

TorreyPines Therapeutics, Inc.  
Form 424B3  
August 28, 2009  
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**Filed Pursuant to Rule 424B3  
Registration No. 333-161424**

## **MEETINGS OF STOCKHOLDERS**

### **PROPOSED MERGER**

#### **YOUR VOTE IS VERY IMPORTANT**

To the Stockholders of TorreyPines Therapeutics, Inc. and Raptor Pharmaceuticals Corp.:

TorreyPines Therapeutics, Inc., which we refer to as TorreyPines, and Raptor Pharmaceuticals Corp., which we refer to as Raptor, have entered into a merger agreement pursuant to which a wholly-owned subsidiary of TorreyPines will merge with and into Raptor, with Raptor continuing as a wholly-owned subsidiary of TorreyPines. TorreyPines and Raptor believe that the merger will result in a biopharmaceutical company that will be better able to achieve the goals of developing new medicines and/or reformulations of existing medicines for new indications in order to address significant unmet or underserved needs of patients.

At the effective time of the merger, each outstanding share of Raptor common stock is expected to convert into the right to receive the number of shares of TorreyPines common stock equal to the 303,982,102 shares of TorreyPines common stock to be issued in the merger divided by 69,145,047 shares of Raptor common stock outstanding as of the signing of the merger agreement plus 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options outstanding as of the signing of the merger agreement plus any additional shares of Raptor common stock and securities exercisable for or exchangeable or convertible into Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger, subject to adjustment to account for the effect of a reverse stock split of TorreyPines common stock to be implemented prior to the consummation of the merger as discussed in the accompanying joint proxy statement/prospectus. TorreyPines stockholders will continue to own their existing shares of TorreyPines common stock. TorreyPines will assume outstanding and unexercised options and warrants to purchase Raptor common stock, and such options and warrants are expected to convert into warrants and options, as applicable, to purchase TorreyPines common stock. Immediately after the merger, Raptor stockholders will hold 95% of the outstanding shares of common stock of the combined company, with TorreyPines stockholders holding 5% of the outstanding shares of common stock of the combined company. For a more complete description of the relative holdings of TorreyPines stockholders and Raptor's stockholders with respect to the capital structure of the combined company, please see the sections titled, "Matters Being Submitted to a Vote of TorreyPines Stockholders TorreyPines Proposal No. 2: Approval of Amendment to TorreyPines Certificate of Incorporation Effecting the Reverse Stock Split" and "The Merger Agreement Merger Consideration and Adjustment" in this joint proxy statement/prospectus beginning on pages 128 and 109, respectively.

Shares of TorreyPines common stock are currently listed on the NASDAQ Global Market under the symbol "TPTX". Shares of Raptor common stock are currently quoted on the Financial Industry Regulatory Authority, or FINRA, Over-the-Counter Bulletin Board, or OTC Bulletin Board, under the symbol "RPTP". Prior to the consummation of the merger TorreyPines intends to file an initial listing application with the NASDAQ Capital Market pursuant to the NASDAQ reverse merger rules for the listing of the combined company following the merger. After completion of the merger, TorreyPines will be renamed Raptor Pharmaceutical Corp. and expects to trade on the NASDAQ Capital Market under the symbol "RPTP". On August 27, 2009, the last trading day before the date of this joint proxy statement/prospectus, the closing sale price of TorreyPines common stock was \$0.39 per share and the closing sale price of Raptor common stock was \$0.38 per share.

TorreyPines and Raptor are each holding their respective annual meetings of stockholders in order to obtain the stockholder approvals necessary to complete the merger and related matters. At the TorreyPines annual meeting, which will be held at 10:00 a.m., local time, on September 28, 2009 at the offices of Cooley Godward Kronish LLP at 4401 Eastgate Mall, San Diego, CA 92121, unless postponed or adjourned to a later date, TorreyPines will ask its stockholders to, among other things, approve the issuance of TorreyPines common stock pursuant to the merger agreement, as well as the resulting change in control and approve amendments to TorreyPines certificate of incorporation effecting a reverse stock split of TorreyPines common stock at one of seventeen reverse split ratios, which is referred to as the reverse stock split, and changing the TorreyPines corporate name to Raptor Pharmaceutical Corp., each as described in the accompanying joint proxy statement/prospectus. Upon the effectiveness of the amendment to TorreyPines certificate of incorporation effecting the

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reverse stock split, referred to as the split effective time, the issued shares of TorreyPines common stock immediately prior to the split effective time will be combined into a smaller number of shares. Depending on the ratio for the reverse stock split, each ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, fifty-five, sixty or seventy shares, of existing TorreyPines common stock held by a TorreyPines stockholder immediately prior to the split effective time will be combined into one new share of TorreyPines common stock. The number of shares of common stock issued and outstanding will therefore be reduced, depending upon the reverse stock split ratio determined by the TorreyPines board of directors and approved by the Raptor board of directors. The amendment to the restated certificate of incorporation that is filed to effect the reverse stock split, if any, will include only the reverse split ratio determined by the boards of directors of TorreyPines and Raptor, respectively, that causes the combined company's stock price to be at least \$4.00 per share and which is determined to be in the best interests of the stockholders of TorreyPines and Raptor, respectively, and all of the other proposed amendments at different ratios will be abandoned. The exact split ratio will be publicly announced by TorreyPines.

At the Raptor annual meeting, which will be held at 10:00 a.m., local time, on September 28, 2009 at Raptor's corporate offices at 9 Commercial Blvd., Suite 200, Novato, CA 94949, unless postponed or adjourned to a later date, Raptor will ask its stockholders to, among other things, adopt the merger agreement, as described in the accompanying joint proxy statement/prospectus.

Concurrently with and as a condition to the execution of the merger agreement, and as described in the accompanying joint proxy statement/prospectus, certain TorreyPines directors and officers who in the aggregate own approximately 1% of the outstanding shares of TorreyPines common stock, and certain Raptor directors and officers who in the aggregate own approximately 11% of Raptor common stock, entered into voting agreements whereby they agreed to vote in favor of the TorreyPines proposals and Raptor proposals, respectively, subject to the terms of the voting agreements.

After careful consideration, the TorreyPines and Raptor boards of directors have each unanimously approved the merger agreement and the respective proposals referred to above, and each of the TorreyPines and Raptor boards of directors has determined that it is advisable to enter into the merger. Each of the boards of directors of TorreyPines and Raptor recommends that its respective stockholders vote FOR the respective proposals described in the accompanying joint proxy statement/prospectus.

More information about TorreyPines, Raptor and the proposed transaction is contained in the accompanying joint proxy statement/prospectus. **TorreyPines and Raptor urge you to read the accompanying joint proxy statement/prospectus carefully and in its entirety. IN PARTICULAR, YOU SHOULD CAREFULLY CONSIDER THE MATTERS DISCUSSED UNDER RISK FACTORS BEGINNING ON PAGE 28.**

TorreyPines and Raptor are very excited about the opportunities the merger brings to both TorreyPines and Raptor stockholders, and we thank you for your consideration and continued support.

/s/ Evelyn Graham  
Chief Executive Officer  
TORREYPINES THERAPEUTICS, INC.

/s/ Christopher Starr  
Chief Executive Officer and Director  
RAPTOR PHARMACEUTICALS CORP.

**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 the joint proxy statement/prospectus. Any representation to the contrary is a criminal offense.**

The accompanying joint proxy statement/prospectus is dated August 28, 2009, and is first being mailed to TorreyPines and Raptor stockholders, respectively, on or about September 1, 2009.

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**TORREYPINES THERAPEUTICS, INC.**

**P.O. Box 231386**

**Encinitas, CA 92023-1386 (858) 623-5665**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON SEPTEMBER 28, 2009**

Dear Stockholders of TorreyPines:

On behalf of the board of directors of TorreyPines Therapeutics, Inc., a Delaware corporation, we are pleased to deliver the accompanying joint proxy statement/prospectus for the proposed merger between TorreyPines and Raptor Pharmaceuticals Corp., a Delaware corporation, pursuant to which ECP Acquisition, Inc., a wholly-owned subsidiary of TorreyPines, will merge with and into Raptor, which will survive as a wholly-owned subsidiary of TorreyPines. The annual meeting of stockholders of TorreyPines will be held on September 28, 2009 at 10:00 a.m., local time, at the offices of Cooley Godward Kronish LLP at 4401 Eastgate Mall, San Diego, CA 92121, for the following purposes:

1. To consider and vote upon a proposal to approve the issuance of TorreyPines common stock and the resulting change in control of TorreyPines pursuant to that certain Agreement and Plan of Merger and Reorganization, dated as of July 27, 2009, by and among TorreyPines, ECP Acquisition, Inc. and Raptor, a copy of which is attached as *Annex A* to the accompanying joint proxy statement/prospectus.
2. To approve an amendment to TorreyPines certificate of incorporation effecting the reverse stock split at one of seventeen reverse split ratios: 1-for-10, 1-for-11, 1-for-12, 1-for-13, 1-for-14, 1-for-15, 1-for-17, 1-for-20, 1-for-25, 1-for-30, 1-for-35, 1-for-40, 1-for-45, 1-for-50, 1-for-55, 1-for-60 or 1-for-70, as described in the accompanying joint proxy statement/prospectus.
3. To approve an amendment to TorreyPines certificate of incorporation to change the corporate name of TorreyPines from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp.
4. To elect the four directors nominated by the TorreyPines board of directors and named herein; provided, however, that if the merger is consummated, it is anticipated that the TorreyPines board of directors will consist of the four people identified in the accompanying joint proxy statement/prospectus.
5. To consider and vote upon an adjournment of the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of TorreyPines Proposal Nos. 1, 2 and 3.
6. To transact such other business as may properly come before the TorreyPines annual meeting or any adjournment or postponement thereof.

The board of directors of TorreyPines has fixed August 27, 2009 as the record date for the determination of stockholders entitled to notice of, and to vote at, the TorreyPines annual meeting and any adjournment or postponement thereof. Only holders of record of shares of TorreyPines common stock at the close of business on the record date are entitled to notice of, and to vote at, the TorreyPines annual meeting. At the close of business on the record date, TorreyPines had 15,999,058 shares of common stock outstanding and entitled to vote.

**Your vote is important. The affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting is required for approval of TorreyPines Proposal Nos. 1 and 5. The affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting is required for approval of TorreyPines Proposal Nos. 2 and 3. For the election of directors (Proposal No. 4), the four nominees receiving the most FOR votes from the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting will be elected.**

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**The accompanying joint proxy statement/prospectus describes the proposed merger and the actions to be taken in connection with the merger and provides additional information about the parties involved. Please give this information your careful attention.**

**Even if you plan to attend the TorreyPines annual meeting in person, TorreyPines requests that you sign and return the enclosed proxy to ensure that your shares will be represented at the TorreyPines annual meeting if you are unable to attend.** If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be counted as a vote in favor of TorreyPines Proposal Nos. 1 through 5. If you fail to return your proxy card and do not attend the TorreyPines annual meeting in person, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the TorreyPines annual meeting and will count as a vote against TorreyPines Proposal Nos. 2 and 3. If you do attend the TorreyPines annual meeting and wish to vote in person, you may withdraw your proxy and vote in person. You may revoke the proxy at any time prior to the TorreyPines annual meeting in the manner described in the accompanying joint proxy statement/prospectus. Any stockholder present at the TorreyPines annual meeting, including any adjournment or postponement of the meeting, may revoke such stockholder's proxy and vote personally on the matters to be considered at the TorreyPines annual meeting.

Please do not send any TorreyPines stock certificates at this time. If TorreyPines Proposal Nos. 2 and 3 are approved and effected, you will receive written instructions for exchanging your stock certificates.

By Order of TorreyPines Board of Directors,

/s/ Evelyn Graham

Chief Executive Officer and Director

Encinitas, California

August 28, 2009

**THE TORREYPINES BOARD OF DIRECTORS HAS DETERMINED AND BELIEVES THAT EACH OF THE PROPOSALS OUTLINED ABOVE IS ADVISABLE TO, AND IN THE BEST INTERESTS OF, TORREYPINES AND ITS STOCKHOLDERS AND HAS APPROVED EACH SUCH PROPOSAL. THE TORREYPINES BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT TORREYPINES STOCKHOLDERS VOTE FOR EACH SUCH PROPOSAL AND FOR EACH OF THE NOMINEES FOR ELECTION OF DIRECTORS IN PROPOSAL NO. 4.**

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**RAPTOR PHARMACEUTICALS CORP.**

**9 Commercial Blvd.**

**Suite 200**

**Novato, CA 94949**

**(415) 382-8111**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON SEPTEMBER 28, 2009**

Dear Stockholders of Raptor Pharmaceuticals Corp.:

On behalf of the board of directors of Raptor Pharmaceuticals Corp., a Delaware corporation, we are pleased to deliver the accompanying joint proxy statement/prospectus for the proposed merger between Raptor and TorreyPines Therapeutics, Inc., a Delaware corporation, pursuant to which ECP Acquisition, Inc., a wholly-owned subsidiary of TorreyPines, will merge with and into Raptor, which will survive as a wholly-owned subsidiary of TorreyPines. The annual meeting of stockholders of Raptor will be held at 10:00 a.m., local time, on September 28, 2009 at its corporate offices at 9 Commercial Blvd., Suite 200, Novato, CA 94949, for the following purposes:

1. To consider and vote upon a proposal to adopt that certain Agreement and Plan of Merger and Reorganization, dated as of July 27, 2009, by and among TorreyPines, ECP Acquisition, Inc. and Raptor, a copy of which is attached as *Annex A* to the accompanying joint proxy statement/prospectus.
2. To elect four directors named herein to serve until the next annual meeting of Raptor stockholders or until their respective successors are duly elected and qualified.
3. To ratify the appointment by the audit committee of Raptor's board of directors of Burr, Pilger & Mayer, LLP as Raptor's independent registered public accounting firm for the fiscal year ending August 31, 2009.
4. To consider and vote upon an adjournment of the Raptor annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement.
5. To transact such other business as may properly come before the Raptor annual meeting or any adjournment or postponement thereof.

The board of directors of Raptor has fixed August 27, 2009 as the record date for the determination of stockholders entitled to notice of, and to vote at, the Raptor annual meeting and any adjournment or postponement thereof. Only holders of record of shares of Raptor common stock at the close of business on the record date are entitled to notice of, and to vote at, the Raptor annual meeting. At the close of business on the record date, Raptor had 76,601,297 shares of common stock outstanding and entitled to vote.

**Your vote is important. The affirmative vote of the holders of a majority of the shares of Raptor common stock outstanding on the record date and entitled to vote at the Raptor annual meeting is required for approval of Raptor Proposal No. 1. The affirmative vote of the holders of a majority of the shares of Raptor common stock having voting power present in person or represented by proxy at the Raptor annual meeting is required for approval of Raptor Proposal Nos. 3 and 4. For the election of directors (Proposal No. 2), the affirmative vote of a plurality of the voting power of the shares present in person or represented by proxy at the Raptor annual meeting is required.**

Under the Delaware General Corporation Law, referred to as the DGCL, holders of Raptor common stock who do not vote in favor of the adoption of the merger agreement will have the ability to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery if the merger is completed, but only if they submit a written demand for an appraisal prior to the vote on the adoption of the merger agreement and they

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comply with the other procedures under the DGCL explained in the joint proxy statement/prospectus. For more information, please see the section titled, "The Merger Appraisal Rights" in the accompanying joint proxy statement/prospectus.

**The accompanying joint proxy statement/prospectus describes the proposed merger and the actions to be taken in connection with the merger and provides additional information about the parties involved. Please give this information your careful attention.**

**Even if you plan to attend the Raptor annual meeting in person, Raptor requests that you sign and return the enclosed proxy to ensure that your shares will be represented at the Raptor annual meeting if you are unable to attend.** If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be counted as a vote in favor of Raptor Proposal Nos. 1 through 4. If you fail to return your proxy card and do not attend the Raptor annual meeting in person, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the Raptor annual meeting and will count as a vote against Raptor Proposal No. 1. If you do attend the Raptor annual meeting and wish to vote in person, you may withdraw your proxy and vote in person. You may revoke the proxy at any time prior to the Raptor annual meeting in the manner described in the accompanying joint proxy statement/prospectus. Any stockholder present at the Raptor annual meeting, including any adjournment or postponement of the meeting, may revoke such stockholder's proxy and vote personally on the matters to be considered at the Raptor annual meeting.

Please do not send any Raptor stock certificates at this time. After the merger is completed, you will receive written instructions for exchanging your stock certificates.

By Order of Raptor's Board of Directors,

/s/ Christopher Starr

Chief Executive Officer and Director

Novato, California

August 28, 2009

**THE RAPTOR BOARD OF DIRECTORS HAS DETERMINED AND BELIEVES THAT EACH OF THE PROPOSALS OUTLINED ABOVE IS ADVISABLE TO, AND IN THE BEST INTERESTS OF, RAPTOR AND ITS STOCKHOLDERS AND HAS APPROVED EACH SUCH PROPOSAL. THE RAPTOR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT RAPTOR STOCKHOLDERS VOTE FOR EACH SUCH PROPOSAL AND FOR EACH OF THE NOMINEES FOR ELECTION OF DIRECTORS IN PROPOSAL 2.**

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**ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates important business and financial information about TorreyPines and Raptor that is not included in or delivered with this proxy statement/prospectus. This information is available without charge to security holders upon written or oral request delivered to the following address and/or phone number: Attn: Investor Relations, TorreyPines Therapeutics, Inc., P.O. Box 231386, Encinitas, CA 92023-1386, telephone number (858) 623-5665. In order to obtain timely delivery, security holders must request the information no later than five business days before the date that security holders must make their investment decision. See the section titled, "Where You Can Find More Information" on page 273 of this joint proxy statement/prospectus.

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**QUESTIONS AND ANSWERS ABOUT THE MERGER**

Except where specifically noted, the following information and all other information contained in this joint proxy statement/prospectus does not give effect to the reverse stock split described in TorreyPines Proposal No. 2.

The following section provides answers to frequently asked questions about the merger. This section, however, provides only summary information. For a more complete response to these questions and for additional information, please refer to the cross-referenced sections.

**Q: What is the merger?**

A: TorreyPines, ECP Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of TorreyPines, which is referred to as the merger sub, and Raptor have entered into an Agreement and Plan of Merger and Reorganization, dated as of July 27, 2009, which is referred to as the merger agreement. The merger agreement contains the terms and conditions of the proposed business combination of TorreyPines and Raptor. Under the merger agreement, merger sub will merge with and into Raptor, with Raptor continuing as a wholly-owned subsidiary of TorreyPines, which transaction is referred to as the merger. At the effective time of the merger, each outstanding share of Raptor common stock is expected to convert into the right to receive the number of shares of TorreyPines common stock equal to the 303,982,102 shares of TorreyPines common stock to be issued in the merger divided by 69,145,047 shares of Raptor common stock outstanding as of the signing of the merger agreement plus 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options outstanding as of the signing of the merger agreement plus any additional shares of Raptor common stock and securities exercisable for or exchangeable or convertible into Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger, subject to adjustment to account for the effect of a reverse stock split of TorreyPines common stock to be implemented immediately prior to the consummation of the merger, which is referred to as the reverse stock split.

**Q: Why are the two companies proposing to merge?**

A: TorreyPines and Raptor believe that the merger will create a strong, more diversified biopharmaceutical company. The combined company will have a seasoned management team, six clinical programs either in, or ready to begin, Phase II or Phase III clinical trials as well as three preclinical programs based upon a proprietary drug-targeting platform, one of which is partnered with a large pharmaceutical company. TorreyPines and Raptor believe that as a combined company, they will be better able to achieve the goals of developing new medicines to address significant unmet or underserved needs of patients. TorreyPines and Raptor also believe that the combined company provides the opportunity to reorganize both TorreyPines and Raptor's capital structure and that the contemplated listing on the NASDAQ Capital Market may provide the combined company with access to a more liquid market for the combined company's common stock.

**Q: On what market are the combined company's shares expected to trade?**

A: It is a condition to the closing of the merger that TorreyPines file an initial listing application with the NASDAQ Capital Market pursuant to The NASDAQ Stock Market LLC reverse merger rules and receive conditional approval for the trading of the combined company's common stock on the NASDAQ Capital Market. If such application is accepted, TorreyPines anticipates that the combined company's common stock will be listed on the NASDAQ Capital Market following the closing of the merger under the trading symbol RPTP.

**Q: Why am I receiving this joint proxy statement/prospectus?**

A: You are receiving this joint proxy statement/prospectus because you have been identified as a stockholder of either TorreyPines or Raptor as of the applicable record date, and you are entitled to vote at such company's



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annual stockholders meeting. This document serves as both a joint proxy statement of TorreyPines and Raptor used to solicit proxies for the respective annual stockholders meetings, and as a prospectus of TorreyPines used to offer shares of TorreyPines common stock in exchange for shares of Raptor common stock in the merger. This joint proxy statement/prospectus contains important information about the merger and respective annual stockholders meetings of TorreyPines and Raptor, and you should read it carefully.

### **Q: What is required to consummate the merger?**

A: To consummate the merger, TorreyPines stockholders must approve:

the issuance of shares of TorreyPines common stock in the merger and the resulting change of control of TorreyPines, which requires the affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting; and

the amendment to TorreyPines certificate of incorporation to effect the reverse stock split of the issued and outstanding shares of TorreyPines common stock and the change of the TorreyPines corporate name to Raptor Pharmaceutical Corp. , which requires the affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting.

To consummate the merger, Raptor stockholders must adopt the merger agreement, which requires the affirmative vote of the holders of a majority of the shares of Raptor common stock outstanding on the record date and entitled to vote at the Raptor annual meeting.

In addition to obtaining TorreyPines and Raptor's stockholder approval, each of the other closing conditions set forth in the merger agreement must be satisfied or waived. For a more complete description of the closing conditions under the merger agreement, please see the section titled, The Merger Agreement Conditions to Completion of the Merger beginning on page 112 of this joint proxy statement/prospectus.

### **Q: What risks should I consider in deciding whether to vote in favor of or consent to the proposals?**

A: You should carefully review the section of this joint proxy statement/prospectus titled, Risk Factors beginning on page 28 of this joint proxy statement/prospectus, which sets forth certain risks and uncertainties related to the merger, risks and uncertainties to which the combined company's business will be subject and risks and uncertainties to which each of TorreyPines and Raptor, as an independent company, is subject.

### **Q: When do the parties expect to complete the merger?**

A: The parties are working towards completing the merger as quickly as possible. TorreyPines and Raptor anticipate that the merger will occur in the fourth quarter of 2009, promptly after the later to occur of the conclusion of the TorreyPines annual meeting and the Raptor annual meeting. However, because completion of the merger is subject to various closing conditions, TorreyPines and Raptor cannot predict the exact timing of the merger or whether the merger will occur at all. For more information, please see the section titled, The Merger Agreement Conditions to the Completion of the Merger on page 112 of this joint proxy statement/prospectus.

### **Q: What will happen to any options or warrants to acquire Raptor common stock in the merger?**

A:



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As a result of the merger, Raptor warrant holders and option holders will have their Raptor warrants and options converted into warrants and options to purchase TorreyPines common stock, as applicable, with the number of shares and exercise price being appropriately adjusted to reflect the exchange ratio between TorreyPines common stock and Raptor common stock determined in accordance with the merger agreement

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and further subject to adjustment to account for the reverse stock split as described in further detail in this joint proxy statement/prospectus. For a more complete description of what Raptor warrant holders and option holders will receive in the merger, please see the section titled, "The Merger Agreement Merger Consideration and Adjustment" in this joint proxy statement/prospectus beginning on page 109.

**Q: Who will be the directors of the combined company following the merger?**

A: Immediately following the merger, the board of directors of the combined company is expected to be composed solely of the members of the Raptor board of directors prior to the merger: (i) Christopher M. Starr, Ph.D., (ii) Raymond W. Anderson, (iii) Erich Sager and (iv) Richard L. Franklin, M.D., Ph.D.

**Q: Who will be the executive officers of the combined company immediately following the merger?**

A: Immediately following the merger, the executive management team of the combined company is expected to be composed solely of the members of the Raptor executive management team prior to the merger:

| Name                        | Title  |
|-----------------------------|--|
| Christopher M. Starr, Ph.D. | Chief Executive Officer                          |
| Todd C. Zankel, Ph.D.       | Chief Scientific Officer                         |
| Kim R. Tsuchimoto           | Chief Financial Officer, Treasurer and Secretary |

**Q: What is the reverse stock split and why is it necessary?**

A: Immediately prior to the effective time of the merger, the outstanding shares of TorreyPines common stock will be combined into a lesser number of shares to be determined by TorreyPines and Raptor's respective boards of directors prior to the effective time and publicly announced by TorreyPines and Raptor. The merger constitutes a reverse merger under applicable marketplace rules established by NASDAQ Stock Market, LLC, which requires the combined company to comply with the initial listing standards of the applicable NASDAQ market to continue to be listed on such market following the merger. The NASDAQ Capital Market's initial listing standards require a company to have, among other things, a \$4.00 per share minimum bid price. Because it is a condition precedent to the merger that TorreyPines common stock be listed on the NASDAQ Capital Market, and the current price of TorreyPines common stock is less than the minimum bid price required by such market, unless the condition is waived, the reverse stock split is necessary to consummate the merger.

**Q: What are the United States federal income tax consequences of the merger?**

A: Each of TorreyPines and Raptor expects the merger to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, or the Code, and it is a closing condition to the merger that TorreyPines and Raptor each receive opinions of their respective counsel regarding such qualification. Assuming the merger qualifies as a reorganization, then, in general, no Raptor stockholder will recognize gain or loss upon the exchange of Raptor common stock for TorreyPines common stock pursuant to the merger, except to the extent of cash received in lieu of a fractional share of TorreyPines common stock as described below; and each Raptor stockholder will recognize gain or loss to the extent any cash received in lieu of a fractional share of TorreyPines common stock exceeds or is less than, respectively, the basis of such fractional share. No gain or loss will be recognized by TorreyPines stockholders (who are not also Raptor stockholders) as a result of the merger.

Tax matters are very complicated, and the tax consequences of the merger to a particular TorreyPines or Raptor stockholder will depend in part on such stockholder's circumstances. Accordingly, you should consult your tax advisor for a full understanding of the tax consequences of the merger to you, including the applicability and effect of federal, state, local and foreign income and other tax laws. For more information, please

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see the section titled, The Merger Material United States Federal Income Tax Consequences of the Merger in this joint proxy statement/prospectus beginning on page 102.

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**Q: What will happen to TorreyPines if, for any reason, the merger with Raptor does not close?**

A: If, for any reason, the merger with Raptor does not close, the TorreyPines board of directors may elect to, among other things, attempt to sell or otherwise dispose of TorreyPines licensed assets, attempt to complete another strategic transaction like the merger or continue to operate TorreyPines business. However, given TorreyPines limited cash reserves it is unlikely TorreyPines would be able to complete any of these transactions in a timely fashion and TorreyPines may be forced to file for bankruptcy, cease operations or liquidate and dissolve.

**Q: Who is paying for this proxy solicitation?**

A: TorreyPines and Raptor will pay the cost of soliciting their respective proxies. Raptor has agreed to pay all fees and expenses, other than fees and expenses of attorneys, accountants and financial advisors, incurred in connection with the filing with the U.S. Securities and Exchange Commission, or SEC, printing and mailing of this joint proxy statement/prospectus (and the registration statement of which it is a part) and any amendments or supplements thereto. Arrangements will be made with brokerage firms and other custodians, nominees and fiduciaries who are record holders of TorreyPines and Raptor common stock for the forwarding of solicitation materials to the beneficial owners of TorreyPines and Raptor common stock. TorreyPines and Raptor will pay the cost of reimbursing their respective, applicable brokers, custodians, nominees and fiduciaries for the reasonable out-of-pocket expenses they incur in connection with the forwarding of solicitation materials.

**FOR TORREYPINES STOCKHOLDERS:**

**Q: Who is soliciting my proxy?**

A: The proxy is being solicited of TorreyPines stockholders by TorreyPines board of directors.

**Q: On what matters am I being asked to vote?**

A: TorreyPines stockholders are being asked to:

consider and vote upon a proposal to approve the issuance of TorreyPines common stock and the resulting change in control of TorreyPines pursuant to the merger agreement;

consider and vote upon a proposal to approve an amendment to TorreyPines certificate of incorporation effecting the reverse stock split at one of seventeen reverse split ratios: 1-for-10, 1-for-11, 1-for-12, 1-for-13, 1-for-14, 1-for-15, 1-for-17, 1-for-20, 1-for-25, 1-for-30, 1-for-35, 1-for-40, 1-for-45, 1-for-50, 1-for-55, 1-for-60 or 1-for-70;

consider and vote upon a proposal to approve an amendment to TorreyPines certificate of incorporation to change the corporate name of TorreyPines from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. ;

consider and vote upon a proposal to elect the four directors nominated by the TorreyPines board of directors; and

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consider and vote upon a proposal to adjourn the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the TorreyPines Proposal Nos. 1, 2 and 3.

**Q: As a TorreyPines stockholder, how does TorreyPines Board of Directors recommend that I vote?**

A: After careful consideration, TorreyPines board of directors recommends that TorreyPines stockholders vote:

**FOR** Proposal No. 1 to approve the issuance of shares of TorreyPines common stock in the merger, and the resulting change of control of TorreyPines;

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**FOR** Proposal No. 2 to approve the amendment to TorreyPines certificate of incorporation to effect a reverse stock split of the issued and outstanding shares of TorreyPines common stock;

**FOR** Proposal No. 3 to approve the amendment to TorreyPines certificate of incorporation to change the corporate name of TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. ;

**FOR** Proposal No. 4 to elect the four directors nominated by the TorreyPines board of directors; and

**FOR** Proposal No. 5 to consider and vote upon an adjournment of the annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of TorreyPines Proposal Nos. 1, 2 and 3.

To review the background of the merger and TorreyPines board of directors reasons for recommending the merger in greater detail, see the sections titled, The Merger Background of the Merger and The Merger Reasons for the Merger beginning on pages 83 and 88, respectively, of this joint proxy statement/prospectus.

**Q: Am I entitled to appraisal rights?**

A: Under Delaware General Corporation Law, or the DGCL, holders of TorreyPines common stock are not entitled to appraisal rights in connection with the merger or the proposals described in this joint proxy statement/prospectus.

**Q: Will the TorreyPines stockholder rights plan be triggered as a result of the merger?**

A: No. TorreyPines board of directors adopted an amendment to the TorreyPines stockholder rights plan that excludes the signing of the merger agreement, the merger and the other transactions contemplated with Raptor from triggering the TorreyPines stockholder rights plan.

**Q: What do I need to do now?**

A: TorreyPines and Raptor urge you to read this joint proxy statement/prospectus carefully, including its annexes, and to consider how the merger affects you.

If you are a TorreyPines stockholder, you may provide your proxy instructions in one of three different ways. First, you can mail your signed proxy card in the enclosed return envelope. Alternatively, you can provide your proxy instructions via touch-tone telephone by dialing the toll-free telephone number on your proxy card or voting instruction form. You may also provide your proxy instructions via the Internet by following the instructions on your proxy card or voting instruction form. If your proxy card allows for Internet voting and you have Internet access, TorreyPines encourages you to record your vote on the Internet. It is convenient, and it saves TorreyPines significant postage and processing costs. In addition, when voting via the Internet or by telephone prior to the meeting date, your vote is recorded immediately, and there is no risk that postal delays will cause your vote to arrive late and therefore not be counted. Please provide your proxy instructions only once and as soon as possible so that your shares can be voted at the annual meeting of stockholders of TorreyPines.

**Q: What happens if I return a signed and dated proxy card but do not indicate how to vote my proxy?**

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- A: If you do not include instructions on how to vote your properly signed and dated proxy, your shares will be voted **FOR** approval of the issuance of shares of TorreyPines common stock in the merger and the resulting change of control of TorreyPines; **FOR** election of the four directors nominated by the TorreyPines board of directors; and **FOR** approval of the adjournment of the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of TorreyPines Proposal Nos. 1, 2 and 3.

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### **Q: What happens if I do not return a proxy card or otherwise provide proxy instructions?**

A: If you are a TorreyPines stockholder, the failure to return your proxy card or otherwise provide proxy instructions will have the same effect as voting against TorreyPines Proposal Nos. 2 and 3 and your shares will not be counted for purposes of determining whether a quorum is present at the TorreyPines annual meeting.

### **Q: May I vote in person?**

A: If you are a stockholder of TorreyPines and your shares of TorreyPines common stock are registered directly in your name with TorreyPines transfer agent, you are considered to be the stockholder of record with respect to those shares, and the proxy materials and proxy card are being sent directly to you by TorreyPines. If you are a TorreyPines stockholder of record, you may attend the annual meeting of TorreyPines stockholders to be held on September 28, 2009 and vote your shares in person. **Even if you plan to attend the TorreyPines annual meeting in person, TorreyPines requests that you sign and return the enclosed proxy to ensure that your shares will be represented at the TorreyPines annual meeting if you are unable to attend.**

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

A: If your shares of TorreyPines common stock are held in a brokerage account or by another nominee, you are considered the beneficial owner of shares held in street name, and the proxy materials are being forwarded to you together with a voting instruction card. As the beneficial owner, you are also invited to attend the annual meeting of TorreyPines stockholders. Because a beneficial owner is not the stockholder of record, you may not vote these shares in person at the TorreyPines annual meeting unless you obtain a proxy from the broker, trustee or nominee that holds your shares, giving you the right to vote the shares at the meeting. Additionally, unless your broker has discretionary authority to vote on certain matters, your broker will not be able to vote your shares of TorreyPines common stock without instructions from you. To make sure that your vote is counted, you should instruct your broker to vote your shares, following the procedure provided by your broker.

### **Q: May I change my vote after I have submitted a proxy or provided proxy instructions?**

A: TorreyPines stockholders of record, other than those TorreyPines stockholders who have executed voting agreements, may change their vote at any time before their proxy is voted at the TorreyPines annual meeting in one of three ways. First, a stockholder of record of TorreyPines can send a written notice to the Corporate Secretary of TorreyPines stating that it would like to revoke its proxy. Second, a stockholder of record of TorreyPines can submit new proxy instructions either on a new proxy card, by telephone or via the Internet. Third, a stockholder of record of TorreyPines can attend the TorreyPines annual meeting and vote in person. Attendance alone will not revoke a proxy.

Any written notice of revocation or subsequent TorreyPines proxy card must be received by the Corporate Secretary of TorreyPines prior to the taking of the vote at TorreyPines 2009 annual meeting. Such written notice of revocation or subsequent TorreyPines proxy card should be hand delivered to the Corporate Secretary of TorreyPines or should be sent so as to be delivered to TorreyPines Therapeutics, Inc., P.O. Box 231386 Encinitas, CA 92032-1386, Attention: Investor Relations. Stockholders whose TorreyPines shares are held in street name should consult with their broker or nominee concerning the method for revoking their TorreyPines proxy. If a stockholder of record of TorreyPines has instructed a broker to vote its shares of TorreyPines common stock, the stockholder must follow directions received from its broker to change those instructions.

### **Q: Should I send in my stock certificates now?**



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- A: No. If TorreyPines Proposal Nos. 2 and 3 are approved and effected, TorreyPines stockholders will exchange their stock certificates and will receive written instructions from TorreyPines transfer agent for exchanging their shares of TorreyPines common stock.

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**Q: Who can help answer my questions?**

A: If you are a TorreyPines stockholder and would like additional copies, without charge, of this joint proxy statement/prospectus or if you have questions about the merger, including the procedures for voting your shares, you should contact:  
TorreyPines Therapeutics, Inc.

P.O. Box 231386

Encinitas, CA 92032-1386

Tel: (858) 623-5665

Attn: Investor Relations

**FOR RAPTOR STOCKHOLDERS:**

**Q: Who is soliciting my proxy?**

A: The proxy is being solicited of Raptor's stockholders by Raptor's board of directors.

**Q: On what matters am I being asked to vote?**

A: Raptor's stockholders are being asked to:

consider and vote upon a proposal to adopt the merger agreement;

consider and vote upon a proposal to elect four directors named herein to serve until the next annual meeting of the stockholders of Raptor or until their respective successors are duly elected and qualified;

consider and vote upon a proposal to ratify the appointment by the audit committee of Raptor's board of directors of Burr, Pilger & Mayer, LLP as Raptor's independent registered public accounting firm for the fiscal year ending August 31, 2009; and

consider and vote upon a proposal to adjourn the Raptor annual meeting, if necessary, to solicit additional proxies in the event there are not sufficient votes in favor of the adoption of the merger agreement.

**Q: As a Raptor stockholder, how does Raptor's Board of Directors recommend that I vote?**

A: After careful consideration, Raptor's board of directors recommends that Raptor's stockholders vote:

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**FOR** Proposal No. 1 to adopt the merger agreement;

**FOR** Proposal No. 2 to elect four directors named herein to serve until the next annual meeting of the stockholders of Raptor or until their respective successors are duly elected and qualified;

**FOR** Proposal No. 3 to ratify the appointment by the audit committee of Raptor's board of directors of Burr, Pilger & Mayer, LLP as Raptor's independent registered public accounting firm for the fiscal year ending August 31, 2009; and

**FOR** Proposal No. 4 to consider and vote upon an adjournment of the annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of adoption of the merger agreement.

To review the background of the merger and TorreyPines' board of directors' reasons for recommending the merger in greater detail, see the sections titled, "The Merger Background of the Merger" and "The Merger Reasons for the Merger" beginning on pages 83 and 88, respectively, of this joint proxy statement/prospectus.

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**Q: How many shares of common stock of the combined company would I own assuming that I own 100,000 shares of Raptor common stock as of the closing of the merger?**

A: The effective share split a Raptor stockholder will experience in this transaction will largely be dependent on the TorreyPines share price upon the date immediately preceding the closing date of this transaction. Assuming a reverse stock split of TorreyPines common stock immediately prior to the closing of the merger within the range of 10:1 to 70:1, a Raptor stockholder currently holding 100,000 shares of common stock of Raptor, would hold between approximately 43,962 and 6,280 shares of common stock of the combined company. For a more complete description of the relative holdings of TorreyPines stockholders and Raptor's stockholders with respect to the capital structure of the combined company, please see the sections titled, Matters Being Submitted to a Vote of TorreyPines Stockholders TorreyPines Proposal No. 2: Approval of Amendment to TorreyPines Certificate of Incorporation Effecting the Reverse Stock Split and The Merger Agreement Merger Consideration and Adjustment in this joint proxy statement/prospectus beginning on pages 128 and 109, respectively.

**Q: What would my percent ownership in the combined company be assuming that I own 100,000 shares of Raptor common stock as of the closing of the merger?**

A: As a result of the proposed merger your percent ownership in the combined company will be reduced by approximately 5% compared to the percent you currently own of Raptor common stock. Raptor currently has approximately 69 million shares of common stock outstanding. For example, if you hold 100,000 shares of Raptor's common stock then you currently own approximately 0.145% of Raptor's common stock. As a result of the merger, such percent ownership in the combined company would be reduced by 5% to 0.137%. For a more complete description of the relative holdings of TorreyPines stockholders and Raptor's stockholders with respect to the capital structure of the combined company, please see the sections titled, Matters Being Submitted to a Vote of TorreyPines Stockholders TorreyPines Proposal No. 2: Approval of Amendment to TorreyPines Certificate of Incorporation Effecting the Reverse Stock Split and The Merger Agreement Merger Consideration and Adjustment in this joint proxy statement/prospectus beginning on pages 128 and 109, respectively.

**Q: Am I entitled to appraisal rights?**

A: Holders of Raptor common stock are entitled to appraisal rights in connection with the merger pursuant to Section 262 of the DGCL. Failure to take any of the steps required under Section 262 of the DGCL on a timely basis may result in a loss of those appraisal rights. The provisions of the DGCL that grant appraisal rights and govern such procedures are attached as *Annex B* to this joint proxy statement/prospectus. For a more complete description of Raptor's stockholder's appraisal rights, see the section titled, The Merger Appraisal Rights.

**Q: Will the Raptor stockholder rights plan be triggered as a result of the merger?**

A: No. Raptor's board of directors adopted an amendment to the Raptor stockholder rights plan that excludes the signing of the merger agreement, the merger and the other transactions contemplated with TorreyPines from triggering the Raptor stockholder rights plan.

**Q: What do I need to do now?**

A: TorreyPines and Raptor urge you to read this joint proxy statement/prospectus carefully, including its annexes, and to consider how the merger affects you.

If you are a Raptor stockholder, you may provide your proxy instructions by mailing your signed proxy card in the enclosed return envelope.

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Please provide your proxy instructions only once and as soon as possible so that your shares can be voted at the respective annual meeting of stockholders of Raptor.

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**Q: What happens if I return a signed and dated proxy card but do not indicate how to vote my proxy?**

A: If you do not include instructions on how to vote your properly signed and dated proxy, your shares will be voted **FOR** adoption of the merger agreement, **FOR** the election of four directors to serve until the next annual meeting of the stockholders of Raptor or until their respective successors are duly elected and qualified, **FOR** the ratification of the appointment by the audit committee of Raptor's board of directors of Burr, Pilger & Mayer, LLP as Raptor's independent registered public accounting firm for the fiscal year ending August 31, 2009; and **FOR** approval of the adjournment of the annual meeting, if necessary, to solicit additional proxies in the event there are not sufficient votes in favor of the adoption of the merger agreement.

**Q: What happens if I do not return a proxy card or otherwise provide proxy instructions?**

A: If you are a Raptor stockholder, the failure to return your proxy card will have the same effect as voting against Raptor Proposal No. 1 and your shares will not be counted for purposes of determining whether a quorum is present at the Raptor annual meeting.

**Q: May I vote in person?**

A: If you are a stockholder of Raptor and your shares of Raptor common stock are registered directly in your name with Raptor's transfer agent, you are considered to be the stockholder of record with respect to those shares, and the proxy materials and proxy card are being sent directly to you by Raptor. If you are a Raptor stockholder of record, you may attend the annual meeting of Raptor stockholders to be held on September 28, 2009 and vote your shares in person. **Even if you plan to attend the Raptor annual meeting in person, Raptor requests that you sign and return the enclosed proxy to ensure that your shares will be represented at the Raptor annual meeting if you are unable to attend.**

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

A: If your shares of Raptor common stock are held in a brokerage account or by another nominee, you are considered the beneficial owner of shares held in street name, and the proxy materials are being forwarded to you together with a voting instruction card. As the beneficial owner, you are also invited to attend the annual meeting of Raptor stockholders. Because a beneficial owner is not the stockholder of record, you may not vote these shares in person at the Raptor annual meeting unless you obtain a proxy from the broker, trustee or nominee that holds your shares, giving you the right to vote the shares at the meeting. Additionally, unless your broker has discretionary authority to vote on certain matters, your broker will not be able to vote your shares of Raptor common stock without instructions from you. To make sure that your vote is counted, you should instruct your broker to vote your shares, following the procedure provided by your broker.

**Q: May I change my vote after I have submitted a proxy or provided proxy instructions?**

A: Raptor stockholders of record, other than those Raptor stockholders who have executed voting agreements, may change their vote at any time before their proxy is voted at the Raptor annual meeting:

if you are a Raptor registered stockholder, by filing a written notice of revocation bearing a later date than Raptor proxy with the Corporate Secretary of Raptor before the taking of the vote at Raptor's 2009 annual meeting;

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duly executing and submitting a later dated, properly completed Raptor proxy relating to the same shares and delivering it to the Corporate Secretary of Raptor before the taking of the vote at Raptor's 2009 annual meeting; or

attending the 2009 annual meeting and voting in person (although attendance at Raptor's 2009 annual meeting will not in and of itself constitute a revocation of Raptor proxy).

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Any written notice of revocation or subsequent Raptor proxy card must be received by the Corporate Secretary of Raptor prior to the taking of the vote at Raptor's 2009 annual meeting. Such written notice of revocation or subsequent Raptor proxy card should be hand delivered to the Corporate Secretary of Raptor or should be sent so as to be delivered to Raptor Pharmaceuticals Corp., 9 Commercial Blvd., Suite 200, Novato, CA 94949, Attention: Kim R. Tsuchimoto, Corporate Secretary. Stockholders whose Raptor shares are held in street name should consult with their broker or nominee concerning the method for revoking their Raptor proxy. If a stockholder of record of Raptor has instructed a broker to vote its shares of Raptor common stock, the stockholder must follow directions received from its broker to change those instructions.

**Q: Will my rights as a Raptor stockholder change as a result of the merger?**

A: Yes. You will become a TorreyPines (such name to be changed to Raptor Pharmaceutical Corp.) stockholder as a result of the merger and will have rights after the completion of the merger that are governed by Delaware law and TorreyPines' certificate of incorporation and bylaws. For further information regarding your rights as a TorreyPines stockholder following the merger, please see Comparison of Rights of Holders of TorreyPines Stock and Raptor Stock beginning on page 262 of this joint proxy statement/prospectus.

**Q: Should I send in my stock certificates now?**

A: No. If you are a Raptor stockholder, after the merger is consummated, you will receive written instructions from the exchange agent for exchanging your certificates representing shares of Raptor common stock for certificates representing shares of TorreyPines common stock. You will receive a cash payment for any fractional shares.

**Q: Who can help answer my questions?**

A: If you are a Raptor stockholder, and would like additional copies, without charge, of this joint proxy statement/prospectus or if you have questions about the merger, including the procedures for voting your shares, you should contact:  
Raptor Pharmaceuticals Corp.

9 Commercial Blvd.

Suite 200

Novato, CA 94949

(415) 382-1390

Attn: Secretary



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### **SUMMARY**

*This summary highlights selected information from this joint proxy statement/prospectus and may not contain all of the information that is important to you. To better understand the merger and the other proposals being considered at the TorreyPines annual meeting and Raptor annual meeting, you should read this entire joint proxy statement/prospectus carefully, including the merger agreement, attached as Annex A and the other documents to which you are referred herein. For more information, please see the section titled, "Where You Can Find More Information" in this joint proxy statement/prospectus.*

#### **The Companies**

##### **TorreyPines Therapeutics, Inc.**

P.O. Box 231386

Encinitas, CA 92023-1386

(858) 623-5665

TorreyPines initially incorporated in Nevada on July 29, 1997 as Axonyx Inc. In October 2006, Axonyx Inc. reincorporated in Delaware and changed its name to TorreyPines Therapeutics, Inc., or TorreyPines. TorreyPines is a biopharmaceutical company that has been committed to providing patients with better alternatives to existing therapies through the development and commercialization of small molecule product candidates. TorreyPines goal has been to develop versatile product candidates each capable of treating a number of diseases and disorders characterized by moderate to severe pain, including acute migraine, migraine prophylaxis and chronic pain, such as neuropathic pain. TorreyPines has no products available for sale and has incurred losses since its inception.

##### **Raptor Pharmaceuticals Corp.**

9 Commercial Blvd.

Suite 200

Novato, CA 94949

(415) 382-8111

Raptor is a publicly traded development-stage biotechnology company dedicated to speeding the delivery of new treatment options to patients by working to improve existing therapeutics through the application of highly specialized drug targeting platforms and formulation expertise. Raptor focuses on underserved patient populations where it believes that it can have the greatest potential impact. Raptor is developing drug therapies for the potential treatment of: genetic diseases including nephropathic cystinosis, or cystinosis, and Huntington's Disease, or HD; metabolic diseases including non-alcoholic steatohepatitis, or NASH, and aldehyde dehydrogenase, or ALDH2, deficiency, or Ethanol Intolerance; and liver diseases including primary liver cancer or hepatocellular carcinoma, or HCC, and hepatitis.

##### **ECP Acquisition, Inc.**

ECP Acquisition, Inc., or merger sub, is a wholly-owned subsidiary of TorreyPines, and was formed solely for the purposes of carrying out the merger.

#### **Summary of the Merger**

If the merger is completed, merger sub will merge with and into Raptor, with Raptor continuing as a wholly-owned subsidiary of TorreyPines. Immediately after the merger Raptor stockholders will hold 95% of the outstanding shares of common stock of the combined company, with TorreyPines stockholders holding 5% of the outstanding shares of common stock of the combined company. TorreyPines will assume outstanding and



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unexercised options and warrants to purchase Raptor common stock, and they will be converted into warrants and options, as applicable, to purchase TorreyPines common stock. Upon the effectiveness of one of the amendments to TorreyPines certificate of incorporation effecting the reverse stock split, referred to as the split effective time, the issued and outstanding shares of TorreyPines common stock immediately prior to the split effective time will be combined into a smaller number of shares of TorreyPines common stock. Depending on the ratio for the reverse stock split, each ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, fifty-five, sixty or seventy shares, of existing TorreyPines common stock held by a TorreyPines stockholder immediately prior to the split effective time will be converted into one new share of TorreyPines common stock. The number of shares of common stock issued and outstanding will therefore be reduced, depending upon the reverse stock split ratio determined by the TorreyPines board of directors and approved by the Raptor board of directors. The amendment to the restated certificate of incorporation that is filed to effect the reverse stock split, if any, will include only the reverse split ratio determined by the boards of directors of TorreyPines and Raptor, respectively, that causes the combined company's stock price to be at least \$4.00 per share and which is determined to be in the best interests of the stockholders of TorreyPines and Raptor, respectively, and all of the other proposed amendments at different ratios will be abandoned. The exact split ratio will be publicly announced by TorreyPines. The reverse stock split will also proportionately reduce the number of shares of TorreyPines common stock issued in the merger but it will not affect the percentages of the outstanding shares of the combined company owned by the TorreyPines stockholders and Raptor stockholders, respectively, described above following the completion of the merger. For a more complete description of the relative holdings of TorreyPines stockholders and Raptor's stockholders with respect to the capital structure of the combined company, please see the sections titled, *Matters Being Submitted to a Vote of TorreyPines Stockholders TorreyPines Proposal No. 2: Approval of Amendment to TorreyPines Certificate of Incorporation Effecting the Reverse Stock Split* and *The Merger Agreement Merger Consideration and Adjustment* in this joint proxy statement/prospectus beginning on pages 128 and 109, respectively.

The closing of the merger will occur no later than the third business day after the last of the conditions to the merger has been satisfied or waived, or at another time as TorreyPines and Raptor agree. TorreyPines and Raptor anticipate that the consummation of the merger will occur after the respective TorreyPines and Raptor annual meetings, sometime in the fourth quarter of 2009. However, because the merger is subject to a number of conditions, neither TorreyPines nor Raptor can predict exactly when the closing will occur or if it will occur at all. After completion of the merger, assuming that TorreyPines receives the required stockholder approval of TorreyPines Proposal No. 3, TorreyPines will be renamed Raptor Pharmaceutical Corp. For a more complete description of the merger please see the section titled, *The Merger Agreement* in this joint proxy statement/prospectus.

### **Reasons for the Merger**

The combined company resulting from the merger will be a biopharmaceutical company focused on the development and commercialization of proprietary products that address important therapeutic needs for various diseases and disorders. TorreyPines and Raptor believe that the combined company will have the following potential advantages:

*Pipeline.* The combined company will have an expanded product candidate pipeline that is more diversified, and targets unmet and underserved markets. The pipeline will consist of six clinical programs either in, or ready to begin, Phase II or Phase III clinical trials as well as three preclinical programs, one of which is partnered with a large pharmaceutical company.

*Markets.* The combined company can better manage clinical development risk by having development capabilities across a wider spectrum of diseases and markets. Raptor's orphan product strategy of applying reformulated versions of already approved compounds to new disease indications may

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provide a balance to the development risks of TorreyPines' novel compounds for the potential treatment of pain. The orphan and non-orphan markets that may be addressed by the clinical and preclinical stage programs of the combined company represent well documented underserved or unmet medical needs.

*Capital Structure.* The combined company provides the opportunity to combine and reorganize both TorreyPines' and Raptor's capital structure and the contemplated listing on the NASDAQ Capital Market may provide the combined company with access to a more liquid market for the combined company's common stock.

*Management Team.* The combined company will be led by an experienced senior management team from Raptor who has significant experience in the development, registration, and commercialization of product candidates and a board of directors with representation from Raptor. The existing senior management team from TorreyPines will remain with a wholly-owned subsidiary of the combined company for a transition period and will focus on advancing TorreyPines' product candidates for the treatment of moderate to severe pain.

In addition to these potential advantages, each of the board of directors of TorreyPines and Raptor also considered other reasons for the merger, as described herein. For example, the board of directors of TorreyPines considered, among other things:

the addition of the four Raptor clinical development programs, and three preclinical stage programs, broadens the combined company's product pipeline;

the consideration of TorreyPines' efforts to pursue alternatives to the merger, including engaging in a merger transaction with another company, an asset sale of TorreyPines' pain program or undertaking a bankruptcy or liquidation of TorreyPines;

Raptor's more advanced stage clinical programs, especially for the treatment of cystinosis, offers the opportunity for filing a New Drug Application, or NDA, with the United States Food and Drug Administration, or FDA, in 2010 with a preliminary target of product launch and commercial revenues in 2011. Other ongoing clinical programs at Raptor include a Phase II clinical trial in NASH and the planned initiation of a Phase II study in HD. These trials may provide the combined company with clinical news flow and possibly partnering or licensing transactions over the next 12-18 months; and

the opportunity for TorreyPines' stockholders to potentially participate in the short and long-term value of Raptor's preclinical and clinical development programs as a result of the merger.

In addition, the Raptor's board of directors approved the merger based on a number of factors, including the following:

merging with a NASDAQ-listed company gives Raptor the opportunity to qualify for a NASDAQ Capital Markets listing, which may facilitate access to private and public equity markets and stockholder liquidity; and

the addition of TorreyPines' clinical programs.

### **Overview of the Merger Agreement**

#### ***Merger Consideration and Adjustment***

At the effective time of the merger,

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each share of Raptor common stock outstanding immediately prior to the effective time of the merger is expected to automatically convert into the right to receive the number of shares of TorreyPines

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common stock equal to the 303,982,102 shares of TorreyPines common stock to be issued in the merger divided by 69,145,047 shares of Raptor common stock outstanding as of the signing of the merger agreement plus 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options outstanding as of the signing of the merger agreement plus any additional shares of Raptor common stock and securities exercisable for or exchangeable or convertible into Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger, such calculation which is referred to as the exchange ratio, subject to adjustment to account for the reverse stock split;

each option to purchase shares of Raptor common stock outstanding and unexercised immediately prior to the effective time of the merger will be assumed by TorreyPines and will become an option to purchase shares of TorreyPines common stock equal to the product of the number of shares of Raptor common stock subject to the option multiplied by the exchange ratio, rounded down to the nearest whole number of shares of TorreyPines common stock, subject to adjustment to account for the reverse stock split; and

each warrant to purchase shares of Raptor common stock outstanding and unexercised immediately prior to the effective time of the merger will be assumed by TorreyPines and will become a warrant to purchase shares of TorreyPines common stock equal to the product of the number of shares of Raptor common stock issuable upon exercise of the Raptor warrant multiplied by the exchange ratio, rounded down to the nearest whole number of shares of TorreyPines common stock, subject to adjustment to account for the reverse stock split.

***Conditions to Completion of the Merger***

To consummate the merger, TorreyPines stockholders must approve:

the issuance of TorreyPines common stock and the resulting change in control of TorreyPines, which requires the affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting; and

the amendment to TorreyPines certificate of incorporation effecting a reverse stock split of TorreyPines common stock, at one of seventeen reverse split ratios: 1-for-10, 1-for-11, 1-for-12, 1-for-13, 1-for-14, 1-for-15, 1-for-17, 1-for-20, 1-for-25, 1-for-30, 1-for-35, 1-for-40, 1-for-45, 1-for-50, 1-for-55, 1-for-60 or 1-for-70, as described below, and a name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp., which requires the affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting.

Upon the effectiveness of the amendment to TorreyPines certificate of incorporation effecting the reverse stock split, referred to as the split effective time, the issued shares of TorreyPines common stock immediately prior to the split effective time will be combined into a smaller number of shares. Depending on the ratio for the reverse stock split, each ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, fifty-five, sixty or seventy shares, of existing TorreyPines common stock held by a TorreyPines stockholder immediately prior to the split effective time will be converted into one new share of TorreyPines common stock. The number of shares of common stock issued and outstanding will therefore be reduced, depending upon the reverse stock split ratio determined by the TorreyPines board of directors and approved by the Raptor board of directors. The amendment to the restated certificate of incorporation that is filed to effect the reverse stock split, if any, will include only the reverse split ratio determined by the boards of directors of TorreyPines and Raptor, respectively, that causes the combined company's stock price to be at least \$4.00 per share and which is determined to be in the best interests of the stockholders of TorreyPines and Raptor, respectively, and all of the other proposed amendments at different ratios will be abandoned. The exact split ratio

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will be publicly announced by TorreyPines. Because the listing standards of the NASDAQ Capital Market will require TorreyPines to have, among other things, a \$4.00 per share minimum bid price, the reverse stock split will be necessary in order to consummate the merger.

In addition, Raptor stockholders must adopt the merger agreement which requires the affirmative vote of the holders of a majority of the shares of Raptor common stock outstanding on the record date and entitled to vote at the Raptor annual meeting.

In addition to obtaining stockholder approval and appropriate regulatory approvals, if any, each of the other closing conditions set forth in the merger agreement must be satisfied or waived. Among the closing conditions is the requirement that TorreyPines qualify its common stock to be issued in the merger for listing on the NASDAQ Capital Market on the closing date and that TorreyPines net cash, as calculated pursuant to merger agreement, be greater than zero dollars at the closing of the merger. For a more complete description of the closing conditions under the merger agreement, please see the section titled, *The Merger Agreement Conditions to the Completion of the Merger* in this joint proxy statement/prospectus.

### ***No Solicitation***

Subject to certain exceptions, each of TorreyPines and Raptor agreed that TorreyPines and Raptor and any of their respective subsidiaries will not, nor will either party or any of its subsidiaries authorize or permit any of the officers, directors, employees, agents, attorneys, accountants, advisors and representatives retained by it or any of its subsidiaries to, directly or indirectly:

solicit, initiate, encourage, induce or knowingly facilitate the making, submission or announcement of, any acquisition proposal, as defined below, or any action that could reasonably be expected to lead to an acquisition proposal;

furnish any information regarding such party or any of its subsidiaries to any person in connection with or in response to an acquisition proposal or an inquiry or indication of interest that could reasonably be expected to lead to an acquisition proposal;

engage in discussions or negotiations with any person with respect to any acquisition proposal;

approve, endorse or recommend an acquisition proposal; or

enter into any letter of intent or similar document or any contract contemplating or otherwise relating to an acquisition transaction, as defined below.

### ***Termination of the Merger Agreement***

Either TorreyPines or Raptor can terminate the merger agreement under certain circumstances, which would prevent the merger from being consummated.

### **Expenses and Reimbursement**

If the merger agreement is terminated under certain circumstances, TorreyPines or Raptor, as applicable, will be required to reimburse the other party for certain expenses incurred in connection with the merger, up to a maximum of \$250,000.

### **Voting Agreements**

In connection with the execution of the merger agreement, certain Raptor directors and officers entered into voting agreements pursuant to which, among other things, each of such persons agreed, solely in his capacity as a stockholder, to vote all of his shares of Raptor capital stock in favor of the adoption of the merger agreement,





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against any action that would result in a breach of the merger agreement by Raptor, against any proposal for any acquisition transaction, as defined in the merger agreement, other than the merger, between Raptor and any third person other than TorreyPines and merger sub and against any change in a majority of the board of directors of Raptor. As of July 27, 2009, the directors and officers of Raptor who entered into voting agreements collectively owned 7,412,500 shares of Raptor common stock, representing approximately 11% of the outstanding Raptor common stock.

In connection with the execution of the merger agreement, TorreyPines directors and officers entered into voting agreements with Raptor pursuant to which, among other things, each of such persons agreed, solely in his capacity as a stockholder, to vote all of his shares of TorreyPines common stock in favor of the approval of the issuance of the shares of TorreyPines common stock in the merger, the amendment to TorreyPines certificate of incorporation effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. and any action in furtherance of the foregoing, and against any action that would result in a breach of the merger agreement by TorreyPines and any proposal for any acquisition transaction, as defined in the merger agreement, between TorreyPines and any third person other than Raptor and against any change in a majority of the board of directors of TorreyPines. As of July 27, 2009, the directors and officers of TorreyPines, who entered into voting agreements, collectively owned 151,040 shares of TorreyPines common stock, representing approximately 1% of the outstanding TorreyPines common stock.

### **Management Following the Merger**

Effective as of the closing of the merger, the combined company's officers are expected to include Christopher M. Starr, Ph.D., Chief Executive Officer, Todd C. Zankel, Ph.D., Chief Scientific Officer and Kim R. Tsuchimoto, Chief Financial Officer, Treasurer and Secretary, each of whom currently holds the same position at Raptor. The combined company will initially have a four member board of directors, comprised of the four individuals from Raptor's current board of directors, Christopher M. Starr, Ph.D., Raymond W. Anderson, Erich Sager and Richard L. Franklin, M.D., Ph.D.

### **Interests of Certain Directors and Officers of TorreyPines and Raptor**

In considering the recommendation of the TorreyPines board of directors with respect to issuing shares of TorreyPines common stock pursuant to the merger agreement and the other matters to be acted upon by TorreyPines stockholders at the TorreyPines annual meeting, TorreyPines stockholders should be aware that certain members of the board of directors and executive officers of TorreyPines have interests in the merger that may be different from, or in addition to, interests they have as TorreyPines stockholders. For example, each of TorreyPines three executive officers have entered into amended and restated employment agreements with TPTX, Inc., a wholly-owned subsidiary of TorreyPines, that will become effective on the closing of the merger. Pursuant to such employment agreements, each of the three current TorreyPines executive officers will be paid their respective base salaries by TPTX, Inc. following the merger through February 28, 2010, whether or not they remain employees of TPTX, Inc. following the merger. In addition, such employment agreements provide for bonus payments to each of the three executives in the event that TPTX, Inc. is able to secure funding, a partnership, sale or similar transaction related to NGX426, TPTX, Inc.'s product candidate for pain, prior to February 28, 2010, in excess of \$10 million. Such employment agreements are discussed in greater detail in the section titled, "The Merger Interests of TorreyPines Directors and Executive Officers in the Merger Employment Agreements Following the Merger" in this joint proxy statement/prospectus.

As of July 27, 2009, all directors and executive officers of TorreyPines owned approximately 1% of the shares of TorreyPines common stock. The affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting is required for approval of TorreyPines Proposal Nos. 1 and 5. The affirmative vote of the

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holders of a majority of the TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting is required for approval of TorreyPines Proposal Nos. 2 and 3. For the election of directors (Proposal No. 4), the four nominees receiving the most FOR votes from the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting will be elected. Certain TorreyPines officers and directors have also entered into voting agreements in connection with the merger. Such voting agreements are discussed in greater detail in the section titled, "Agreements Related to the Merger - Voting Agreements" in this joint proxy statement/prospectus.

In considering the recommendation of the Raptor board of directors with respect to adopting the merger agreement, Raptor stockholders should be aware that members of the board of directors and executive officers of Raptor have interests in the merger that may be different from, or in addition to, interests they have as Raptor stockholders. For example, following the consummation of the merger, all of Raptor's directors will continue to serve on the board of directors of the combined company and the management team of the combined company is expected to be composed of the current management team of Raptor. In addition, all of Raptor's directors and executive officers hold options to purchase shares of Raptor common stock, which options will be assumed by TorreyPines and become options to purchase shares of TorreyPines common stock following the consummation of the merger.

As of July 27, 2009, all directors and executive officers of Raptor owned approximately 11% of the shares of Raptor's common stock. The adoption of the merger agreement requires the affirmative vote of the holders of a majority of the shares of Raptor common stock outstanding on the record date and entitled to vote at the Raptor annual meeting. Certain Raptor officers and directors have also entered into voting agreements in connection with the merger. Such voting agreements and the Raptor proposals to which they relate are discussed in greater detail in the section titled, "Agreements Related to the Merger - Voting Agreements" in this joint proxy statement/prospectus.

## **Stock Options and Warrants**

At the effective time of the merger, each outstanding stock option to purchase Raptor common stock not exercised immediately prior to the effective time of the merger, whether or not vested, will be assumed by TorreyPines and become exercisable (a) for such number of shares of TorreyPines common stock as is determined by multiplying the number of shares of Raptor common stock subject to the option by the exchange ratio and rounding that result down to the nearest whole number of shares of TorreyPines common stock, and (b) at a per share exercise price as is determined by dividing the existing exercise price of the option by the exchange ratio and rounding that result up to the nearest whole cent. Any restrictions on the exercise of any Raptor option assumed by TorreyPines will continue following the conversion and the term, exercisability, vesting schedules and other provisions of assumed Raptor options will generally remain unchanged; provided, that any Raptor options assumed by TorreyPines may be subject to adjustment to reflect changes in the combined company's capitalization after the effective time of the merger and that the TorreyPines board of directors will succeed to the authority of the Raptor board with respect to each assumed Raptor option.

At the effective time of the merger, each outstanding warrant to purchase shares of Raptor common stock not terminated or exercised immediately prior to the effective time of the merger will be assumed by TorreyPines and will become exercisable (a) for such number of shares of TorreyPines common stock as is determined by multiplying the number of shares of Raptor common stock subject to each warrant by the exchange ratio and rounding that result down to the nearest whole number of shares of TorreyPines common stock, and (b) at a per share exercise price determined by dividing the per share exercise price of the Raptor common stock subject to each warrant as in effect immediately prior to the effective time of the merger by the exchange ratio and rounding that result up to the nearest whole cent.

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For more information, please see the section titled, "The Merger Agreement - Merger Consideration and Adjustment" in this joint proxy statement/prospectus.

### **Material United States Federal Income Tax Consequences of the Merger**

Each of TorreyPines and Raptor expects the merger to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, and it is a closing condition to the merger that TorreyPines and Raptor receive opinions of their respective counsel regarding such qualification. Assuming the merger's qualification as a reorganization, Raptor stockholders generally will not recognize gain or loss for United States federal income tax purposes upon the exchange of shares of Raptor common stock for shares of TorreyPines common stock, except with respect to cash received in lieu of fractional shares of TorreyPines common stock, depending on such Raptor stockholder's basis in such fractional share, and except for Raptor stockholders who exercise their appraisal rights with respect to the merger. Assuming the merger's qualification as a reorganization, TorreyPines stockholders will not recognize gain or loss for United States federal income tax purposes as a result of the merger. Tax matters are very complicated, and the tax consequences of the merger to a particular stockholder will depend in part on such stockholder's circumstances. Accordingly, you are urged to consult your own tax advisor for a full understanding of the tax consequences of the merger to you, including the applicability and effect of federal, state, local and foreign income and other tax laws. For more information, please see the section titled, "The Merger - Material U.S. Federal Income Tax Consequences of the Merger" in this joint proxy statement/prospectus.

### **Risk Factors**

Both TorreyPines and Raptor are subject to various risks associated with their businesses and their industries. In addition, the merger, including the possibility that the merger may not be completed, poses a number of risks to each company and its respective stockholders, including the following risks:

Failure to complete the merger may harm TorreyPines' or Raptor's common stock price and future business and operations, and may require TorreyPines to file for bankruptcy, cease operations or liquidate and dissolve;

If the conditions to the merger are not met or waived, including the requirement that TorreyPines file an initial listing application under The NASDAQ Stock Market LLC's reverse merger rules and qualify its common stock to be issued in the merger for listing on the NASDAQ Capital Market on the closing date and that TorreyPines' net cash, as calculated pursuant to merger agreement, be greater than zero dollars at the closing of the merger, the merger will not occur;

Some of TorreyPines' and Raptor's officers and directors have conflicts of interest that may influence them to support or approve the merger;

The exchange ratio is not adjustable based on the market price of TorreyPines' or Raptor's common stock;

The merger may be completed even though material adverse changes may result from the announcement of the merger, industry-wide changes and other causes;

The market price of the combined company's common stock may decline as a result of the merger;

TorreyPines and Raptor stockholders may not realize a benefit from the merger commensurate with the ownership dilution they will experience in connection with the merger; and

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During the pendency of the merger, TorreyPines and Raptor may not be able to enter into a business combination with another party at a favorable price because of restrictions in the merger agreement.

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The risks associated with the merger and other risks are discussed in greater detail under the section titled, "Risk Factors" in this joint proxy statement/prospectus. TorreyPines and Raptor both encourage you to read and consider all of these risks carefully.

### **Regulatory Approvals**

As of the date of this joint proxy statement/prospectus, neither TorreyPines nor Raptor is required to make filings or to obtain approvals or clearances from any antitrust regulatory authorities in the United States or other countries to consummate the merger. In the United States, TorreyPines and Raptor, respectively, must comply with applicable federal and state securities laws and the rules and regulations of the NASDAQ Stock Market and FINRA, respectively, in connection with the issuance of shares of TorreyPines common stock and the filing of this joint proxy statement/prospectus with the SEC. As of the date hereof, the registration statement of which this joint proxy statement/prospectus is a part has not become effective.

### **NASDAQ Stock Market LLC Listing**

Prior to consummation of the merger, TorreyPines intends to file an initial listing application with the NASDAQ Capital Market pursuant to The NASDAQ Stock Market LLC reverse merger rules. Acceptance of the initial listing application and the listing of the shares of TorreyPines common stock on the NASDAQ Capital Market is a condition to closing the merger. Because the listing standards of the NASDAQ Capital Market will require TorreyPines to have, among other things, a \$4.00 per share minimum bid price, the reverse stock split will be necessary in order to consummate the merger, but there is no assurance that the reverse stock split will be sufficient from The NASDAQ Stock Market LLC's perspective in order to approve the listing application. If such application is accepted, TorreyPines anticipates that the combined company's common stock will be listed on the NASDAQ Capital Market upon the closing of the merger and will trade under the combined company's new name, Raptor Pharmaceutical Corp., and new trading symbol, RPTP.

### **Anticipated Accounting Treatment**

The merger will be treated by TorreyPines as a reverse merger under the purchase method of accounting in accordance with United States generally accepted accounting principles. For accounting purposes, Raptor is considered to be acquiring TorreyPines in the merger.

### **Appraisal Rights**

Under the Delaware General Corporation Law, referred to as the DGCL, Raptor stockholders are entitled to appraisal rights in connection with the merger. Under the DGCL, TorreyPines stockholders are not entitled to appraisal rights in connection with the merger. For more information about appraisal rights, see the provisions of Section 262 of the DGCL, attached to this joint proxy statement/prospectus as *Annex B*, and the section titled, "The Merger Appraisal Rights" in this joint proxy statement/prospectus.

Under the DGCL, TorreyPines' stockholders are not entitled to appraisal rights with respect to the reverse stock split, and TorreyPines will not independently provide stockholders with any such right.

### **Comparison of Stockholder Rights**

Both TorreyPines and Raptor are incorporated under the laws of the State of Delaware and, accordingly, the rights of the stockholders of each are currently, and will continue to be, governed by the DGCL. If the merger is completed, Raptor stockholders will become stockholders of TorreyPines, and their rights will be governed by

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the DGCL, the bylaws of TorreyPines and, assuming TorreyPines Proposal Nos. 2 and/or 3 are approved by TorreyPines stockholders at the TorreyPines annual meeting, the certificate of incorporation, as amended by the amendment to TorreyPines certificate of incorporation attached to this joint proxy statement/prospectus as *Annex C*. The rights of TorreyPines stockholders contained in the certificate of incorporation, as amended, and bylaws of TorreyPines differ from the rights of Raptor stockholders under the certificate of incorporation and bylaws of Raptor, as more fully described under the section titled, *Comparison of Rights of Holders of TorreyPines Stock and Raptor Stock* in this joint proxy statement/prospectus.

**Table of Contents****SELECTED HISTORICAL AND UNAUDITED PRO FORMA CONDENSED****COMBINED FINANCIAL DATA**

The following tables present summary historical financial data for TorreyPines and Raptor, summary unaudited pro forma condensed combined financial data for TorreyPines and Raptor, and comparative historical and unaudited pro forma per share data for TorreyPines and Raptor.

**Selected Historical Consolidated Financial Data of TorreyPines**

The following selected financial data for the five years ended December 31, 2008 are derived from the audited consolidated financial statements of TorreyPines Therapeutics, Inc. The financial data for the six month periods ended June 30, 2009 and 2008 are derived from unaudited financial statements. The unaudited financial statements include all adjustments, consisting of normal recurring accruals, which TorreyPines Therapeutics, Inc. considers necessary for a fair presentation of the financial position and the results of operations for these periods. Operating results for the six months ended June 30, 2009 are not necessarily indicative of the results that may be expected for the entire year ending December 31, 2009.

You should read the following financial information together with the information under the sections titled, TorreyPines Management's Discussion and Analysis of Financial Condition and Results of Operations and TorreyPines Business and TorreyPines financial statements and the related notes to these financial statements appearing elsewhere in this joint proxy statement/prospectus. Certain reclassifications have been made to prior period amounts to conform to the current presentation.

|   | Six Months Ended<br>June 30 (unaudited) |             | Years Ended December 31, |             |             |             |             |
|---|---|-------------|--------------------------|-------------|-------------|-------------|-------------|
|   | 2009                                    | 2008        | 2008                     | 2007        | 2006        | 2005        | 2004        |
| (In thousands, except share and per share data)   |   |             |                          |             |             |             |             |
| <b>Statement of Operations Data:</b>  |   |             |                          |             |             |             |             |
| Revenue   | \$ 280                                  | \$ 3,258    | \$ 6,071                 | \$ 9,850    | \$ 9,850    | \$ 7,967    | \$ 3,551    |
| Operating expenses:   |   |             |                          |             |             |             |             |
| Research and development  | 916                                     | 10,751      | 18,949                   | 27,977      | 22,353      | 17,317      | 11,379      |
| General and administrative  | 2,010                                   | 3,199       | 5,801                    | 5,643       | 3,971       | 2,588       | 2,399       |
| Loss on impairment of purchased patents   |   |             | 3,074                    |             |             |             |             |
| Purchased in-process research and development   |   |             |                          |             | 8,328       |             |             |
| Total operating expenses  | 2,926                                   | 13,950      | 27,824                   | 33,620      | 34,652      | 19,905      | 13,778      |
| Loss from operations  | (2,646)                                 | (10,692)    | (21,753)                 | (23,770)    | (24,802)    | (11,938)    | (10,227)    |
| Other income (expense), net   | (82)                                    | (651)       | (1,032)                  | 401         | (575)       | 396         | (129)       |
| Net loss  | (2,728)                                 | (11,343)    | (22,785)                 | (23,369)    | (25,377)    | (11,542)    | (10,356)    |
| Dividends and accretion to redemption value of redeemable convertible preferred stock           |   |             |                          |             |             | (4,434)     | (2,593)     |
| Net loss attributable to common stockholders  | \$ (2,728)                              | \$ (11,343) | \$ (22,785)              | \$ (23,369) | \$ (25,377) | \$ (15,976) | \$ (12,949) |
| Basic and diluted net loss per share attributable to common stockholders                        | \$ (0.17)                               | \$ (0.72)   | \$ (1.45)                | \$ (1.49)   | \$ (8.18)   | \$ (30.69)  | \$ (25.99)  |
| Shares used to compute basic and diluted net loss per share attributable to common stockholders | 15,982,391                              | 15,743,875  | 15,748,967               | 15,717,984  | 3,100,852   | 520,588     | 498,127     |





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|  | As of                           | As of December 31, |           |           |           |           |
|--|---------------------------------|--------------------|-----------|-----------|-----------|-----------|
|  | June 30,<br>2009<br>(unaudited) | 2008               | 2007      | 2006      | 2005      | 2004      |
|  |                                 | (In thousands)     |           |           |           |           |
| <b>Selected Balance Sheet Data:</b>    |                                 |                    |           |           |           |           |
| Cash and cash equivalents              | \$ 1,175                        | \$ 10,864          | \$ 32,500 | \$ 55,383 | \$ 28,757 | \$ 27,629 |
| Working capital                        | 1,269                           | 5,746              | 24,299    | 43,694    | 24,806    | 24,357    |
| Total assets                           | 1,418                           | 11,130             | 38,652    | 63,435    | 31,104    | 29,888    |
| Long-term debt, net of current portion |                                 | 2,112              | 954       | 4,397     | 3,826     | 591       |
| Redeemable convertible preferred stock |                                 |                    |           |           | 72,018    | 67,584    |
| Accumulated deficit                    | (121,914)                       | (119,186)          | (96,401)  | (73,032)  | (58,850)  | (42,874)  |
| Total stockholders' equity (deficit)   | 1,269                           | 3,713              | 26,460    | 44,569    | (58,341)  | (42,381)  |

**Table of Contents****Selected Historical Consolidated Financial Data of Raptor**

The following table shows selected historical consolidated financial and operating information for, and as of the end of, each of the periods indicated and should be read in conjunction with the information in the sections titled, Raptor's Management's Discussion and Analysis of Financial Condition and Results of Operation and Raptor's Business and Raptor's consolidated financial statements and the corresponding notes to those consolidated financial statements included elsewhere in this joint proxy statement/prospectus. The following tables set forth Raptor's consolidated balance sheet data as of May 31, 2009, August 31, 2008, 2007 and 2006, and its consolidated statements of operations data for the nine months ended May 31, 2009 and 2008 (unaudited) and the years ended August 31, 2008 and 2007, for the period from September 8, 2005 (inception) to August 31, 2006.

|   | For the nine<br>months<br>ended<br>May 31, 2008<br>(unaudited) | For the nine<br>months<br>ended<br>May 31, 2009<br>(unaudited) | For the year ended<br>August 31, 2008 | For the year ended<br>August 31, 2007 | For the<br>period<br>from<br>September 8,<br>2005<br>(inception) to<br>August 31,<br>2006 |
|---|--|--|---------------------------------------|---------------------------------------|---|
| Revenues:   | \$   | \$   | \$                                    | \$                                    | \$  |
| Operating expenses:                                     |  |  |                                       |                                       |   |
| General and administrative                              | 1,588,035  | 1,935,612  | 2,229,140                             | 1,529,028                             | 510,079   |
| Research and development                                | 3,641,400  | 5,369,922  | 5,558,871                             | 2,246,057                             | 499,238   |
| In-process research and<br>development                  | 240,625  |  | 240,625                               |                                       |   |
| Total operating expenses                                | 5,470,060  | 7,305,534  | 8,028,636                             | 3,775,085                             | 1,009,317   |
| Loss from operations                                    | (5,470,060)  | (7,305,534)  | (8,028,636)                           | (3,775,085)                           | (1,009,317)   |
| Interest income   | 51,583   | 32,930   | 77,871                                | 143,760                               | 43,528  |
| Interest expense  | (103,044)  | (1,876)  | (103,198)                             | (751)                                 | (3,461)   |
| Net loss  | \$ (5,521,521)   | \$ (7,274,480)   | \$ (8,053,963)                        | \$ (3,632,076)                        | \$ (969,250)  |
| Net loss per share:                                     |  |  |                                       |                                       |   |
| Basic and diluted                                       | \$ (0.15)  | \$ (0.12)  | \$ (0.19)                             | \$ (0.12)                             | \$ (0.18)   |
| Weighted average shares<br>outstanding used to compute: |  |  |                                       |                                       |   |
| Basic and diluted                                       | 37,882,220   | 60,411,732   | 42,439,379                            | 31,497,782                            | 12,495,425  |

|  | May 31,<br>2009<br>(unaudited) | August 31,<br>2008 | August 31,<br>2007 | 2006         |
|--|--------------------------------|--------------------|--------------------|--------------|
| <b>Balance Sheet Data:</b>                     |                                |                    |                    |              |
| Cash and cash equivalents                      | \$ 492,963                     | \$ 7,546,912       | \$ 2,627,072       | \$ 3,648,538 |
| Working capital (deficit)                      | (135,982)                      | 6,659,226          | 2,493,651          | 3,598,428    |
| Total assets                                   | 3,478,585                      | 10,620,770         | 3,290,925          | 4,305,582    |
| Long-term portion of capital lease obligations | 7,770                          |                    | 2,302              | 4,801        |
| Total liabilities                              | 800,223                        | 1,003,280          | 332,816            | 158,806      |
| Total stockholders' equity                     | 2,678,362                      | 9,617,490          | 2,958,109          | 4,146,776    |



**Table of Contents****Selected Unaudited Pro Forma Condensed Combined Financial Data of TorreyPines and Raptor**

(In thousands, except per share amounts)

The following selected unaudited pro forma condensed combined financial information was prepared using the purchase method of accounting. For accounting purposes, Raptor is considered to be acquiring TorreyPines in the merger. TorreyPines' and Raptor's unaudited pro forma condensed combined balance sheet data assume that the merger took place on May 31, 2009 and combine Raptor's historical balance sheet at May 31, 2009 with TorreyPines' historical balance sheet at June 30, 2009. TorreyPines' and Raptor's unaudited pro forma condensed combined statement of operations data assume that the merger took place as of the beginning of the period presented. The unaudited pro forma condensed combined statement of operations data for the year ended August 31, 2008 combine Raptor's historical statement of operations for the year ended August 31, 2008 with TorreyPines' derived historical statement of operations for the year ended December 31, 2008. The unaudited pro forma condensed combined statement of operations data for the nine months ended May 31, 2009 combine Raptor's historical statement of operations for the nine months ended May 31, 2009 with TorreyPines' derived historical statement of operations for the nine months ended June 30, 2009.

The selected unaudited pro forma condensed combined financial data are presented for illustrative purposes only and are not necessarily indicative of the combined financial position or results of operations of future periods or the results that actually would have been realized had the entities been a single entity during these periods. The selected unaudited pro forma condensed combined financial data as of and for the nine months ended May 31, 2009 and for the year ended August 31, 2008 are derived from the unaudited pro forma condensed combined financial information and should be read in conjunction with that information. For more information, please see the section titled, "Unaudited Pro Forma Condensed Combined Financial Statements" in this joint proxy statement/prospectus.

|   | <b>For the<br/>Year<br/>Ended<br/>August 31,<br/>2008</b> | <b>For the<br/>Nine Months<br/>Ended<br/>May 31,<br/>2009</b> |
|---|---|---|
| <b>Unaudited Pro Forma Condensed Combined Statement of Operations Data:</b> |   |   |
| Total revenue   | \$ 6,943  | \$ 1,870  |
| Research and development expense  | 28,875  | 9,506   |
| General and administrative expense  | 7,989   | 5,421   |
| Loss on impairment of purchased patents                                     |   | 3,074   |
| In-process research and development   | 241   |   |
| Loss from operations  | (30,162)  | (16,131)  |
| Net loss  | \$ (32,947)   | \$ (16,050)   |

|   | <b>As of<br/>May 31,<br/>2009</b> |
|---|-----------------------------------|
| <b>Unaudited Pro Forma Condensed Combined Balance Sheet Data:</b> |                                   |
| Cash and cash equivalents   | \$ 1,668                          |
| Working capital   | 433                               |
| Total assets  | 6,218                             |
| Long-term obligations, less current portion                       | 8                                 |
| Stockholders' equity  | 4,568                             |

**Table of Contents****Comparative Historical and Unaudited Pro Forma Per Share Data**

The following information does not give effect to the reverse stock split of TorreyPines common stock described in TorreyPines Proposal No. 2.

The information below reflects the historical net loss and book value per share of Raptor common stock and the historical net loss and book value per share of TorreyPines common stock in comparison with the unaudited pro forma net loss and book value per share after giving effect to the proposed merger of TorreyPines with Raptor on a purchase basis.

You should read the tables below in conjunction with the audited and unaudited financial statements of TorreyPines Therapeutics, Inc. included in this joint proxy statement/prospectus and audited and unaudited financial statements of Raptor included in this joint proxy statement/prospectus and the related notes and the unaudited pro forma condensed financial information and notes related to such financial statements included elsewhere in this joint proxy statement/prospectus.

**TORREYPINES**

|   | <b>Derived<br/>12 Months<br/>Ended<br/>September 30,<br/>2008</b> | <b>Derived<br/>Nine<br/>Months<br/>Ended<br/>June 30,<br/>2009</b> |
|---|---|--|
| <b>Historical Per Common Share Data:</b>    |   |  |
| Net loss per common share basic and diluted | \$ (1.58)   | \$ (0.55)  |
| Book value per share                        | \$ 0.64   | \$ 0.08  |

**RAPTOR**

|   | <b>Year<br/>Ended<br/>August 31,<br/>2008</b> | <b>Nine<br/>Months<br/>Ended<br/>May 31,<br/>2009</b> |
|---|---|---|
| <b>Historical Per Common Share Data:</b>    |   |   |
| Net loss per common share basic and diluted | \$ (0.19)                                     | \$ (0.12)   |
| Book value per share                        | \$ 0.16                                       | \$ 0.04   |

**TORREYPINES AND RAPTOR**

|   | <b>Year<br/>Ended<br/>August 31,<br/>2008</b> | <b>Nine<br/>Months<br/>Ended<br/>May 31,<br/>2009</b> |
|---|---|---|
| <b>Combined Unaudited Pro Forma Per Share Data:</b> |   |   |
| Net loss per combined share basic and diluted       | \$ (0.10)                                     | \$ (0.05)   |
| Book value per combined share                       |   | \$ 0.01   |



**Table of Contents****MARKET PRICE AND DIVIDEND INFORMATION**

TorreyPines common stock currently trades on the NASDAQ Global Market under the symbol TPTX. The following table sets forth the range of high and low sales prices of TorreyPines common stock for the quarterly periods indicated, as reported by NASDAQ. Such quotations represent inter-dealer prices without retail mark up, mark down or commission and may not necessarily represent actual transactions.

|                                      | High     | Low     |
|--------------------------------------|----------|---------|
| <b>Year Ended December 31, 2009:</b> |          |         |
| First Quarter                        | \$ 0.35  | \$ 0.15 |
| Second Quarter                       | 0.45     | 0.12    |
| Third Quarter (through August 27)    | 0.69     | 0.07    |
| <b>Year Ended December 31, 2008:</b> |          |         |
| First Quarter                        | \$ 2.59  | \$ 1.26 |
| Second Quarter                       | 1.71     | 1.07    |
| Third Quarter                        | 1.28     | 0.44    |
| Fourth Quarter                       | 0.55     | 0.16    |
| <b>Year Ended December 31, 2007:</b> |          |         |
| First Quarter                        | \$ 8.75  | \$ 6.59 |
| Second Quarter                       | 7.52     | 6.10    |
| Third Quarter                        | 7.32     | 5.76    |
| Fourth Quarter                       | 6.15     | 2.26    |
| <b>Year Ended December 31, 2006:</b> |          |         |
| First Quarter                        | \$ 10.00 | \$ 6.64 |
| Second Quarter                       | 11.60    | 6.40    |
| Third Quarter                        | 9.12     | 6.64    |
| Fourth Quarter                       | 9.00     | 6.15    |

Raptor's common stock is quoted on the FINRA OTC Bulletin Board under the symbol RPTP. Prior to June 8, 2006, Raptor's common stock had not traded in the public market. The following table sets forth the quarterly high and low trading prices for Raptor's common stock for the period from June 8, 2006 through August 27, 2009, as reported by the OTC Bulletin Board, which reflects inter-dealer quotations, without retail mark-up, mark-down or commission and may not represent actual transactions.

|                                       | High    | Low     |
|---------------------------------------|---------|---------|
| <b>Year Ended December 31, 2009:</b>  |         |         |
| September 1, 2008 – November 30, 2008 | \$ 0.48 | \$ 0.12 |
| December 1, 2008 – February 29, 2009  | 0.39    | 0.10    |
| March 1, 2009 – May 31, 2009          | 0.38    | 0.15    |
| June 1, 2009 – August 27, 2009        | 0.50    | 0.29    |
| <b>2008 Fiscal Quarters:</b>          |         |         |
| September 1, 2007 – November 30, 2007 | \$ 0.66 | \$ 0.47 |
| December 1, 2007 – February 29, 2008  | 0.62    | 0.38    |
| March 1, 2008 – May 31, 2008          | 0.67    | 0.47    |
| June 1, 2008 – August 31, 2008        | 0.58    | 0.38    |
| <b>2007 Fiscal Quarters:</b>          |         |         |
| September 1, 2006 – November 30, 2006 | \$ 0.61 | \$ 0.46 |
| December 1, 2006 – February 28, 2007  | 0.75    | 0.54    |
| March 1, 2007 – May 31, 2007          | 1.29    | 0.58    |
| June 1, 2007 – August 31, 2007        | 0.76    | 0.41    |
| <b>2006 Fiscal Period:</b>            |         |         |
| June 8, 2006 – August 31, 2006        | \$ 0.85 | \$ 0.50 |





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On July 27, 2009, the last trading day prior to announcement of the merger, the closing price of TorreyPines common stock was \$0.09, for an aggregate value of TorreyPines of approximately \$1.4 million. Accordingly, if the merger had been consummated on that day, the value attributable to the Raptor capital stock, or to 95% of the combined company, would have equaled \$28.8 million.

The following table presents trading information for TorreyPines and Raptor's common stock for July 27, 2009 and August 27, 2009. July 27, 2009 was the last full trading day prior to the public announcement of the proposed merger. August 27, 2009 was the last practicable trading day for which information was available prior to the date of the first mailing of this joint proxy statement/prospectus.

|                 | <b>TorreyPines<br/>Common<br/>Stock Close</b> | <b>Raptor<br/>Common<br/>Stock<br/>Close</b> |
|-----------------|---|--|
| July 27, 2009   | \$ 0.09                                       | \$ 0.36                                      |
| August 27, 2009 | \$ 0.39                                       | \$ 0.38                                      |

Because the market price of TorreyPines common stock is subject to fluctuation, the market value of the shares of TorreyPines common stock that holders of Raptor common stock will be entitled to receive in the merger may increase or decrease.

Assuming approval of TorreyPines Proposal No. 3 and successful application for initial listing with the NASDAQ Capital Market, following the consummation of the merger, TorreyPines common stock will be listed on the NASDAQ Capital Market and will trade under the combined company's new name, Raptor Pharmaceutical Corp. and the new trading symbol, RPTP. Because the listing standards of the NASDAQ Capital Market will require TorreyPines to have, among other things, a \$4.00 per share minimum bid price, the reverse stock split will be necessary in order to consummate the merger, but there is no assurance that the reverse stock split will be sufficient from The NASDAQ Stock Market LLC's perspective in order to approve the listing application.

As of August 27, 2009, there were 330 registered holders of TorreyPines common stock. As of August 27, 2009, there were 49 registered holders of Raptor's common stock. For detailed information regarding the beneficial ownership of certain stockholders of the combined company upon consummation of the merger, see the section titled, Principal Stockholders of Combined Company in this joint proxy statement/prospectus.

**Dividends**

TorreyPines has never declared or paid any cash dividends on its capital stock nor does it intend to do so in the foreseeable future. Any future determination to pay cash dividends will be at the discretion of TorreyPines board of directors and will depend upon its financial condition, operating results, capital requirements, any applicable contractual restrictions and such other factors as TorreyPines board of directors deems relevant.

Raptor has never declared or paid any cash dividends on its capital stock nor does it intend to do so in the foreseeable future.

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**RISK FACTORS**

*The combined company will be faced with a market environment that cannot be predicted and that involves significant risks, many of which will be beyond its control. In addition to the other information contained in this joint proxy statement/prospectus, you should carefully consider the material risks described below before deciding how to vote your shares of common stock.*

**Risks Related to the Merger**

***Failure to complete the merger could harm TorreyPines' or Raptor's common stock price and future business and operations and may result in TorreyPines filing for bankruptcy, ceasing operations or liquidating and dissolving.***

If the merger is not completed, TorreyPines and Raptor are subject to the following risks:

if the merger agreement is terminated under certain circumstances, TorreyPines or Raptor will be required to pay the expenses of the other party, up to a maximum of \$250,000;

the price of TorreyPines' and Raptor's stock may decline; and

costs related to the merger, such as legal, accounting, certain financial advisory fees and costs associated with printing and mailing this joint proxy statement/prospectus, which TorreyPines and Raptor estimate will total approximately \$350,000 per company, must be paid even if the merger is not completed.

In addition, if the merger agreement is terminated and TorreyPines' or Raptor's board of directors determines to seek another business combination, there can be no assurance that it will be able to find a partner willing to provide equivalent or more attractive consideration than the consideration to be provided by each party in the merger. If the merger is not completed and TorreyPines is unable to complete a financing or strategic transaction, it does not expect to be able to continue as a going concern and may be required to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code.

***If the conditions to the merger are not met, the merger will not occur.***

Even if the merger is adopted by the stockholders of Raptor, specified conditions must be satisfied or waived to complete the merger. These conditions are described in detail in the merger agreement, and include the requirement that TorreyPines file an initial listing application under The NASDAQ Stock Market LLC's reverse merger rules and qualify its common stock to be issued in the merger for listing on the NASDAQ Capital Market on the closing date and that TorreyPines' net cash, as calculated pursuant to merger agreement, be greater than \$0 at the closing of the merger. Because the listing standards of the NASDAQ Capital Market will require TorreyPines to have, among other things, a \$4.00 per share minimum bid price, the reverse stock split will be necessary in order to consummate the merger, but there is no assurance that the reverse stock split will be sufficient from The NASDAQ Stock Market LLC's perspective in order to approve the listing application. TorreyPines and Raptor cannot assure you that all of the conditions will be satisfied. If the conditions are not satisfied or waived, the merger will not occur or will be delayed, TorreyPines and Raptor each may lose some or all of the intended benefits of the merger, and if TorreyPines is unable to complete another financing or strategic transaction, it does not expect to be able to continue as a going concern and may be required to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code.

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*Some of TorreyPines and Raptor's officers and directors have conflicts of interest that may influence them to support or approve the merger.*

Certain officers and directors of TorreyPines and Raptor participate in arrangements that provide them with interests in the merger that are different from yours, including, among others, their continued service as an officer or director of the combined company, retention and severance benefits, continued indemnification and the potential ability to sell an increased number of shares of common stock of the combined company. For example, each of TorreyPines' three executive officers are party to employment agreements with TPTX, Inc., a wholly-owned subsidiary of TorreyPines, that will become effective on the closing of the merger, assuming the TorreyPines stockholders approve the merger. Pursuant to the employment agreements each of the current TorreyPines executive officers will be paid by TPTX, Inc. following the merger through February 28, 2010, whether or not they remain employees of TPTX, Inc. following the merger. In addition, the employment agreements provide for bonus payments to each of the executives in the event that TPTX, Inc. is able to secure funding, a partnership, sale or similar transaction related to NGX426 in excess of \$10 million prior to February 28, 2010. Additionally, following the consummation of the merger, all of Raptor's directors will continue to serve on the board of directors of the combined company and the management team of the combined company is expected to be composed of the management team of Raptor. Further, all of Raptor's directors and executive officers hold options to purchase shares of Raptor common stock, which options will be assumed by TorreyPines and become options to purchase shares of TorreyPines common stock following the consummation of the merger.

These interests, among others, may influence the officers and directors of TorreyPines and Raptor to support or approve the merger. For a more detailed discussion see the sections titled, "The Merger Interests of TorreyPines' Directors and Executive Officers in the Merger" and "The Merger Interests of Raptor's Directors and Executive Officers in the Merger" in this joint proxy statement/prospectus.

*The exchange ratio is not adjustable based on the market price of TorreyPines or Raptor common stock so the merger consideration at the closing may have a larger or smaller value than at the time the merger agreement was signed.*

The merger agreement describes the method for calculating the exchange ratio for the Raptor common stock, and that exchange ratio is only subject to adjustment to account for (i) stock splits, stock dividends, reverse stock splits, reclassifications, recapitalizations or similar events, such as the reverse stock split discussed in this joint proxy statement/prospectus and (ii) certain additional shares of Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger. Any changes in the market price of the TorreyPines or Raptor common stock will not affect the number of shares Raptor stockholders will be entitled to receive pursuant to the merger without taking into effect the proposed reverse stock split. Therefore, if the market price of TorreyPines common stock declines from the market price on the date of the merger agreement prior to the closing of the merger, Raptor stockholders could receive merger consideration with considerably less value. Similarly, if the market price of the TorreyPines common stock increases from the market price on the date of the merger agreement prior to the closing of the merger, Raptor stockholders could receive merger consideration with considerably more value than their shares of Raptor common stock and the TorreyPines stockholders immediately prior to the merger will not be compensated for the increased market value of the TorreyPines common stock. The merger agreement does not include a price-based termination right. Because the exchange ratio does not adjust as a result of changes in the value of TorreyPines common stock for each one percentage point that the market value of TorreyPines common stock declines, there is a concomitant one percentage point decline in the value of the total merger consideration issued to Raptor stockholders. For example, on July 27, 2009, the date of the merger agreement, the closing price of TorreyPines common stock, as reported on the NASDAQ Global Market, was \$0.09 per share. Assuming that a total of 303,982,102 shares of TorreyPines common stock are issued to Raptor stockholders upon the closing of the merger at a per share value of \$0.09 per share, the aggregate merger consideration to be issued to Raptor stockholders in the merger would be approximately \$27.4 million. If, however, the closing price of TorreyPines common stock prior to the date of closing of the merger had declined from \$0.09 per share to, for example, \$0.07 per share, a

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decline of 22%, the aggregate merger consideration to be issued to Raptor stockholders in the merger would decrease from approximately \$27.4 million to approximately \$21.3 million, a decline of \$6.2 million or 22%.

***The merger may be completed even though material adverse changes may result from the announcement of the merger, industry-wide changes and other causes.***

In general, either TorreyPines or Raptor can refuse to complete the merger if there is a material adverse change affecting the other party between July 27, 2009, the date of the merger agreement, and the closing. However, certain types of changes do not permit either party to refuse to complete the merger, even if such change would have a material adverse effect on TorreyPines or Raptor, including:

changes due to the announcement or pendency of the merger;

changes attributable to the U.S. economy or industry in which TorreyPines or Raptor competes;

changes resulting from or relating to any change in accounting requirements or principles or any change in applicable laws, rules or regulations or the interpretation thereof; or

changes resulting from a change in the stock price or trading volume of TorreyPines or Raptor, excluding any underlying effect that may have caused such change.

If adverse changes occur but TorreyPines and Raptor still complete the merger, the combined company's stock price may suffer. This in turn may reduce the value of the merger to the stockholders of Raptor.

***The market price of the combined company's common stock may decline as a result of the merger.***

The market price of the combined company's common stock may decline as a result of the merger for a number of reasons including if:

a decline in the liquidity of the combined company's stock following the merger;

the combined company does not achieve the perceived benefits of the merger as rapidly or to the extent anticipated by financial or industry analysts;

the effect of the merger on the combined company's business and prospects is not consistent with the expectations of financial or industry analysts; or

investors react negatively to the effect on the combined company's business and prospects from the merger.

***TorreyPines and Raptor stockholders may not realize a benefit from the merger commensurate with the ownership dilution they will experience in connection with the merger.***

If the combined company is unable to realize the strategic and financial benefits currently anticipated from the merger, TorreyPines' stockholders will have experienced substantial dilution and Raptor's stockholders will have experienced dilution, of their respective ownership interests without receiving any commensurate benefit.

*During the pendency of the merger, TorreyPines and Raptor may not be able to enter into a business combination with another party at a favorable price because of restrictions in the merger agreement, which could adversely affect their respective business.*

Covenants in the merger agreement impede the ability of TorreyPines and Raptor to make acquisitions or complete other transactions that are not in the ordinary course of business pending completion of the merger. As a result, if the merger is not completed, the parties may be at a disadvantage to their competitors. In addition, while the merger agreement is in effect and subject to very narrowly defined exceptions, neither party will directly or indirectly:

solicit, initiate, encourage, induce or knowingly facilitate the making, submission or announcement of, any acquisition proposal, as defined below, or any action that could reasonably be expected to lead to an acquisition proposal;

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furnish any information regarding such party or any of its subsidiaries to any person in connection with or in response to an acquisition proposal or an inquiry or indication of interest that could reasonably be expected to lead to an acquisition proposal;

engage in discussions or negotiations with any person with respect to any acquisition proposal;

approve, endorse or recommend an acquisition proposal; or

enter into any letter of intent or similar document or any contract contemplating or otherwise relating to an acquisition transaction, as defined below.

Any such transaction could be favorable to such party's stockholders.

***Certain provisions of the merger agreement may discourage third parties from submitting alternative takeover proposals, including proposals that may be superior to the arrangements contemplated by the merger agreement.***

The terms of the merger agreement prohibit each of TorreyPines and Raptor from soliciting alternative takeover proposals or cooperating with persons making unsolicited takeover proposals, except in limited circumstances when such party's board of directors determines in its good faith judgment that an unsolicited alternative takeover proposal is or is reasonably likely to lead to a superior takeover proposal and is reasonably capable of being consummated and that failure to cooperate with the proponent of the proposal could reasonably be considered a breach of the board's fiduciary duties.

***Because Raptor's business will constitute the substantial majority of the business of the combined company after the closing of the merger, if any of the events described in Risks Related to Raptor occur, those events could cause the potential benefits of the merger not to be realized and the market price of the combined company's common stock to decline.***

Because of TorreyPines' limited operations, the combined company's business immediately following the merger will primarily be the business conducted by Raptor immediately prior to the merger. As a result, the risks described below under Risks Related to Raptor are significant risks to the combined company if the merger is completed. To the extent any of the events in the risks described below under Risks Related to Raptor occur, those events could cause the potential benefits of the merger not to be realized and the market price of the combined company's common stock to decline.

#### **Risks Related to TorreyPines**

*In addition to the other information contained in this joint proxy statement/prospectus, you should carefully consider the material risks described below. As discussed above, TorreyPines has entered into the merger agreement with merger sub and Raptor pursuant to which merger sub will merge with and into Raptor, with Raptor as the surviving corporation becoming a wholly-owned subsidiary of TorreyPines. TorreyPines has effectively ceased all business operations related to the development of its product candidates to focus its efforts on the completion of the merger with Raptor and a possible strategic transaction related to its product candidates to the extent permitted under the merger agreement. Following the completion of the merger, the current management and board of directors of TorreyPines will have no control over the ultimate decisions regarding the combined company's operations and business, including whether the combined company will elect to dispose of TorreyPines' product candidates in a strategic transaction, reinitiate their development, abandon them entirely or any combination of the foregoing. Most of the TorreyPines risk factors described below relate to TorreyPines' current product candidates and related matters, and will only be relevant if the combined company attempts to continue to develop TorreyPines' product candidates, which it may never do. Prior to executing the merger agreement with Raptor, TorreyPines' board of directors approved a Plan of Liquidation and Dissolution*

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*and called a stockholder meeting to vote on that plan, which meeting was cancelled as a condition to the execution of the merger agreement. If TorreyPines is unable to complete the merger or another financing or strategic transaction, it does not expect to be able to continue as a going concern and may be required to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code. Most, if not all, of the combined company's business immediately following the merger will be the business conducted by Raptor immediately prior to the merger, and most if not all of the risk factors related to TorreyPines' business in this joint proxy statement/prospectus will change from those described herein based on TorreyPines' business to date and otherwise may no longer be applicable to the combined company. TorreyPines encourages you to review the section titled, Risk Related to Raptor appearing elsewhere in this joint proxy statement/prospectus for a description of the substantial portion of the expected risks of the combined company if the merger is approved and completed.*

***TorreyPines may not be able to complete the merger with Raptor and failure to do so could adversely affect its business.***

TorreyPines cannot assure you that it will close the pending merger with Raptor in a timely manner or at all. TorreyPines consideration and completion of the merger is subject to a variety of risks that could materially and adversely affect TorreyPines business and financial results, including risks that it will forego strategic opportunities while the closing of the merger is pending; and risks inherent in negotiating and completing any transaction. In particular, one condition to the closing of the merger is that TorreyPines must have Net Cash (as defined in the merger agreement) upon the closing of the merger greater than zero dollars. While TorreyPines has and will continue to expend substantial effort to limit its expenses and preserve its remaining cash, unforeseen liabilities or expenses, in some cases over which it has no control, may arise that could make satisfaction of this closing condition difficult or impossible. If TorreyPines does not close the merger with Raptor, TorreyPines board of directors may elect to attempt to complete another strategic transaction similar to the merger or otherwise, or may determine that TorreyPines should file for bankruptcy, cease operations or liquidate and dissolve.

Net Cash is defined in the merger agreement, generally, as the sum of (a) (i) TorreyPines' cash and cash equivalents, short-term investments, net and restricted cash, and (ii) all tax refunds and refunds of prepaid expenses due and owing to TorreyPines or any of its subsidiaries that have not been received as of the closing of the merger agreement, minus (b) the sum of all liabilities and obligations of TorreyPines and any of its subsidiaries (other than all costs and expenses which are the exclusive responsibility of Raptor as described in the merger agreement).

***TorreyPines may not be able to continue as a going concern. TorreyPines will need substantial additional funds to continue operations, which the merger with Raptor may not provide and which TorreyPines may not be able to raise on favorable terms, or at all.***

TorreyPines would need substantial additional funds in order to initiate any further preclinical studies and clinical trials and to fund its development operations and has not been able to obtain any such financing. TorreyPines' independent registered public accounting firm has included an explanatory paragraph in their report on TorreyPines' 2008 financial statements related to the uncertainty and substantial doubt of TorreyPines ability to continue as a going concern. TorreyPines believes that its cash and cash equivalents, which were approximately \$1.2 million at June 30, 2009, will only fund its operations, independent of the merger with Raptor, through the third quarter, and possibly into the fourth quarter, of 2009. Although TorreyPines intends that the merger with Raptor will enable it to have sufficient funds to continue as a going concern, there is no assurance that the combined entity will have sufficient capital to fund its operations beyond the first quarter of 2010 or be able to complete a future financing or corporate transaction, either on favorable terms or at all. If the merger is not completed and TorreyPines is unable to complete a financing or strategic transaction, it does not expect to be able to continue as a going concern and may be required to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code.

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TorreyPines' forecast of the period of time through which its financial resources will be adequate to support its operations is a forward-looking statement and involves risks and uncertainties, and actual results could vary as a result of a number of factors, including the factors discussed elsewhere in these risk factors. TorreyPines has based this estimate on assumptions that may prove to be wrong, and TorreyPines could utilize its available capital resources sooner than it currently expects. If TorreyPines is able to obtain funds through arrangements with collaborative partners or others that require TorreyPines to relinquish rights to intellectual property or product candidates that it would otherwise seek to develop or commercialize itself this may have a material adverse effect on TorreyPines business, results of operations, financial condition or cash flow.

***TorreyPines may need to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code, and in that event, it is unlikely that stockholders would receive any value for their shares.***

TorreyPines has incurred net operating losses every year since TorreyPines inception. As of June 30, 2009, TorreyPines had an accumulated deficit of approximately \$121.9 million and has been unable to raise the necessary capital to continue TorreyPines existing operations. TorreyPines is currently working to complete the proposed merger with Raptor. TorreyPines cannot assure its stockholders that any actions that it takes would raise or generate sufficient capital to fully address the uncertainties of its financial position. As a result, TorreyPines may be unable to realize value from its assets and discharge its liabilities in the normal course of business. If TorreyPines is unable to settle its obligations to its creditors or if TorreyPines is unable to consummate the merger with Raptor it would likely need to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code. In that event, TorreyPines or a trustee appointed by the court may be required to liquidate TorreyPines' assets. In such event, TorreyPines might realize significantly less value from its assets than their carrying values on its financial statements. The funds resulting from the liquidation of TorreyPines assets would be used first to satisfy obligations to creditors before any funds would be available to TorreyPines stockholders, and any shortfall in the proceeds would directly reduce the amounts available for distribution, if any, to TorreyPines creditors and to TorreyPines stockholders. In the event TorreyPines is required to liquidate under Delaware law or the federal bankruptcy laws, it is highly unlikely that stockholders would receive any value for their shares. TorreyPines board of directors approved a Plan of Liquidation and Dissolution on May 19, 2009. TorreyPines previously convened a special meeting of its stockholders to consider the Plan of Liquidation and Dissolution, which meeting was adjourned twice because of insufficient support from TorreyPines' stockholders and which its board of directors cancelled in connection with TorreyPines' execution of the merger agreement. In the event TorreyPines is unable to complete the merger with Raptor, it is likely that it will seek protection under the provisions of the U.S. Bankruptcy Code or, if TorreyPines' board of directors calls another special meeting of its stockholders to consider the Plan of Liquidation and Dissolution and TorreyPines' stockholders approve the Plan of Liquidation and Dissolution, liquidate in a voluntary dissolution under Delaware law.

***TorreyPines is seeking to maximize the value of its assets, and address its liabilities and raise additional capital for its existing business. TorreyPines is attempting to pursue asset out-licenses, asset sales, mergers or similar strategic transactions with respect to its product candidates. TorreyPines may be unable to satisfy its liabilities and can provide no assurances that it can be successful in completing the merger with Raptor or executing a strategic transaction with respect to its product candidates.***

Due to TorreyPines financial position, it is unable to initiate further preclinical studies or clinical trials. TorreyPines is actively working to complete the merger with Raptor with the goal of maximizing the value of its assets. There are substantial challenges and risks which will make it difficult to successfully implement the merger. For example, under the terms of the merger agreement, TorreyPines would need Raptor's consent to complete any strategic transaction with respect to TorreyPines' product candidates. Even if TorreyPines decides to pursue a strategic transaction with respect to its product candidates, it may be unable to do so on acceptable terms, if at all. In the event TorreyPines is unable to complete the merger with Raptor and, if the merger is not consummated, is unable to complete a strategic transaction with respect to its product candidates, TorreyPines



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may be forced to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code.

Stockholders should recognize that in TorreyPines efforts to address its liabilities and fund future operations and development of its product candidates, if TorreyPines is unable to complete the merger with Raptor it may pursue strategic alternatives that result in the stockholders of TorreyPines having little or no continuing interest in the assets of TorreyPines as stockholders or otherwise. In such circumstances, TorreyPines will continue to evaluate TorreyPines alternatives in light of its cash position, including the possibility that it may need to liquidate in a voluntary dissolution under Delaware law or to seek protection under the provisions of the U.S. Bankruptcy Code.

***TorreyPines is currently not in compliance with NASDAQ rules regarding the minimum bid price or the minimum required stockholders equity and is at risk of being delisted from the NASDAQ Global Market, which could prevent TorreyPines from completing the merger with Raptor and may subject it to the SEC's penny stock rules and decrease the liquidity of TorreyPines common stock.***

TorreyPines received a NASDAQ staff deficiency letter dated August 21, 2008 indicating that, for the prior 30 consecutive days, the bid price for TorreyPines' common stock had closed below the minimum bid price of \$1.00 per share as required for continued inclusion of the NASDAQ Global Market under Marketplace Rule 4450(a)(5) (now Rule 5450(a)(1)). In accordance with Marketplace Rule 4450(e)(2) (now Rule 5450(a)(1)), TorreyPines had 180 calendar days to regain compliance with the minimum bid price requirement of \$1.00 per share. In addition, as of March 25, 2009, the market value of TorreyPines publicly held shares was less than \$5 million, which is the minimum market value of publicly held shares required for continued listing under the NASDAQ Global Market's Marketplace Rules. However, NASDAQ temporarily suspended, through July 20, 2009, the application of the continued listing requirements related to minimum bid price and minimum market value of publicly held shares for listing on the NASDAQ Global Market. Assuming the suspension is not extended, TorreyPines will have until November 19, 2009, to regain compliance with the minimum bid price requirement of \$1.00 per share. If TorreyPines does not regain compliance by the end of such period, and does not elect or is unable to transfer to the NASDAQ Capital Market, NASDAQ will provide written notification that TorreyPines' common stock will be delisted, after which TorreyPines may appeal the staff determination to the NASDAQ Listing Qualifications Panel if it so chooses.

In addition, as of December 31, 2008, TorreyPines stockholders' equity was less than \$10 million, which is the minimum required stockholders equity for continued listing on the NASDAQ Global Market. On March 31, 2009 TorreyPines received a letter from the Listing Qualifications Department of NASDAQ notifying TorreyPines that based on its stockholders' equity as reported in its Annual Report on Form 10-K for the year ended December 31, 2008, TorreyPines does not comply with the minimum stockholders' equity requirement of \$10 million for continued listing on The NASDAQ Global Market as set forth in NASDAQ Marketplace Rule 4450(a)(3) (now Rule 5450(b)(1)(A)). TorreyPines provided a plan to regain compliance with the minimum stockholder's equity requirement to NASDAQ and TorreyPines was granted an extension through July 14, 2009 to gain compliance. On July 14, 2009 TorreyPines received a letter from the Listing Qualifications Staff of The NASDAQ Stock Market notifying TorreyPines that it did not comply with the minimum \$10 million stockholders' equity requirement for continued listing set forth in Listing Rule 5450(b)(1)(A). TorreyPines requested a hearing before the NASDAQ Listing Qualifications Panel to review the Staff determination to delist TorreyPines' common stock. The request for a hearing stayed the Staff determination to delist TorreyPines' common stock until the Panel renders a determination following the hearing. The hearing is scheduled for August 20, 2009.

If following the NASDAQ Listing Qualifications Panel hearing, TorreyPines has not been granted additional time to regain compliance with the NASDAQ listing requirements, TorreyPines expects that it would be delisted from the NASDAQ Global Market. One of the conditions to the completion of the merger with Raptor is that TorreyPines continue to be listed on either the NASDAQ Capital Market or, if agreed to by Raptor, the

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NASDAQ Global Market, as of the closing of the merger. If TorreyPines is delisted from the NASDAQ Global Market and is not listed on the NASDAQ Capital Market, it would be unable to complete the merger without Raptor's waiver of this listing condition, which it does not expect Raptor would grant. Following any such delisting, TorreyPines common stock may be traded over-the-counter on the OTC Bulletin Board or in the pink sheets. These alternative markets, however, are generally considered to be less efficient than, and not as broad as, the NASDAQ Global Market. Many OTC Bulletin Board stocks trade less frequently and in smaller volumes than securities traded on the NASDAQ markets, which could have a material adverse effect on the liquidity of TorreyPines common stock. If TorreyPines common stock is delisted from the NASDAQ Global Market, there may be a limited market for TorreyPines stock, trading in TorreyPines stock may become more difficult and TorreyPines share price could decrease even further. In addition, if TorreyPines common stock is delisted, TorreyPines ability to raise additional capital may be impaired.

Specifically, you may not be able to resell your shares of common stock at or above the price you paid for such shares or at all. In addition, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Any such litigation brought against TorreyPines could result in substantial costs and a diversion of management's attention and resources, which could hurt TorreyPines business, operating results and financial condition.

In addition, TorreyPines common stock may become subject to penny stock rules. The SEC generally defines penny stock as an equity security that has a market price of less than \$5.00 per share, subject to certain exceptions. TorreyPines is not currently subject to the penny stock rules because TorreyPines common stock qualifies for an exception to the SEC's penny stock rules for companies that have an equity security that is quoted on the NASDAQ Stock Market. However, if TorreyPines is delisted, TorreyPines common stock would become subject to the penny stock rules, which impose additional sales practice requirements on broker-dealers who sell TorreyPines common stock. If TorreyPines common stock was considered penny stock, the ability of broker-dealers to sell TorreyPines common stock and the ability of TorreyPines stockholders to sell their shares in the secondary market would be limited and, as a result, the market liquidity for TorreyPines common stock would be adversely affected. TorreyPines cannot assure stockholders that trading in TorreyPines securities will not be subject to these or other regulations in the future.

***TorreyPines, through its wholly-owned subsidiary TPTX, Inc., entered into employment agreements with each of its key executives that may require material payments in connection with their continued service with TPTX, Inc. following the closing of the merger.***

As part of the execution of the Merger Agreement, TorreyPines, through its subsidiary TPTX, Inc., entered into second amended and restated employment agreements with each of its three key executive officers which agreements would become effective upon the closing of the merger and would remain effective through February 28, 2010 unless sooner terminated. Pursuant to the amended and restated employment agreements, each of the executives will continue to receive his or her current base salary through February 28, 2010 and the executives would also be eligible for certain incentive payments related to strategic transactions that may be completed with respect to NGX426. These payments (excluding the possible incentive payments) will reduce TorreyPines' Net Cash at the closing of the merger, which may result in a closing condition to the merger not being satisfied.

***TorreyPines will need substantial additional funding and may be unable to raise capital when needed, which would force it to delay further, reduce or eliminate its development programs or commercialization efforts.***

TorreyPines will need to raise substantial additional capital in the future and additional funding requirements will depend on, and could increase significantly as a result of, many factors, including:

the rate of progress and cost of clinical trials;

the scope of its clinical trials and other development activities;

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the prioritization and number of clinical development programs it pursues;

the terms and timing of any collaborative, licensing and other arrangements that it may establish;

the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;

the costs and timing of regulatory approvals;

the costs of goods and manufacturing expenses; and

the costs of establishing or contracting for sales and marketing capabilities.

TorreyPines does not anticipate that it will generate significant continuing revenue for several years, if at all. Until TorreyPines can generate significant continuing revenue, if ever, it expect to satisfy its future cash needs through public or private equity offerings, debt financings or strategic partnerships and licensing arrangements, as well as through interest income earned on cash balances. TorreyPines cannot be certain that its immediate funding needs or future additional funding needs will be available on acceptable terms, or at all. If the near term funds that TorreyPines needs to continue operations do not become available, it may be required to cease operations, seek protection under the provisions of the U.S. Bankruptcy Code or liquidate and dissolve.

***TorreyPines may have difficulty, or may be unable to, restart its clinical development programs***

In the first quarter of 2009 TorreyPines suspended development of its clinical stage product candidates, NGX426 and tezampanel. In addition, on March 31, 2009 TorreyPines terminated all but three employees. In order to restart the clinical and preclinical work for NGX426 and tezampanel, TorreyPines will need to hire the appropriate employees or consultants. If TorreyPines is unable to identify and retain such individuals it will be difficult to restart the program. Additionally, TorreyPines has incurred delays created by suspension of work on the program and will need to re-engage third parties to prepare materials and conduct the necessary clinical and preclinical work. TorreyPines may not be successful in restarting its clinical programs. Furthermore, if the merger with Raptor is completed, Raptor's current board of directors and management will succeed TorreyPines current board of directors and management. In such case, TorreyPines will have no control over these development programs and its successor board of directors and management may choose to divest such programs or abandon them altogether.

***TorreyPines product candidates are at an early stage of development. TorreyPines cannot be certain that any of its product candidates will be successfully developed, receive regulatory approval, or be commercialized.***

TorreyPines has two product candidates, both at an early stage of development and TorreyPines does not have any products that are commercially available. TorreyPines two ionotropic glutamate receptor antagonists, NGX426 and tezampanel are clinical stage product candidates. TorreyPines will need to perform additional development work and conduct further preclinical testing and clinical trials for both product candidates before it can seek the regulatory approvals necessary to begin commercial sales.

Success in preclinical testing and early clinical trials does not mean that later clinical trials will be successful. Companies frequently suffer significant setbacks in later stage clinical trials, even after earlier clinical trials have shown promising results. In future clinical trials with larger or somewhat different populations, results from early clinical trials may not be reproduced and analysis of new or additional data may not demonstrate sufficient safety and efficacy to support regulatory approval of a product candidate.

Additionally, preclinical testing and clinical trials are expensive, can take many years, and have an uncertain outcome. Product candidates may not be successful in clinical trials for a number of reasons, including, but not limited to, the failure of a product candidate to be safe and efficacious, the results of later stage clinical trials not confirming earlier clinical results, or clinical trial results not being acceptable to the FDA or other regulatory agencies.

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There is no certainty that the safety and efficacy results of TorreyPines Phase I trial of NGX426 in a capsaicin induced pain model announced in December 2008 or of TorreyPines Phase IIb clinical trial for tezampanel in acute migraine announced in October 2007 are predictive of results in subsequent trials or are meaningful indicators of the safety and efficacy of the compounds. TorreyPines will be required to perform additional clinical testing in order to obtain regulatory approval of its product candidates and the results of such additional clinical testing may not replicate what has been demonstrated to date regarding the safety and efficacy. Additionally, further testing may not result in data that supports regulatory approval.

TorreyPines does not anticipate that any of its current product candidates will be eligible to receive regulatory approval and begin commercialization for a number of years, if at all. Even if TorreyPines were to ultimately receive regulatory approval for one or more of its product candidates, it may be unable to successfully commercialize them for a variety of reasons including:

the availability of alternative treatments;

the product not being cost effective to manufacture and sell;

limited acceptance in the marketplace; and

the effect of competition with other marketed products.

The success of TorreyPines product candidates may also be limited by the incidence and severity of any adverse events or undesirable side effects. Additionally, any regulatory approval to market a product may be subject to the imposition by such regulatory agency of limitations on the indicated uses. These limitations may reduce the size of the market for the product. If TorreyPines fails to commercialize one or more of its current product candidates, its business, results of operations, financial condition, and prospects for future growth may be materially and adversely affected.

***Delays in the commencement or completion of clinical testing of TorreyPines product candidates could result in increased costs to it and delay TorreyPines ability to generate significant revenues.***

TorreyPines cannot predict whether it will encounter problems with any of its future clinical trials that will cause it or regulatory authorities to delay or suspend TorreyPines clinical trials, or delay the analysis of data from such clinical trials. Any of the following factors could delay the clinical development of TorreyPines product candidates:

discussions with the FDA or comparable foreign authorities regarding the scope or design of one or more clinical trials;

delays in receiving, or the inability to obtain, required approvals from institutional review boards or other reviewing entities at clinical trial sites selected for participation in a clinical trial;

delays or slower than anticipated enrollment of participants into clinical trials;

lower than anticipated retention rate of participants in clinical trials;

need to repeat clinical trials as a result of inconclusive or negative results or unforeseen complications in testing;

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inadequate supply or deficient quality of product candidate materials or other materials necessary to conduct TorreyPines clinical trials;

unfavorable FDA inspection and review of a clinical trial site or records of any clinical or preclinical investigation;

serious, unexpected adverse events or undesirable side effects experienced by participants in the clinical trials that delay or preclude regulatory approval or limit the commercial use or market acceptance if approved;

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findings that the clinical trial participants are being exposed to unacceptable health risks;

placement by the FDA of a clinical hold on a clinical trial;

restrictions on or post-approval commitments with regard to any regulatory approval TorreyPines ultimately obtain that renders a product candidate not commercially viable; and

unanticipated cost overruns in preclinical studies and clinical trials.

In addition, once a clinical trial has started, it may be suspended or terminated by TorreyPines or the FDA or other regulatory authorities due to a number of factors, including:

failure to conduct the clinical trial in accordance with regulatory requirements;

inspection of the clinical trial operations or clinical trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;

negative clinical trial results;

adverse events or negative side-effects experienced by the clinical trial participants; or

lack of adequate funding to continue the clinical trial.

The FDA may not accept any or all of the efficacy endpoints and they may ultimately decide that the endpoints are inadequate to demonstrate the statistically significant efficacy levels required for regulatory approval. TorreyPines failure to adequately demonstrate the safety and efficacy of its product candidates would jeopardize its ability to achieve regulatory approval for, and ultimately to commercialize, the product candidates.

Clinical trials require sufficient participant enrollment, which is a function of many factors, including the size of the target population, the nature of the clinical trial protocol, the proximity of participants to clinical trial sites, the availability of effective treatments for the relevant disorder or disease, the eligibility criteria for TorreyPines clinical trials and the number of competing clinical trials. Delays in enrollment can result in increased costs and longer development times. Failure to enroll participants in TorreyPines clinical trials could delay the completion of the clinical trials beyond current expectations. In addition, the FDA could require TorreyPines to conduct clinical trials with a larger number of participants than it may project for any of its product candidates. As a result of these factors, TorreyPines may not be able to enroll a sufficient number of participants in a timely or cost-effective manner.

Additionally, enrolled participants may drop out of clinical trials, which could impair the validity or statistical significance of the clinical trials. A number of factors can lead participants in a clinical trial to discontinue participating in the clinical trial, including, but not limited to: the inclusion of a placebo arm in the clinical trial; possible lack of effect of the product candidate being tested at one or more of the dose levels being tested; adverse side effects experienced by the participant, whether or not related to the product candidate; and the availability of alternative treatment options.

TorreyPines, the FDA or other applicable regulatory authorities may suspend clinical trials of a product candidate at any time if TorreyPines or they believe the participants in such clinical trials, or in independent third-party clinical trials for product candidates based on similar technologies, are being exposed to unacceptable health risks or for other reasons. In addition, it is impossible to predict whether legislative changes will be enacted, or whether FDA regulations, guidance or interpretations will be changed, or what the impact of such changes, if any, may be.

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If TorreyPines experiences any such problems, it may not have the financial resources to continue development of the product candidate that is affected or the development of any of its other product candidates. If TorreyPines experiences significant delays in the commencement or completion of clinical testing, financial results and the commercial prospects for the product candidates will be harmed and costs will increase.

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Additionally, any significant delays in the commencement or completion of clinical testing will delay TorreyPines ability to generate significant revenue.

***TorreyPines relies on third parties to assist it in conducting clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, TorreyPines may not be able to obtain regulatory approval for or commercialize its product candidates.***

TorreyPines relies on, and intends to continue to rely on, third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories, to conduct clinical trials of its product candidates. TorreyPines reliance on these third parties for development activities reduces its control over these activities. If these third parties do not successfully carry out their contractual duties or obligations or meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to TorreyPines clinical protocols or for other reasons, its clinical trials may be extended, delayed or terminated. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, TorreyPines may be required to replace them. Although TorreyPines believes there are a number of third party contractors it could engage to continue these activities, replacing a third party contractor may result in a delay of the affected trial. Accordingly, TorreyPines may not be able to obtain regulatory approval for or successfully commercialize its product candidates.

***TorreyPines has licensed rights to product candidates NGX426 and tezampanel from Eli Lilly and Company, or Eli Lilly. Eli Lilly has rights of termination under the license agreement, which if exercised would adversely affect TorreyPines business.***

In April 2003, TorreyPines entered into an agreement with Eli Lilly to obtain an exclusive license from Eli Lilly to their ionotropic glutamate receptor antagonist assets NGX426 and tezampanel. Pursuant to the license agreement TorreyPines has obligations to make payments to Eli Lilly under the agreement and to use commercially reasonable efforts to develop and commercialize the product candidates, including achievement of specified development events within specified timeframes. Eli Lilly may terminate the agreement for uncured material breach of the agreement by TorreyPines, including any breach of TorreyPines development and commercialization obligations. If Eli Lilly were to terminate the agreement, TorreyPines would lose rights to the ionotropic glutamate receptor antagonist product candidates, and its business would be adversely affected.

***If TorreyPines fails to enter into and maintain collaborations for its product candidates, it may have to reduce or delay product development or increase expenditures.***

TorreyPines strategy for developing, manufacturing, and commercializing potential products includes establishing and maintaining collaborations with pharmaceutical and biotechnology companies to advance some of TorreyPines programs and share expenditures with partners on those programs. TorreyPines may not be able to negotiate future collaborations on acceptable terms, if at all. If TorreyPines is not able to establish and maintain collaborative arrangements, TorreyPines may have to reduce or delay further development of some programs or undertake the development activities at TorreyPines own expense. If TorreyPines elects to increase capital expenditures to fund development programs on its own, it will need to obtain additional capital, which may not be available on acceptable terms or at all. Even if TorreyPines does succeed in securing such collaborations, it may not be able to maintain them if, for example, objectives under the agreement are not met, the agreement is terminated or not renewed, development or approval of a product candidate is delayed or sales of an approved drug are disappointing. Furthermore, any delay in entering into collaborations could delay the development and commercialization of TorreyPines product candidates and reduce their competitiveness, even if they reach the market. Any such delay related to TorreyPines collaborations could adversely affect TorreyPines business.



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***If TorreyPines strategic partners do not devote adequate resources to the development and commercialization of TorreyPines product candidates, TorreyPines may not be able to commercialize its products and achieve revenues.***

TorreyPines may enter into collaborations with other strategic partners with respect to its product candidates. If TorreyPines enters into any such collaborations, it may have limited or no control over the amount and timing of resources that its partners dedicate to the development of its product candidates. TorreyPines ability to commercialize products it develops with its partners and generate royalties from product sales will depend on the partner's ability to assist TorreyPines in establishing the safety and efficacy of TorreyPines product candidates, obtaining regulatory approvals and achieving market acceptance of products. TorreyPines partners may elect to delay or terminate development of a product candidate, independently develop products that could compete with TorreyPines products, or not commit sufficient resources to the marketing and distribution of products under the collaboration. If TorreyPines partners fail to perform as expected under the collaborative agreements, TorreyPines potential for revenue from the related product candidates will be dramatically reduced. In addition, revenue from TorreyPines future collaborations may consist of contingent payments, such as payments for achieving development and commercialization milestones and royalties payable on sales of any successfully developed drugs. The milestone, royalty or other revenue that TorreyPines may receive under these collaborations will depend upon both TorreyPines ability and its partner's ability to successfully develop, introduce, market and sell new products. In some cases, TorreyPines will not be involved in these processes and, accordingly, will depend entirely on its partners.

***TorreyPines does not have internal manufacturing capabilities. If TorreyPines fails to develop and maintain supply relationships with collaborators or other third party manufacturers, TorreyPines may be unable to develop or commercialize its products.***

TorreyPines ability to develop and commercialize its products depends in part on TorreyPines ability to manufacture, or arrange for future collaborators or other third parties to manufacture, its products at a competitive cost, in accordance with regulatory requirements and in sufficient quantities for clinical testing and eventual commercialization. None of TorreyPines product candidates have been manufactured on a commercial scale. TorreyPines and its third-party manufacturers may encounter difficulties with the small- and large-scale formulation and manufacturing processes required to manufacture its product candidates, resulting in delays in clinical trials and regulatory submissions, in the commercialization of product candidates or, if any product candidate is approved, in the recall or withdrawal of the product from the market. TorreyPines inability to enter into or maintain agreements with capable third-party manufacturers on acceptable terms could delay or prevent the commercialization of its products, which would adversely affect its ability to generate revenue and could prevent it from achieving profitability.

TorreyPines will need to identify and reach agreement with third parties for the supply of its product candidates for future clinical trials. TorreyPines does not have long-term supply agreements with third parties, and TorreyPines may not be able to enter into supply agreements with them in a timely manner or on acceptable terms, if at all. These third parties may also be subject to capacity constraints that would cause them to limit the amount of TorreyPines product candidates they can produce or the chemicals that TorreyPines can purchase. Any interruption or delay TorreyPines experiences in the supply of its product candidates may impede or delay such product candidates clinical development and cause TorreyPines to incur increased expenses associated with identifying and qualifying one or more alternate suppliers.

In addition, TorreyPines, its future collaborators or other third-party manufacturers of its products must comply with current good manufacturing practice, or cGMP, requirements enforced by the FDA through its facilities inspection program. These requirements include quality control, quality assurance and the maintenance of records and documentation. In addition, product manufacturing facilities in California are subject to licensing requirements of the California Department of Health Services and may be inspected by the California Department of Health Services at any time. TorreyPines, its collaborators or other third-party manufacturers of

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its products may be unable to comply with these cGMP requirements and with other FDA, state and foreign regulatory requirements. A failure to comply with these requirements may result in fines and civil penalties, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval.

***TorreyPines currently has no marketing or sales staff. If TorreyPines is unable to enter into or maintain collaborations with marketing partners or if it is unable to develop its own sales and marketing capabilities, TorreyPines may not be successful in commercializing its potential products and it may be unable to generate significant revenues.***

TorreyPines may elect to commercialize some of the products it is developing on its own, with or without a partner, where those products can be effectively marketed and sold in concentrated markets that do not require a large sales force to be competitive. TorreyPines currently has no sales, marketing or distribution capabilities. To be able to commercialize TorreyPines own products, it will need to establish its own specialized sales force and marketing organization with technical expertise and with supporting distribution capabilities. Developing such an organization is expensive and time consuming and could delay or limit TorreyPines ability to commercialize products.

To commercialize any product candidate that TorreyPines decides not to market on its own, it will depend on collaborations with third parties that have established distribution systems and direct sales forces. If TorreyPines is unable to enter into such collaborations on acceptable terms, it may not be able to successfully commercialize those products.

To the extent that TorreyPines enters into arrangements with collaborators or other third parties to perform sales and marketing services, its product revenue is likely to be lower than if it directly marketed and sold its product candidates. If TorreyPines is unable to establish adequate sales and marketing capabilities, independently or with others, it may not be able to generate significant revenue and may not become profitable and the price of its common stock may be negatively affected.

***NGX426 and tezampanel belong to a new class of compounds. There are no compounds in this class that have received regulatory approval for any indication. Therefore, TorreyPines does not know whether its product candidates will yield commercially viable products or receive regulatory approval.***

NGX426 and tezampanel are ionotropic glutamate receptor antagonists of the AMPA and kainite subtype. They are part of a new class of compounds that block the binding of glutamate to AMPA and kainite receptors and, in turn, stop the transmission of pain signals. NGX426 and tezampanel may represent a novel approach to the treatment of numerous pain and non-pain diseases and disorders. There are currently no approved products that are ionotropic glutamate receptor antagonists of the AMPA and kainite subtype. As a result, TorreyPines cannot be certain that NGX426 and tezampanel will result in commercially viable drugs.

***If TorreyPines product candidates do not achieve market acceptance among physicians, patients, health care payers and the medical community, they will not be commercially successful and TorreyPines business will be adversely affected.***

The degree of market acceptance of any of TorreyPines approved product candidates among physicians, patients, health care payors and the medical community will depend on a number of factors, including:

acceptable evidence of safety and efficacy;

relative convenience and ease of administration;

the prevalence and severity of any adverse side effects;

availability of alternative treatments;

pricing and cost effectiveness;



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effectiveness of sales and marketing strategies; and

ability to obtain sufficient third-party coverage or reimbursement.

If TorreyPines is unable to achieve market acceptance for its product candidates, then such product candidates will not be commercially successful and TorreyPines business will be adversely affected.

***If TorreyPines fails to attract and keep key management it may be unable to develop or commercialize its product candidates successfully.***

TorreyPines success depends on its continued ability to attract, retain and motivate highly qualified management and scientific personnel. The loss of the services of any principal member of TorreyPines senior management team could delay or prevent the commercialization of its product candidates. TorreyPines employs these individuals on an at-will basis and their employment can be terminated by TorreyPines or such employees at any time, for any reason and with or without notice, subject to the terms contained in their respective employment agreements and offer letters.

***Companies and universities that have licensed product candidates to TorreyPines for clinical development and marketing are sophisticated competitors that could develop similar products to compete with TorreyPines products.***

Licensing TorreyPines product candidates from other companies, universities or individuals does not always prevent them from developing non-identical but competitive products for their own commercial purposes, nor from pursuing patent protection in areas that are competitive with TorreyPines. TorreyPines partners who created these product candidates are experienced scientists and business people who may continue to do research and development and seek patent protection in the same areas that led to the discovery of the product candidates that they licensed to TorreyPines. By virtue of the previous research that led to the discovery of the drugs or product candidates that they licensed to TorreyPines, these companies, universities, or individuals may be able to develop and market competitive products in less time than might be required to develop a product with which they have no prior experience.

***Changes in, or interpretations of, accounting rules and regulations could result in unfavorable accounting charges or require TorreyPines to change its compensation policies.***

Accounting methods and policies for biopharmaceutical companies, including policies governing revenue recognition, expenses, accounting for stock options and in-process research and development costs are subject to further review, interpretation and guidance from relevant accounting authorities, including the SEC. Changes to, or interpretations of, accounting methods or policies in the future may result in unfavorable accounting charges or may require TorreyPines to change its compensation policies to avoid such charges.

***TorreyPines management will be required to devote substantial time to comply with public company regulations.***

As a public company, TorreyPines will incur significant legal, accounting and other expenses. In addition, the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, as well as rules subsequently implemented by the SEC and the NASDAQ Global Market, impose various requirements on public companies, including corporate governance practices. TorreyPines management and other personnel will have to meet these requirements. Moreover, these rules and regulations will increase TorreyPines legal and financial compliance costs and will make some activities more time-consuming and costly.

In addition, the Sarbanes-Oxley Act requires, among other things, that TorreyPines maintain effective internal controls for financial reporting and disclosure controls and procedures. In particular, TorreyPines must perform system and process evaluation and testing of its internal controls over financial reporting to allow

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management to report on the effectiveness of its internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. TorreyPines compliance with Section 404 will require that it incur substantial accounting and related expense and expend significant management efforts. TorreyPines will need to hire additional accounting and financial staff to satisfy the on-going requirements of Section 404. Moreover, if TorreyPines is not able to comply with the requirements of Section 404, or if it or its independent registered public accounting firm identifies deficiencies in TorreyPines internal controls over financial reporting that are deemed to be material weaknesses, the market price of TorreyPines stock could decline and TorreyPines could be subject to sanctions or investigations by the NASDAQ Global Market, SEC or other regulatory authorities.

***TorreyPines is a defendant in a class action lawsuit which, if determined adversely, could have a material adverse affect on it.***

A class action securities lawsuit was filed against TorreyPines, as described in the section titled, "TorreyPines Business Legal Proceedings" in this joint proxy statement/prospectus. TorreyPines is defending against this action vigorously; however, TorreyPines does not know what the outcome of the proceedings will be and, if it does not prevail, it may be required to pay substantial damages or settlement amounts. Furthermore, regardless of the outcome, TorreyPines may incur significant defense costs, and the time and attention of its key management may be diverted from normal business operations. If TorreyPines is ultimately required to pay significant defense costs, damages or settlement amounts, such payments could materially and adversely affect its operations and results. TorreyPines has purchased liability insurance, however, if any costs or expenses associated with the litigation exceed the insurance coverage, TorreyPines may be forced to bear some or all of these costs and expenses directly, which could be substantial and may have an adverse effect on its business, financial condition, results of operations and cash flows. In any event, publicity surrounding the lawsuits and/or any outcome unfavorable to TorreyPines could adversely affect its reputation and stock price. The uncertainty associated with substantial unresolved lawsuits could harm TorreyPines business, financial condition and reputation.

TorreyPines has certain obligations to indemnify its officers and directors and to advance expenses to such officers and directors. Although TorreyPines has purchased liability insurance for its directors and officers, if its insurance carriers should deny coverage, or if the indemnification costs exceed the insurance coverage, TorreyPines may be forced to bear some or all of these indemnification costs directly, which could be substantial and may have an adverse effect on its business, financial condition, results of operations and cash flows. If the cost of TorreyPines liability insurance increases significantly, or if this insurance becomes unavailable, TorreyPines may not be able to maintain or increase its levels of insurance coverage for its directors and officers, which could make it difficult to attract or retain qualified directors and officers.

***The use of any TorreyPines drug product candidates in clinical trials may expose TorreyPines to liability claims.***

The nature of TorreyPines business exposes them to potential liability risks inherent in the testing, manufacturing and marketing of its drug product candidates. While TorreyPines products are clinically tested, TorreyPines products could potentially harm people or allegedly harm people, and TorreyPines may be subject to costly and damaging product liability claims. Some of the patients who participate in clinical trials are already critically ill when they enter a trial. The waivers TorreyPines obtain may not be enforceable and may not protect TorreyPines from liability or the costs of product liability litigation. Although TorreyPines carries clinical product liability insurance, it may not be sufficient to cover future claims. TorreyPines currently does not have any clinical or product liability claims or threats of claims filed against it.

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### **Risks Related to TorreyPines Intellectual Property**

*TorreyPines success depends upon its ability to protect its intellectual property and proprietary technologies.*

TorreyPines commercial success depends on obtaining and maintaining patent protection and trade secret protection of its product candidates, proprietary technologies and their uses, as well as successfully defending its patents against third-party challenges. TorreyPines will only be able to protect its product candidates, proprietary technologies and their uses from unauthorized use by third parties to the extent that valid and enforceable patents or trade secrets cover them.

The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in biotechnology patents has emerged to date in the U.S. The biotechnology patent situation outside the U.S. is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the U.S. and other countries may diminish the value of TorreyPines intellectual property. Accordingly, TorreyPines cannot predict the breadth of claims that may be allowed or enforced in its patents or in third-party patents.

The degree of future protection for TorreyPines proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect its rights or permit TorreyPines to gain or keep its competitive advantage. For example:

TorreyPines or its licensors might not have been the first to make the inventions covered by each of its pending patent applications and issued patents;

TorreyPines or its licensors might not have been the first to file patent applications for these inventions;

others may independently develop similar or alternative technologies or duplicate any of TorreyPines technologies;

TorreyPines issued patents may not provide a basis for commercially viable products, may not provide it with any competitive advantages, or may be challenged by third parties;

TorreyPines issued patents may not be valid or enforceable;

TorreyPines may not develop additional proprietary technologies that are patentable; and

the patents of others may have an adverse effect on TorreyPines business.

Proprietary trade secrets and unpatented know-how are also very important to TorreyPines business. Although TorreyPines has taken steps to protect its trade secrets and unpatented know-how, including entering into confidentiality agreements with third parties and proprietary information and inventions agreements with employees, consultants and advisors, third parties may still obtain this information. Enforcing a claim that a third party illegally obtained and is using TorreyPines trade secrets or unpatented know-how is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the U.S. may be less willing to protect this information. Moreover, TorreyPines competitors may independently develop equivalent knowledge, methods and know-how.

*If TorreyPines is sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on its business.*

TorreyPines commercial success depends upon its ability and the ability of any of its collaborators to develop, manufacture, market, and sell its product candidates and use its proprietary technologies without infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which TorreyPines is developing products.

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Because patent applications can take many years to issue, there may be currently pending applications, unknown

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to TorreyPines, which may later result in issued patents that its product candidates or proprietary technologies may infringe. TorreyPines has not conducted a complete search of existing patents to identify existing patents that its product candidates or proprietary technologies may inadvertently infringe.

TorreyPines may be exposed to future litigation by the companies holding these patents or other third parties based on claims that its product candidates and/or proprietary technologies infringe their intellectual property rights. If one of these patents was found to cover TorreyPines product candidates, proprietary technologies or their uses, TorreyPines or its collaborators could be required to pay damages and could be unable to commercialize its product candidates or use its proprietary technologies unless TorreyPines obtained a license to the patent. A license to these patents may not be available to TorreyPines or its collaborators on acceptable terms, if at all.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and biopharmaceutical industries generally. If a third party claims that TorreyPines or its collaborators infringe on its technology, it may face a number of issues, including:

infringement and other intellectual property claims which, with or without merit, may be expensive and time-consuming to litigate and may divert management's attention from its core business;

substantial damages for infringement, including treble damages and attorneys' fees, as well as damages for products development using allegedly infringing drug discovery tools or methods which TorreyPines may have to pay if a court decides that the product or proprietary technology at issue infringes on or violates the third party's rights;

a court prohibiting TorreyPines from selling or licensing the product or using the proprietary technology unless the third party licenses its technology to TorreyPines, which it is not required to do;

if a license is available from the third party, TorreyPines may have to pay substantial royalties, fees and/or grant cross licenses to its technology; and

redesigning TorreyPines products or processes so they do not infringe, which may not be possible or may require substantial funds and time.

TorreyPines may also be subject to claims that it or its employees, who were previously employed at universities or other biotechnology or pharmaceutical companies, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. If TorreyPines fails in defending such claims, in addition to paying monetary damages, it may lose valuable intellectual property rights or personnel. A loss of key personnel or their work product could hamper or prevent TorreyPines ability to commercialize certain potential drugs, which could severely harm its business. Even if TorreyPines is successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

## **Risks Related to TorreyPines Industry**

***TorreyPines' product candidates are subject to extensive regulation, which can be costly and time consuming, cause unanticipated delays or prevent the receipt of the required approvals to commercialize TorreyPines' product candidates.***

The clinical development, manufacturing, labeling, storage, record-keeping, future advertising, promotion, export, marketing and distribution of TorreyPines' product candidates are subject to extensive regulation by the FDA and other regulatory agencies in the U.S. and by comparable foreign governmental authorities. The process of obtaining these approvals is expensive, often takes many years, and can vary substantially based upon the type, complexity and novelty of the products involved. Approval policies or regulations may change. In addition, although members of TorreyPines management have drug development and regulatory experience, as a company TorreyPines has not previously filed the marketing applications necessary to gain regulatory approvals for any





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product. This lack of experience may impede TorreyPines ability to obtain FDA marketing approval in a timely manner, if at all, for the product candidates it is developing and commercializing. TorreyPines will not be able to commercialize its product candidates in the U.S. until it obtains FDA approval and in other countries until it obtains approval by comparable governmental authorities. Any delay in obtaining, or inability to obtain, these approvals would prevent TorreyPines from commercializing its product candidates.

*Even if any of TorreyPines product candidates receive regulatory approval, they may still face future development and regulatory difficulties.*

If any of TorreyPines product candidates receive regulatory approval, the FDA and foreign regulatory authorities may still impose significant restrictions on the uses or marketing of the product candidates or impose on-going requirements for post-approval studies. In addition, regulatory agencies subject a product, its manufacturer and the manufacturer's facilities to continuing review and periodic inspections. If previously unknown problems with a product or its manufacturing facility are discovered, a regulatory agency may impose restrictions on that product, TorreyPines, or its partners, including requiring withdrawal of the product from the market. TorreyPines product candidates will also be subject to on-going FDA requirements for submission of safety and other post-market information. If TorreyPines product candidates fail to comply with applicable regulatory requirements, a regulatory agency may:

issue warning letters;

impose civil or criminal penalties;

suspend regulatory approval;

suspend any on-going clinical trials;

refuse to approve pending applications or supplements to approved applications filed by TorreyPines or its collaborators;

impose restrictions on operations, including costly new manufacturing requirements; or

seize or detain products or require a product recall.

In order to market any products outside of the U.S., TorreyPines and its partners must establish and comply with numerous and varying regulatory requirements of other countries regarding safety and efficacy. Approval procedures vary among countries and can involve additional product testing and additional administrative review periods. The time required to obtain approval in other countries might differ from that required to obtain FDA approval. The regulatory approval process in other countries may include all of the risks detailed above regarding FDA approval in the U.S. Regulatory approval in one country does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one country may negatively impact the regulatory process in others. Failure to obtain regulatory approval in other countries or any delay or setback in obtaining such approval could have the same adverse effects described above regarding FDA approval in the U.S., including the risk that TorreyPines product candidates may not be approved for all indications requested, which could limit the uses of its product candidates and adversely impact potential royalties and product sales, and that such approval may be subject to limitations on the indicated uses for which the product may be marketed or require costly, post-marketing follow-up studies.

If TorreyPines and its partners fail to comply with applicable foreign regulatory requirements, TorreyPines and its partners may be subject to fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions and criminal prosecution.

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***If TorreyPines competitors have products that are approved faster, marketed more effectively or demonstrated to be more effective than TorreyPines products, then TorreyPines commercial opportunity will be reduced or eliminated.***

The biotechnology and biopharmaceutical industries are characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. TorreyPines face competition from many different sources, including commercial pharmaceutical and biotechnology enterprises, academic institutions, government agencies and private and public research institutions. Due to the high demand for treatments in the areas in which TorreyPines is competing, research is intense and new treatments are being sought out and developed by TorreyPines competitors.

In addition, many other competitors are developing products for the treatment of the diseases TorreyPines is targeting and if successful, these products could compete with TorreyPines products. If TorreyPines receives approval to market and sell any of its product candidates, it may compete with these companies and their products as well as others in varying stages of development.

Many of TorreyPines competitors have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, clinical trials, regulatory approvals and marketing approved products than TorreyPines does. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. TorreyPines competitors may succeed in developing technologies and therapies that are more effective, better tolerated or less costly than theirs, or that would render its product candidates obsolete and noncompetitive. TorreyPines competitors may succeed in obtaining approvals from the FDA and foreign regulatory authorities for their products sooner than TorreyPines does. TorreyPines will also face competition from these third parties in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and patient registration for clinical trials, and in acquiring and in-licensing technologies and products complementary to TorreyPines programs or advantageous to its business.

***TorreyPines is subject to uncertainty relating to health care reform measures and reimbursement policies which, if not favorable to its product candidates, could hinder or prevent the commercial success of its product candidates.***

The continuing efforts of the government, insurance companies, managed care organizations and other payors of health care costs to contain or reduce costs of health care may adversely affect TorreyPines:

ability to set a price TorreyPines believe is fair for its products;

ability to generate revenues and achieve profitability;

future revenues and profitability of potential customers, suppliers and collaborators; and

the availability of capital.

In certain foreign markets, the pricing of prescription drugs is subject to government control. In the U.S., given recent federal and state government initiatives directed at lowering the total cost of health care, Congress and state legislatures will likely continue to focus on health care reform, the cost of prescription drugs and the reform of the Medicare and Medicaid systems. For example, a new Medicare prescription drug benefit program began in 2006. While TorreyPines cannot predict the full outcome of the implementation of this legislation or whether any future legislative or regulatory proposals affecting its business will be adopted, the announcement or adoption of these proposals could materially and adversely affect TorreyPines business, financial condition, and results of operations.

TorreyPines ability to commercialize its product candidates successfully will depend in part on the extent to which governmental authorities, private health insurers and other organizations establish appropriate reimbursement levels for the cost of its products and related treatments. Third-party payors are increasingly

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challenging the prices charged for medical products and services. Also, the trend toward managed health care in the U.S., which could significantly influence the purchase of health care services and products, as well as legislative proposals to reform health care or reduce government insurance programs, may result in lower prices for TorreyPines product candidates or exclusion of its product candidates from reimbursement programs. The cost containment measures that health care payors and providers are instituting and the effect of any health care reform could materially and adversely affect TorreyPines results of operations.

### ***Product liability claims may harm TorreyPines business if its insurance coverage for those claims is inadequate.***

TorreyPines faces an inherent risk of product liability exposure related to the testing of its product candidates in human clinical trials, and will face an even greater risk if it sells its product candidates commercially. An individual may bring a liability claim against TorreyPines if one of its product candidates causes, or merely appears to have caused, an injury. If TorreyPines is unable to successfully defend itself against any such product liability claim, it will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

decreased demand for TorreyPines product candidates;

injury to TorreyPines reputation;

withdrawal of clinical trial participants;

costs of related litigation;

substantial monetary awards to patients or other claimants;

loss of revenues; and

the inability to commercialize TorreyPines product candidates.

TorreyPines has product liability insurance that covers its clinical trials, up to an annual aggregate limit of \$5.0 million. TorreyPines intends to expand its insurance coverage to include the sale of commercial products if marketing approval is obtained for any of its product candidates. However, insurance coverage is increasingly expensive. TorreyPines may not be able to maintain insurance coverage at a reasonable cost and it may not be able to obtain insurance coverage that will be adequate to satisfy any liability that may arise.

### ***TorreyPines uses hazardous chemicals and biological materials in its business. Any claims relating to improper handling, storage or disposal of these materials could be time-consuming and costly.***

TorreyPines development processes involve the controlled use of hazardous materials, including chemicals and biological materials. TorreyPines operations produce hazardous waste products. TorreyPines cannot eliminate the risk of accidental contamination or discharge and any resultant injury from those materials. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of hazardous materials. TorreyPines may be sued for any injury or contamination that results from its use or the use by third parties of these materials. Compliance with environmental laws and regulations may be expensive, and current or future environmental regulations may impair TorreyPines development and production efforts.

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**Risks Related to TorreyPines Common Stock**

*TorreyPines stock price has been, and is expected to continue to be, volatile.*

The market price of TorreyPines common stock could be subject to significant fluctuations. Market prices for securities of early-stage pharmaceutical, biotechnology and other life sciences companies have historically been particularly volatile. Some of the factors that may cause the market price of TorreyPines common stock to fluctuate include:

announcements related to developments involving the merger with Raptor and Raptor's business, including developments relating to Raptor's product candidates and its clinical trial or preclinical study results;

the results of any future clinical trials of TorreyPines or Raptor's product candidates;

the results of any future preclinical studies of TorreyPines or Raptor's product candidates;

the entry into, or termination of, key agreements, including key strategic alliance agreements;

the results and timing of regulatory reviews relating to the approval of TorreyPines or Raptor's product candidates;

the initiation of, material developments in, or conclusion of litigation to enforce or defend any of TorreyPines or Raptor's intellectual property rights;

general and industry-specific economic conditions that may affect TorreyPines' development expenditures;

the results of clinical trials conducted by others on drugs that would compete with TorreyPines or Raptor's product candidates;

issues in manufacturing TorreyPines or Raptor's product candidates or any approved products;

the loss of key employees by TorreyPines or Raptor;

the introduction of technological innovations or new commercial products by TorreyPines competitors;

failure of any of TorreyPines or Raptor's product candidates, if approved, to achieve commercial success;

changes in estimates or recommendations by securities analysts, if any, who cover TorreyPines common stock;

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future sales of TorreyPines common stock;

changes in the structure of health care payment systems; and

period-to-period fluctuations in TorreyPines financial results.

Moreover, the stock markets in general have experienced substantial volatility that has often been unrelated to the operating performance of individual companies. These broad market fluctuations may also adversely affect the trading price of TorreyPines common stock.

In the past, following periods of volatility in the market price of a company's securities, stockholders have often instituted class action securities litigation against those companies. Such litigation, if instituted, could result in substantial costs and diversion of management attention and resources, which could significantly harm TorreyPines profitability and reputation.

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***Anti-takeover provisions in TorreyPines stockholder rights plan and in TorreyPines certificate of incorporation and bylaws may prevent or frustrate attempts by stockholders to change the board of directors or current management and could make a third-party acquisition difficult.***

TorreyPines is a party to a stockholder rights plan, also referred to as a poison pill, which is intended to deter a hostile takeover of TorreyPines by making such proposed acquisition more expensive and less desirable to the potential acquirer. The stockholder rights plan and TorreyPines certificate of incorporation and bylaws, as amended, contain provisions that may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could limit the price that investors might be willing to pay in the future for shares of TorreyPines common stock.

***TorreyPines largest stockholders may take actions that are contrary to your interests, including selling their stock.***

A small number of TorreyPines stockholders hold a significant amount of TorreyPines outstanding stock. These stockholders may support competing transactions and have interests that are different from yours. In addition, the average number of shares of TorreyPines stock that trade each day is generally low. As a result, sales of a large number of shares of TorreyPines stock by these large stockholders or other stockholders within a short period of time could adversely affect TorreyPines stock price.

***TorreyPines management has broad discretion over the use of its cash and, while management has expended significant effort to preserve cash, TorreyPines may not use its remaining cash effectively, which could adversely affect its results of operations.***

TorreyPines management has significant flexibility in applying its cash resources and could use these resources for corporate purposes that do not increase TorreyPines market value, or in ways with which TorreyPines stockholders may not agree. TorreyPines may use its cash resources for corporate purposes that do not yield a significant return or any return at all for its stockholders, which may cause TorreyPines stock price to decline.

***Raising additional funds by issuing securities or through collaboration and licensing arrangements may cause dilution to existing stockholders, restrict operations or require TorreyPines to relinquish proprietary rights.***

TorreyPines may raise additional funds through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements. To the extent that TorreyPines raises additional capital by issuing equity securities, its existing stockholders' ownership will be diluted. Any debt financing TorreyPines enters into may involve covenants that restrict its operations. These restrictive covenants may include limitations on additional borrowing, specific restrictions on the use of TorreyPines assets as well as prohibitions on its ability to create liens, pay dividends, redeem stock or make investments. In addition, if TorreyPines raise additional funds through collaboration and licensing arrangements, it may be necessary to relinquish potentially valuable rights to its potential products or proprietary technologies, or grant licenses on terms that are not favorable to TorreyPines.

***There is only a limited trading market for TorreyPines common stock and it is possible that investors may not be able to sell their shares easily.***

There is currently only a limited trading market for TorreyPines common stock. TorreyPines common stock trades on the NASDAQ Global Market under the symbol TPTX with very limited trading volume. TorreyPines cannot assure investors that a substantial trading market will be sustained for its common stock.

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**Risks Related to Raptor**

*In addition to the other information contained in this joint proxy statement/prospectus, you should carefully consider the material risks described below. As discussed above, TorreyPines has entered into the merger agreement with merger sub and Raptor pursuant to which merger sub will merge with and into Raptor, with Raptor as the surviving corporation becoming a wholly-owned subsidiary of TorreyPines.*

**Risks Related to Raptor's Business**

*If Raptor fails to obtain the capital necessary to fund its operations, its financial results, financial condition and its ability to continue as a going concern will be adversely affected and Raptor will have to delay or terminate some or all of its product development programs.*

Raptor's condensed consolidated financial statements as of May 31, 2009 have been prepared assuming that it will continue as a going concern. As of May 31, 2009, Raptor had an accumulated deficit of approximately \$19.9 million. Raptor expects to continue to incur losses for the foreseeable future and will have to raise substantial cash to fund its planned operations.

Raptor believes that its cash and cash equivalents balances as of August 27, 2009, will be sufficient to meet its obligations into the first calendar quarter of 2010. Raptor is currently in the process of reviewing strategic partnerships and collaborations in order to fully fund its preclinical and clinical programs through the end of 2010. If Raptor is not able to close a strategic transaction, it anticipates raising additional capital in the fourth calendar quarter of 2009. These estimates are based on assumptions that may prove to be wrong. In addition to the activities described herein above, Raptor anticipates that it will need to raise funds in the future for the continued development of its drug development programs. Raptor will need to sell equity or debt securities to raise significant additional funds. The sale of additional securities is likely to result in additional dilution to Raptor's stockholders. Additional financing, may not be available in amounts or on terms satisfactory to Raptor or at all. Raptor may be unable to raise additional financing due to a variety of factors, including its financial condition, the status of its research and development programs, and the general condition of the financial markets. If Raptor fails to raise significant additional financing, it will have to delay or terminate some or all of its research and development programs, its financial condition and operating results will be adversely affected and it may have to cease its operations.

If Raptor obtains significant additional financing, it expects to continue to spend substantial amounts of capital on its operations for the foreseeable future. The amount of additional capital it will need depends on many factors, including:

the progress, timing and scope of its preclinical studies and clinical trials;

the time and cost necessary to obtain regulatory approvals;

the time and cost necessary to develop commercial manufacturing processes, including quality systems, and to build or acquire manufacturing capabilities;

the time and cost necessary to respond to technological and market developments; and

any changes made or new developments in its existing collaborative, licensing and other corporate relationships or any new collaborative, licensing and other commercial relationships that it may establish.

Moreover, Raptor's fixed expenses such as rent, collaboration and license payments and other contractual commitments are substantial and will likely increase in the future. These fixed expenses are likely to increase because Raptor expects to enter into:

additional licenses and collaborative agreements;



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contracts for manufacturing, clinical and preclinical research, consulting, maintenance and administrative services; and

financing facilities.

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Raptor is an early development stage company and has not generated any revenues to date and has a limited operating history. Many of Raptor's drug product candidates are in the concept stage and have not undergone significant testing in preclinical studies or any testing in clinical trials. Moreover, Raptor cannot be certain that its research and development efforts will be successful or, if successful, that its drug product candidates will ever be approved for sale or generate commercial revenues. Raptor has a limited relevant operating history upon which an evaluation of its performance and prospects can be made. Raptor is subject to all of the business risks associated with a new enterprise, including, but not limited to, risks of unforeseen capital requirements, failure of drug product candidates either in preclinical testing or in clinical trials, failure to establish business relationships, and competitive disadvantages against larger and more established companies.

Raptor will need to make important progress towards achieving at least one of its major clinical objectives, as outlined in the section titled, "Raptor's Management's Discussion and Analysis of Financial Conditions and Results of Operations" in this joint proxy statement/prospectus or Raptor's ability to continue as a going concern will be adversely impacted by limiting its ability to raise additional capital.

*The current disruptions in the financial markets could affect Raptor's ability to obtain financing on favorable terms (or at all).*

The U.S. credit markets have recently experienced historic dislocations and liquidity disruptions which have caused financing to be unavailable in many cases and, even if available, have caused the cost of prospective financings to increase. These circumstances have materially impacted liquidity in the debt markets, making financing terms for borrowers able to find financing less attractive, and in many cases have resulted in the unavailability of certain types of debt financing. Continued uncertainty in the debt and equity markets may negatively impact Raptor's ability to access financing on favorable terms or at all. In addition, Federal legislation to deal with the current disruptions in the financial markets could have an adverse affect on Raptor's ability to raise other types of financing.

*Even if Raptor is able to develop its drug product candidates, it may not be able to receive regulatory approval, or if approved, it may not be able to generate significant revenues or successfully commercialize its products, which would adversely affect its financial results and financial condition and it would have to delay or terminate some or all of its research product development programs.*

All of Raptor's drug product candidates are at an early stage of development and will require extensive additional research and development, including preclinical testing and clinical trials, as well as regulatory approvals, before it can market them.

Raptor cannot predict if or when any of the drug product candidates it intends to develop will be approved for marketing. There are many reasons that Raptor may fail in its efforts to develop its drug product candidates. These include:

the possibility that preclinical testing or clinical trials may show that Raptor's drug product candidates are ineffective and/or cause harmful side effects;

Raptor's drug product candidates may prove to be too expensive to manufacture or administer to patients;

Raptor's drug product candidates may fail to receive necessary regulatory approvals from the FDA or foreign regulatory authorities in a timely manner, or at all;

Raptor's drug product candidates, if approved, may not be produced in commercial quantities or at reasonable costs;

Raptor's drug product candidates, if approved, may not achieve commercial acceptance;

regulatory or governmental authorities may apply restrictions to Raptor's drug product candidates, which could adversely affect their commercial success; and



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the proprietary rights of other parties may prevent Raptor or its potential collaborative partners from marketing its drug product candidates.

If Raptor fails to develop its drug product candidates, its financial results and financial condition will be adversely affected, it will have to delay or terminate some or all of its research product development programs and may be forced to cease operations.

***If Raptor is limited in its ability to utilize acquired or licensed technologies, it may be unable to develop, out-license, market and sell its product candidates, which could cause delayed new product introductions, and/or adversely affect its reputation, any of which could have a material adverse effect on its business, prospects, financial condition, and operating results.***

Raptor has acquired and licensed certain proprietary technologies, discussed in the following risk factors, and plan to further license and acquire various patents and proprietary technologies owned by third parties. These agreements are critical to Raptor's product development programs. These agreements may be terminated, and all rights to the technologies and product candidates will be lost, if Raptor fails to perform its obligations under these agreements and licenses in accordance with their terms including, but not limited to, Raptor's ability to make all payments due under such agreements. Raptor's inability to continue to maintain these technologies could materially adversely affect Raptor's business, prospects, financial condition, and operating results. In addition, Raptor's business strategy depends on the successful development of these licensed and acquired technologies into commercial products, and, therefore, any limitations on Raptor's ability to utilize these technologies may impair its ability to develop, out-license, market and sell its product candidates, delay new product introductions, and/or adversely affect its reputation, any of which could have a material adverse effect on Raptor's business, prospects, financial condition, and operating results.

***If the purchase or licensing agreements Raptor entered into are terminated, Raptor will lose the right to use or exploit its owned and licensed technologies, in which case Raptor will have to delay or terminate some or all of its research and development programs, Raptor's financial condition and operating results will be adversely affected and it may have to cease its operations.***

Raptor entered into an asset purchase agreement with BioMarin Pharmaceutical Inc., or BioMarin, for the purchase of intellectual property related to the receptor-associated protein, or RAP, technology, a licensing agreement with Washington University for mesoderm development protein, or Mesd, and a licensing agreement with UCSD for DR Cysteamine. BioMarin, Washington University and UCSD may terminate their respective agreements with Raptor upon the occurrence of certain events, including if Raptor enters into certain bankruptcy proceedings or if Raptor materially breaches its payment obligations and fail to remedy the breach within the permitted cure periods. Although Raptor is not currently involved in any bankruptcy proceedings or in breach of these agreements, there is a risk that it may be in the future, giving BioMarin, Washington University and UCSD the right to terminate their respective agreements with Raptor. Raptor has the right to terminate these agreements at any time by giving prior written notice. If the BioMarin, Washington University or UCSD agreements are terminated by either party, Raptor would be forced to assign back to BioMarin, in the case of the BioMarin agreement, all of Raptor's rights, title and interest in and to the intellectual property related to the RAP technology, would lose Raptor's rights to the Mesd technology, in the case of the Washington University agreement and would lose Raptor's rights to DR Cysteamine, in the case of UCSD. Under such circumstances, Raptor would have no further right to use or exploit the patents, copyrights or trademarks in those respective technologies. If this happens, Raptor will have to delay or terminate some or all of its research and development programs, Raptor's financial condition and operating results will be adversely affected, and it may have to cease its operations. If Raptor loses its rights to the intellectual property related to the RAP technology purchased by Raptor from BioMarin, Raptor's agreement with Roche would likely be terminated and any milestone or royalty payments from Roche to Raptor would thereafter cease to accrue.

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***If Raptor fails to compete successfully with respect to acquisitions, joint venture and other collaboration opportunities, it may be limited in its ability to develop its drug product candidates.***

Raptor's competitors compete with Raptor to attract established biotechnology and pharmaceutical companies or organizations for acquisitions, joint ventures, licensing arrangements or other collaborations. Collaborations include licensing proprietary technology from, and other relationships with, academic research institutions. If Raptor's competitors successfully enter into partnering arrangements or license agreements with academic research institutions, Raptor will then be precluded from pursuing those specific opportunities. Since each of these opportunities is unique, Raptor may not be able to find a substitute. Other companies have already begun many drug development programs, which may target diseases that Raptor is also targeting, and have already entered into partnering and licensing arrangements with academic research institutions, reducing the pool of available opportunities.

Universities and public and private research institutions also compete with Raptor. While these organizations primarily have educational or basic research objectives, they may develop proprietary technology and acquire patents that Raptor may need for the development of its drug product candidates. Raptor will attempt to license this proprietary technology, if available. These licenses may not be available to Raptor on acceptable terms, if at all. If Raptor is unable to compete successfully with respect to acquisitions, joint venture and other collaboration opportunities, Raptor may be limited in its ability to develop new products.

***If Raptor does not achieve its projected development goals in the time frames it announces and expects, the credibility of its management and its technology may be adversely affected and, as a result, Raptor's financial condition may suffer.***

For planning purposes, Raptor estimates the timing of the accomplishment of various scientific, clinical, regulatory and other product development goals, which Raptor sometimes refers to as milestones. These milestones may include the commencement or completion of scientific studies and clinical trials and the submission of regulatory filings. From time to time, Raptor may publicly announce the expected timing of some of these milestones. All of these milestones will be based on a variety of assumptions. The actual timing of these milestones can vary dramatically compared to its estimates, in many cases for reasons beyond Raptor's control. If Raptor does not meet these milestones as publicly announced, its stockholders may lose confidence in Raptor's ability to meet these milestones and, as a result, the price of its common stock may decline.

***Raptor's product development programs will require substantial additional future funding which could impact its operational and financial condition.***

It will take several years before Raptor is able to develop marketable drug product candidates, if at all. Raptor's product development programs will require substantial additional capital to successfully complete them, arising from costs to:

conduct research, preclinical testing and human studies;

establish pilot scale and commercial scale manufacturing processes and facilities; and

establish and develop quality control, regulatory, marketing, sales, finance and administrative capabilities to support these programs. Raptor's future operating and capital needs will depend on many factors, including:

the pace of scientific progress in its research and development programs and the magnitude of these programs;

the scope and results of preclinical testing and human clinical trials;

Raptor's ability to obtain, and the time and costs involved in obtaining regulatory approvals;



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Raptor's ability to prosecute, maintain, and enforce, and the time and costs involved in preparing, filing, prosecuting, maintaining and enforcing patent claims;

competing technological and market developments;

Raptor's ability to establish additional collaborations;

changes in Raptor's existing collaborations;

the cost of manufacturing scale-up; and

the effectiveness of Raptor's commercialization activities.

Raptor bases its outlook regarding the need for funds on many uncertain variables. Such uncertainties include the success of Raptor's research initiatives, regulatory approvals, the timing of events outside its direct control such as negotiations with potential strategic partners and other factors. Any of these uncertain events can significantly change Raptor's cash requirements as they determine such one-time events as the receipt or payment of major milestones and other payments.

Significant additional funds will be required to support Raptor's operations and if Raptor is unable to obtain them on favorable terms, it may be required to cease or reduce further development or commercialization of its drug product programs, to sell some or all of its technology or assets, to merge with another entity or cease operations.

***If Raptor fails to demonstrate efficacy in its preclinical studies and clinical trials Raptor's future business prospects, financial condition and operating results will be materially adversely affected.***

The success of Raptor's development and commercialization efforts will be greatly dependent upon its ability to demonstrate drug product candidate efficacy in preclinical studies, as well as in clinical trials. Preclinical studies involve testing drug product candidates in appropriate non-human disease models to demonstrate efficacy and safety. Regulatory agencies evaluate these data carefully before they will approve clinical testing in humans. If certain preclinical data reveals potential safety issues or the results are inconsistent with an expectation of the drug product candidate's efficacy in humans, the regulatory agencies may require additional more rigorous testing, before allowing human clinical trials. This additional testing will increase program expenses and extend timelines. Raptor may decide to suspend further testing on its drug product candidates or technologies if, in the judgment of Raptor's management and advisors, the preclinical test results do not support further development.

Moreover, success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and Raptor cannot be sure that the results of later clinical trials will replicate the results of prior clinical trials and preclinical testing. The clinical trial process may fail to demonstrate that Raptor's drug product candidates are safe for humans and effective for indicated uses. This failure would cause Raptor to abandon a drug product candidate and may delay development of other drug product candidates. Any delay in, or termination of, Raptor's preclinical testing or clinical trials will delay the filing of its investigational new drug application, or IND, and new drug application, or NDA, as applicable, with the FDA and, ultimately, Raptor's ability to commercialize its drug product candidates and generate product revenues. In addition, some of Raptor's clinical trials will involve small patient populations. Because of the small sample size, the results of these early clinical trials may not be indicative of future results. Following successful preclinical testing, drug product candidates will need to be tested in a clinical development program to provide data on safety and efficacy prior to becoming eligible for product approval and licensure by regulatory agencies. From first clinical trial through product approval can take at least eight years, on average in the U.S.

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If any of Raptor's future clinical development drug product candidates become the subject of problems, including those related to, among others:

efficacy or safety concerns with the drug product candidates, even if not justified;

unexpected side-effects;

regulatory proceedings subjecting the drug product candidates to potential recall;

publicity affecting doctor prescription or patient use of the drug product candidates;

pressure from competitive products; or

introduction of more effective treatments.

Raptor's ability to sustain its development programs will become critically compromised. For example, efficacy or safety concerns may arise, whether or not justified, that could lead to the suspension or termination of Raptor's clinical programs.

Each clinical phase is designed to test attributes of drug product candidates and problems that might result in the termination of the entire clinical plan can be revealed at any time throughout the overall clinical program. The failure to demonstrate efficacy in Raptor's clinical trials would have a material adverse effect on its future business prospects, financial condition and operating results.

***If Raptor does not obtain the support of new, and maintain the support of existing, key scientific collaborators, it may be difficult to establish products using Raptor's technologies as a standard of care for various indications, which may limit its revenue growth and profitability and could have a material adverse effect on Raptor's business, prospects, financial condition and operating results.***

Raptor will need to establish relationships with additional leading scientists and research institutions. Raptor believes that such relationships are pivotal to establishing products using its technologies as a standard of care for various indications. Although Raptor has established a Medical and Scientific Advisory Board and research collaborations, there is no assurance that its Advisory Board members and its research collaborators will continue to work with Raptor or that Raptor will be able to attract additional research partners. If Raptor is not able to maintain existing or establish new scientific relationships to assist in its research and development, Raptor may not be able to successfully develop its drug product candidates.

***If the manufacturers upon whom Raptor relies fail to produce in the volumes and quality that Raptor requires on a timely basis, or to comply with stringent regulations applicable to pharmaceutical manufacturers, Raptor may face delays in the development and commercialization of, or be unable to meet demand for, its products, if any, and may lose potential revenues.***

Raptor does not currently manufacture its drug product candidates, and does not currently plan to develop the capacity to do so. The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls. Manufacturers of pharmaceutical products often encounter difficulties in production, particularly in scaling up initial production. These problems include difficulties with production costs and yields, quality control, including stability of the product candidate and quality assurance testing, shortages of qualified personnel, as well as compliance with strictly enforced federal, state and foreign regulations. Raptor's third-party manufacturers and key suppliers may experience manufacturing difficulties due to resource constraints or as a result of labor disputes, unstable political environments at foreign facilities or financial difficulties. If these manufacturers or key suppliers were to encounter any of these difficulties, or otherwise fail to comply with their contractual obligations, Raptor's ability to timely launch any potential product candidate, if approved, would be jeopardized.





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In addition, all manufacturers and suppliers of pharmaceutical products must comply with cGMP requirements enforced by the FDA, through its facilities inspection program. The FDA is likely to conduct inspections of Raptor's third party manufacturer and key supplier facilities as part of their review of any Raptor NDAs. If Raptor's third party manufacturers and key suppliers are not in compliance with cGMP requirements, it may result in a delay of approval, particularly if these sites are supplying single source ingredients required for the manufacture of any potential product. These cGMP requirements include quality control, quality assurance and the maintenance of records and documentation. Furthermore, regulatory qualifications of manufacturing facilities are applied on the basis of the specific facility being used to produce supplies. As a result, if a manufacturer for Raptor shifts production from one facility to another, the new facility must go through a complete regulatory qualification and be approved by regulatory authorities prior to being used for commercial supply. Raptor manufacturers may be unable to comply with these cGMP requirements and with other FDA, state and foreign regulatory requirements. A failure to comply with these requirements may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval. If the safety of any quantities supplied is compromised due to a Raptor third party manufacturer's or key supplier's failure to adhere to applicable laws or for other reasons, Raptor may not be able to obtain regulatory approval for or successfully commercialize its products.

***If Raptor fails to obtain or maintain orphan drug exclusivity for some of its drug product candidates, Raptor's competitors may sell products to treat the same conditions and Raptor's revenues will be reduced.***

As part of Raptor's business strategy, Raptor intends to develop some drugs that may be eligible for FDA and European Union, or EU, orphan drug designation. Under the Orphan Drug Act, the FDA may designate a product as an orphan drug if it is a drug intended to treat a rare disease or condition, defined as a patient population of less than 200,000 in the U.S. The company that first obtains FDA approval for a designated orphan drug for a given rare disease receives marketing exclusivity for use of that drug for the stated condition for a period of seven years. Orphan drug exclusive marketing rights may be lost if the FDA later determines that the request for designation was materially defective or if the manufacturer is unable to assure sufficient quantity of the drug. Similar regulations are available in the EU with a 10-year period of market exclusivity.

Because the extent and scope of patent protection for some of Raptor's drug products is particularly limited, orphan drug designation is especially important for its products that are eligible for orphan drug designation. For eligible drugs, Raptor plans to rely on the exclusivity period under Orphan Drug Act designation to maintain a competitive position. If Raptor does not obtain orphan drug exclusivity for its drug products that do not have patent protection, Raptor's competitors may then sell the same drug to treat the same condition and Raptor's revenues will be reduced.

Even though Raptor has obtained orphan drug designation for DR Cysteamine for the potential treatment of nephropathic cystinosis, the potential treatment of HD and the potential treatment of Batten Disease and even if Raptor obtains orphan drug designation for its future drug product candidates, due to the uncertainties associated with developing pharmaceutical products, Raptor may not be the first to obtain marketing approval for any orphan indication. Further, even if Raptor obtains orphan drug exclusivity for a product, that exclusivity may not effectively protect the product from competition because different drugs can be approved for the same condition. Even after an orphan drug is approved, the FDA can subsequently approve the same drug for the same condition if the FDA concludes that the later drug is safer, more effective or makes a major contribution to patient care. Orphan drug designation neither shortens the development time or regulatory review time of a drug, nor gives the drug any advantage in the regulatory review or approval process.

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***The fast-track designation for Raptor's drug product candidates, if obtained, may not actually lead to a faster review process and a delay in the review process or in the approval of Raptor's products will delay revenue from the sale of the products and will increase the capital necessary to fund these product development programs.***

Although Raptor has received Orphan Drug Designations from the FDA as described above, Raptor's drug product candidates may not receive an FDA fast-track designation or priority review. Without fast-track designation, submitting an NDA and getting through the regulatory process to gain marketing approval is a lengthy process. Under fast-track designation, the FDA may initiate review of sections of a fast-track drug's NDA before the application is complete. However, the FDA's time period goal for reviewing an application does not begin until the last section of the NDA is submitted. Additionally, the fast-track designation may be withdrawn by the FDA if the FDA believes that the designation is no longer supported by data emerging in the clinical trial process. Under the FDA policies, a drug candidate is eligible for priority review, or review within a six-month time frame from the time a complete NDA is accepted for filing, if the drug candidate provides a significant improvement compared to marketed drugs in the treatment, diagnosis or prevention of a disease. A fast-track designated drug candidate would ordinarily meet the FDA's criteria for priority review. The fast-track designation for Raptor's drug product candidates, if obtained, may not actually lead to a faster review process and a delay in the review process or in the approval of Raptor's products will delay revenue from the sale of the products and will increase the capital necessary to fund these product development programs.

***Because the target patient populations for some of Raptor's products are small, Raptor must achieve significant market share and obtain high per-patient prices for its products to achieve profitability.***

Raptor's clinical development of DR Cysteamine targets diseases with small patient populations, including nephropathic cystinosis and HD. If Raptor is successful in developing DR Cysteamine and receives regulatory approval to market DR Cysteamine for a disease with a small patient population, the per-patient prices at which Raptor could sell DR Cysteamine for these indications are likely to be relatively high in order for Raptor to recover its development costs and achieve profitability. Raptor believes that it will need to market DR Cysteamine for these indications worldwide to achieve significant market penetration of this product.

***Raptor may not be able to market or generate sales of its products to the extent anticipated.***

Assuming that Raptor is successful in developing its drug product candidates and receive regulatory clearances to market its products, Raptor's ability to successfully penetrate the market and generate sales of those products may be limited by a number of factors, including the following:

Certain of Raptor's competitors in the field have already received regulatory approvals for and have begun marketing similar products in the U.S., the EU, Japan and other territories, which may result in greater physician awareness of their products as compared to Raptor's.

Information from Raptor's competitors or the academic community indicating that current products or new products are more effective than Raptor's future products could, if and when it is generated, impede Raptor's market penetration or decrease its future market share.

Physicians may be reluctant to switch from existing treatment methods, including traditional therapy agents, to Raptor's future products.

The price for Raptor's future products, as well as pricing decisions by Raptor's competitors, may have an effect on Raptor's revenues.

Raptor's future revenues may diminish if third-party payers, including private healthcare coverage insurers and healthcare maintenance organizations, do not provide adequate coverage or reimbursement for Raptor's future products.

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*There are many difficult challenges associated with developing proteins that can be used to transport therapeutics across the blood-brain barrier.*

Raptor's RAP technology has a potential clinical use as a drug transporter through the blood-brain barrier. However, Raptor does not know that its technology will work or work safely. Many groups and companies have attempted to solve the critical medical challenge of developing an efficient method of transporting therapeutic proteins from the blood stream into the brain. Unfortunately, these efforts to date have met with little success due in part to a lack of adequate understanding of the biology of the blood-brain barrier and to the enormous scientific complexity of the transport process itself.

In the research and development of its RAP technology, Raptor will certainly face many of the same issues that have caused these earlier attempts to fail. It is possible that:

Raptor or its collaborator/licensee will not be able to produce enough RAP drug product candidates for testing;

the pharmacokinetics, or where the drug distributes in the body, of Raptor's RAP drug product candidates will preclude sufficient binding to the targeted receptors on the blood-brain barrier;

the targeted receptors are not transported across the blood-brain barrier;

other features of the blood-brain barrier, apart from the cells, block access molecules to brain tissue after transport across the cells;

the targeted receptors are expressed on the blood-brain barrier at densities insufficient to allow adequate transport of Raptor's RAP drug product candidates into the brain;

targeting of the selected receptors induces harmful side-effects which prevent their use as drugs; or

that Raptor or its collaborator/licensee's RAP drug product candidates themselves cause unacceptable side-effects.

Any of these conditions may preclude the use of RAP or RAP fusion compounds from potentially treating diseases affecting the brain.

*If Raptor's competitors succeed in developing products and technologies that are more effective than its own, or if scientific developments change Raptor's understanding of the potential scope and utility of its drug product candidates, then Raptor's technologies and future drug product candidates may be rendered less competitive.*

Raptor faces significant competition from industry participants that are pursuing similar technologies that Raptor is pursuing and are developing pharmaceutical products that are competitive with Raptor's drug product candidates. Nearly all of Raptor's industry competitors have greater capital resources, larger overall research and development staffs and facilities, and a longer history in drug discovery and development, obtaining regulatory approval and pharmaceutical product manufacturing and marketing than Raptor does. With these additional resources, Raptor's competitors may be able to respond to the rapid and significant technological changes in the biotechnology and pharmaceutical industries faster than Raptor can. Raptor's future success will depend in large part on its ability to maintain a competitive position with respect to these technologies. Rapid technological development, as well as new scientific developments, may result in Raptor's compounds, drug product candidates or processes becoming obsolete before Raptor can recover any of the expenses incurred to develop them. For example, changes in Raptor's understanding of the appropriate population of patients who should be treated with a targeted therapy like Raptor is developing may limit the drug's market potential if it is subsequently demonstrated that only certain subsets of patients should be treated with the targeted therapy.



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***Raptor's reliance on third parties, such as collaborators, university laboratories, contract manufacturing organizations and contract or clinical research organizations, may result in delays in completing, or a failure to complete, preclinical testing or clinical trials if they fail to perform under Raptor's agreements with them.***

In the course of product development, Raptor may engage university laboratories, other biotechnology or companies or contract or clinical manufacturing organizations to manufacture drug material for Raptor to be used in preclinical and clinical testing and collaborators and contract or clinical research organizations to conduct and manage preclinical studies and clinical trials. If Raptor engages these organizations to help Raptor with its preclinical and clinical programs, many important aspects of this process have been and will be out of Raptor's direct control. If any of these organizations Raptor may engage in the future fail to perform their obligations under Raptor's agreements with them or fail to perform preclinical testing and/or clinical trials in a satisfactory manner, Raptor may face delays in completing its clinical trials, as well as commercialization of any of its drug product candidates. Furthermore, any loss or delay in obtaining contracts with such entities may also delay the completion of Raptor's clinical trials, regulatory filings and the potential market approval of its drug product candidates.

***Companies and universities that have licensed product candidates to Raptor for research, clinical development and marketing are sophisticated competitors that could develop similar products to compete with Raptor products which could reduce Raptor's future revenues.***

Licensing Raptor product candidates from other companies, universities or individuals does not always prevent them from developing non-identical but competitive products for their own commercial purposes, nor from pursuing patent protection in areas that are competitive with Raptor. While Raptor seeks patent protection for all of its owned and licensed product candidates, Raptor's licensors or assignors who created these product candidates are experienced scientists and business people who may continue to do research and development and seek patent protection in the same areas that led to the discovery of the product candidates that they licensed or assigned to Raptor. By virtue of the previous research that led to the discovery of the drugs or product candidates that they licensed or assigned to Raptor, these companies, universities, or individuals may be able to develop and market competitive products in less time than might be required to develop a product with which they have no prior experience and may reduce Raptor's future revenues from such product candidates.

***Any future product revenues could be reduced by imports from countries where Raptor's product candidates are available at lower prices.***

Even if Raptor obtains FDA approval to market its potential products in the United States, Raptor's sales in the United States may be reduced if Raptor's products are imported into the United States from lower priced markets, whether legally or illegally. In the United States, prices for pharmaceuticals are generally higher than in the bordering nations of Canada and Mexico. There have been proposals to legalize the import of pharmaceuticals from outside the United States. If such legislation were enacted, the Raptor's potential future revenues could be reduced.

***The use of any of Raptor's drug product candidates in clinical trials may expose Raptor to liability claims.***

The nature of Raptor's business exposes it to potential liability risks inherent in the testing, manufacturing and marketing of Raptor's drug product candidates. While Raptor is in clinical stage testing, its drug product candidates could potentially harm people or allegedly harm people and Raptor may be subject to costly and damaging product liability claims. Some of the patients who participate in clinical trials are already critically ill when they enter a trial. The waivers Raptor obtains may not be enforceable and may not protect Raptor from liability or the costs of product liability litigation. Although Raptor currently carries a \$3 million clinical product liability insurance policy, it may not be sufficient to cover future claims. Raptor currently does not have any clinical or product liability claims or threats of claims filed against it.

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### ***Raptor's future success depends, in part, on the continued service of its management team.***

Raptor's success is dependent in part upon the availability of its senior executive officers, including its Chief Executive Officer, Dr. Christopher M. Starr, its Chief Scientific Officer, Dr. Todd C. Zankel, its Chief Financial Officer, Kim R. Tsuchimoto, Ted Daley, the President of Raptor's clinical development subsidiary and Dr. Patrice P. Rioux, Chief Medical Officer of Raptor's clinical development subsidiary. The loss or unavailability to Raptor of any of these individuals or key research and development personnel, and particularly if lost to competitors, could have a material adverse effect on Raptor's business, prospects, financial condition, and operating results. Raptor has no key-man insurance on any of its employees.

### ***Raptor's success depends on its ability to manage its growth.***

If Raptor is able to raise significant additional financing, it expects to continue to grow, which could strain Raptor's managerial, operational, financial and other resources. With the addition of Raptor's clinical-stage programs and with Raptor's plans to in-license and acquire additional clinical-stage product candidates, Raptor will be required to retain experienced personnel in the regulatory, clinical and medical areas over the next several years. Also, as Raptor's preclinical pipeline diversifies through the acquisition or in-licensing of new molecules, Raptor will need to hire additional scientists to supplement its existing scientific expertise over the next several years.

Raptor's staff, financial resources, systems, procedures or controls may be inadequate to support its operations and Raptor's management may be unable to take advantage of future market opportunities or manage successfully Raptor's relationships with third parties if Raptor is unable to adequately manage its anticipated growth and the integration of new personnel.

### ***Raptor's executive offices and laboratory facility are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could cause damage to its facility and equipment, or that of its third-party manufacturers or single-source suppliers, which could materially impair Raptor's ability to continue its product development programs.***

Raptor's executive offices and laboratory facility are located in the San Francisco Bay Area near known earthquake fault zones and are vulnerable to significant damage from earthquakes. Raptor and the third-party manufacturers with whom it contracts and Raptor's single-source suppliers of raw materials are also vulnerable to damage from other types of disasters, including fires, floods, power loss and similar events. If any disaster were to occur, Raptor's ability to continue its product development programs, could be seriously, or potentially completely impaired. The insurance Raptor maintains may not be adequate to cover its losses resulting from disasters or other business interruptions.

### ***Raptor will incur increased costs as a result of recently enacted and proposed changes in laws and regulations.***

Raptor faces burdens relating to the recent trend toward stricter corporate governance and financial reporting standards. Legislation or regulations such as Section 404 of the Sarbanes-Oxley Act of 2002 follow the trend of imposing stricter corporate governance and financial reporting standards have led to an increase in the costs of compliance for companies similar to Raptor's, including increases in consulting, auditing and legal fees. New rules could make it more difficult or more costly for Raptor to obtain certain types of insurance, including directors and officers' liability insurance, and Raptor may be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for Raptor to attract and retain qualified persons to serve on its board of directors, its board committees or as executive officers. Failure to comply with these new laws and regulations may impact market perception of Raptor's financial condition and could materially harm its business. Additionally, it is unclear what additional laws or regulations may develop, and Raptor cannot predict the ultimate impact of any future changes in law.

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### **Risks Related to Raptor's Intellectual Property**

*If Raptor is unable to protect its proprietary technology, Raptor may not be able to compete as effectively and Raptor's business and financial prospects may be harmed.*

Where appropriate, Raptor seeks patent protection for certain aspects of its technology. Patent protection may not be available for some of the drug product candidates Raptor is developing. If Raptor must spend significant time and money protecting its patents, designing around patents held by others or licensing, potentially for large fees, patents or other proprietary rights held by others, Raptor's business and financial prospects may be harmed.

*The patent positions of biopharmaceutical products are complex and uncertain.*

Raptor owns or licenses patent applications related to certain of its drug product candidates. However, these patent applications do not ensure the protection of Raptor's intellectual property for a number of reasons, including the following:

Raptor does not know whether its patent applications will result in issued patents. For example, Raptor may not have developed a method for treating a disease before others developed similar methods.

Competitors may interfere with Raptor's patent process in a variety of ways. Competitors may claim that they invented the claimed invention prior to Raptor. Competitors may also claim that Raptor is infringing on their patents and therefore cannot practice Raptor's technology as claimed under its patents, if issued. Competitors may also contest Raptor's patents, if issued, by showing the patent examiner that the invention was not original, was not novel or was obvious. In litigation, a competitor could claim that Raptor's patents, if issued, are not valid for a number of reasons. If a court agrees, Raptor would lose that patent. As a company, Raptor has no meaningful experience with competitors interfering with its patents or patent applications.

Enforcing patents is expensive and may absorb significant time of Raptor's management. Management would spend less time and resources on developing drug product candidates, which could increase Raptor's operating expenses and delay product programs.

Receipt of a patent may not provide much practical protection. If Raptor receives a patent with a narrow scope, then it will be easier for competitors to design products that do not infringe on Raptor's patent.

In addition, competitors also seek patent protection for their technology. Due to the number of patents in Raptor's field of technology, Raptor cannot be certain that it does not infringe on those patents or that Raptor will not infringe on patents granted in the future. If a patent holder believes Raptor's drug product candidate infringes on its patent, the patent holder may sue Raptor even if Raptor has received patent protection for Raptor's technology. If someone else claims Raptor infringes on their technology, Raptor would face a number of issues, including the following:

Defending a lawsuit takes significant time and can be very expensive.

If the court decides that Raptor's drug product candidate infringes on the competitor's patent, Raptor may have to pay substantial damages for past infringement.

The court may prohibit Raptor from selling or licensing the drug product candidate unless the patent holder licenses the patent to Raptor. The patent holder is not required to grant Raptor a license. If a license is available, Raptor may have to pay substantial royalties or grant cross licenses to its patents.



Redesigning Raptor's drug product candidates so it does not infringe may not be possible or could require substantial funds and time.

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It is also unclear whether Raptor's trade secrets are adequately protected. While Raptor uses reasonable efforts to protect its trade secrets, Raptor's employees or consultants may unintentionally or willfully disclose Raptor's information to competitors.

Enforcing a claim that someone else illegally obtained and is using Raptor's trade secrets, like patent litigation, is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the U.S. are sometimes less willing to protect trade secrets. Raptor's competitors may independently develop equivalent knowledge, methods and know-how.

Raptor may also support and collaborate in research conducted by government organizations, hospitals, universities or other educational institutions. These research partners may be unwilling to grant Raptor any exclusive rights to technology or products derived from these collaborations prior to entering into the relationship.

If Raptor does not obtain required licenses or rights, Raptor could encounter delays in its product development efforts while it attempts to design around other patents or even be prohibited from developing, manufacturing or selling drug product candidates requiring these licenses. There is also a risk that disputes may arise as to the rights to technology or drug product candidates developed in collaboration with other parties.

***If Raptor is sued for infringing intellectual property rights of other parties, such litigation will be costly and time consuming, and an unfavorable outcome would have a significant adverse effect on the business of Raptor.***

Although Raptor believes that it would have valid defenses to allegation that its current product candidates, production methods and other activities infringe the valid and enforceable intellectual property rights of any third parties of which it is aware, Raptor cannot be certain that a third party will not challenge its position in the future. Other parties may own patent rights that might be infringed by Raptor's product candidates or other activities. There has been and Raptor believes that there will continue to be, significant litigation and demands for licenses in the life sciences industry regarding patent and other intellectual property rights. Competitors or other patent holders may assert that Raptor product candidates and the methods Raptor employs are covered by their patents. These parties could bring claims against Raptor that would cause it to incur substantial expenses and, if successful against Raptor, could cause it to pay substantial damages or possibly prevent it from commercializing its product candidates. Further, if a patent infringement suit were brought against Raptor, Raptor could be forced to stop or delay research or development of the product candidate that is the subject of the lawsuit.

As a result of patent infringement claims, or in order to avoid potential claims, Raptor may choose to seek, or be required to seek, a license from the third party and would likely be required to pay license fees or royalties or both. These licenses may not be available on acceptable terms, or at all. Even if Raptor was able to obtain a license, the rights may be non-exclusive, which would give competitors access to the same intellectual property. Ultimately, Raptor could be prevented from commercializing a product candidate, or be forced to cease some aspect of its business operations if, as a result of actual or threatened patent infringement claims, Raptor or its collaborators are unable to enter into licenses on acceptable terms. This could harm Raptor's business significantly.

***If Raptor agreements with employees, consultants, advisors and corporate partners fail to protect its intellectual property, proprietary information or trade secrets, it could have a significant adverse effect on Raptor.***

Raptor has taken steps to protect its intellectual property and proprietary technology, by entering into confidentiality agreements and intellectual property assignment agreements with its employees, consultants, advisors and corporate partners. Such agreements may not be enforceable or may not provide meaningful protection for Raptor trade secrets or other proprietary information in the event of unauthorized use or disclosure or other breaches of the agreements, and Raptor may not be able to prevent such unauthorized disclosure. Monitoring unauthorized disclosure is difficult, and Raptor does not know whether the steps it has taken to

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prevent such disclosure are, or will be, adequate. Furthermore, the laws of some foreign countries may not protect Raptor intellectual property rights to the same extent as do the laws of the United States.

### **Risks Related to Raptor's Common Stock**

***Raptor is obligated to issue additional common stock based on its contractual obligations, if Raptor meets certain triggering events, if at all. When Raptor issues such additional common stock, this will result in dilution to common stockholders at the time such additional common stock is issued.***

Future milestone payments, as more fully set forth under Contractual Obligations with Thomas E. Daley (as assignee of the dissolved Convivia, Inc.) and Contractual Obligations with Former Encode Stockholders discussed elsewhere in this joint proxy statement/prospectus, relating to Raptor's acquisition of the Convivia assets and merger with Encode will result in dilution. Raptor may be required to make additional contingent payments of up to 3.1 million shares of its common stock, in the aggregate, under the terms of Raptor's acquisition of Convivia assets and merger with Encode, based on milestones related to certain future marketing and development approvals obtained with respect to Convivia and Encode product candidates. The issuance of any of these shares will result in further dilution to Raptor's existing stockholders.

In May and June 2008, pursuant to a securities purchase agreement for a private placement of units, Raptor issued 20 million shares of its common stock and two-year warrants to purchase up to, in the aggregate, 10 million shares of Raptor's common stock as well as five-year warrants to purchase up to, in the aggregate, 2.1 million shares of Raptor's common stock to placement agents in such private placement. On April 29, 2009, in order to reflect current market prices, Raptor notified the holders of warrants purchased in the May/June 2008 private placement that Raptor was offering, in exchange for such warrants, new warrants to purchase Raptor's common stock at an exercise price of \$0.30 per share, but only to the extent such exchange of the original warrants and exercise of the new warrants, including the delivery of the exercise price, occurred on or prior to July 17, 2009. The warrants that were not exchanged prior to or on July 17, 2009 retained their original exercise prices of \$0.90 per share and original expiration date of May 21, 2010. Raptor received approximately \$2.6 million of proceeds from warrant exercises that resulted in the issuance of 8,715,000 shares of Raptor's common stock pursuant to the exchange described above. In August 2009, pursuant to a securities purchase agreement for a private placement of units, Raptor issued 7,456,250 shares of its common stock and two-year warrants to purchase up to, in the aggregate, 3,728,125 shares of Raptor's common stock as well as a five-year warrant to purchase up to, in the aggregate, 556,500 shares of Raptor's common stock to a placement agent in such private placement. These stock issuances and other future issuances of common stock underlying unexpired and unexercised warrants have and will result in, significant dilution to Raptor's stockholders.

In connection with other collaborations, joint ventures or license agreements that Raptor may enter into in the future, Raptor may issue additional shares of common stock or other equity securities, and the value of the securities issued may be substantial and create additional dilution to Raptor's existing and future common stockholders.

***There is no active trading market for Raptor's common stock and if a market for its common stock does not develop, Raptor's investors will be unable to sell their shares.***

There is currently no active trading market for Raptor's common stock and such a market may not develop or be sustained. Shares of Raptor's common stock are eligible for quotation on the FINRA OTC Bulletin Board but there has been very limited trading of Raptor's common stock. Raptor cannot provide its investors with any assurance that a public market will materialize.

Further, the OTC Bulletin Board is not a listing service or exchange, but is instead a dealer quotation service for subscribing members. If Raptor's common stock is not quoted on the OTC Bulletin Board or if a public market for Raptor's common stock does not develop, then investors may not be able to resell the shares of Raptor's common stock that they have purchased and may lose all of their investment. If Raptor establishes a trading market for its common stock, the market price of its common stock may be significantly affected by factors such as actual or anticipated fluctuations in Raptor's operating results, Raptor's ability or perceived ability to reach corporate milestones, general market conditions and other factors. In addition, the stock market

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has from time to time experienced significant price and volume fluctuations that have particularly affected the market prices for the shares of development stage companies. As Raptor is a development stage company such fluctuations may negatively affect the market price of Raptor's common stock.

***Because Raptor does not intend to pay any cash dividends on its common stock, investors seeking dividend income or liquidity should not purchase shares of Raptor's common stock.***

Raptor has not declared or paid any cash dividends on its common stock since its inception, and Raptor does not anticipate paying any such cash dividends for the foreseeable future. Investors seeking dividend income or liquidity should not invest in Raptor's common stock.

***Raptor's stock is a penny stock. Trading of Raptor's stock may be restricted by the SEC's penny stock regulations and the FINRA's sales practice requirements, which may limit a stockholder's ability to buy and sell Raptor's stock.***

Raptor's common stock is a penny stock. The SEC has adopted Rule 15c-9 which generally defines "penny stock" to be any equity security that has a market price less than \$5.00 per share or an exercise price of less than \$5.00 per share, subject to certain exceptions. Raptor's securities are covered by the penny stock rules, which impose additional sales practice requirements on broker-dealers who sell to persons other than established customers and institutional accredited investors. The penny stock rules require a broker-dealer, prior to a transaction in a penny stock not otherwise exempt from the rules, to deliver a standardized risk disclosure document in a form prepared by the SEC which provides information about penny stocks and the nature and level of risks in the penny stock market. The broker-dealer also must provide the customer with current bid and offer quotations for the penny stock, the compensation of the broker-dealer and its salesperson in the transaction and monthly account statements showing the market value of each penny stock held in the customer's account. The bid and offer quotations, and the broker-dealer and salesperson compensation information, must be given to the customer orally or in writing prior to effecting the transaction and must be given to the customer in writing before or with the customer's confirmation. In addition, the penny stock rules require that prior to a transaction in a penny stock not otherwise exempt from these rules, the broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive the purchaser's written agreement to the transaction. These disclosure requirements may have the effect of reducing the level of trading activity in the secondary market for the stock that is subject to these penny stock rules. Consequently, these penny stock rules may affect the ability of broker-dealers to trade Raptor's securities. Raptor believes that the penny stock rules discourage investor interest in and limit the marketability of Raptor's common stock.

In addition to the penny stock rules promulgated by the SEC, the FINRA has adopted rules that require that in recommending an investment to a customer, a broker-dealer must have reasonable grounds for believing that the investment is suitable for that customer. Prior to recommending speculative low priced securities to their non-institutional customers, broker-dealers must make reasonable efforts to obtain information about the customer's financial status, tax status, investment objectives and other information. Under interpretations of these rules, the FINRA believes that there is a high probability that speculative low priced securities will not be suitable for at least some customers. The FINRA requirements make it more difficult for broker-dealers to recommend that their customers buy Raptor's common stock, which may limit your ability to buy and sell Raptor's stock.

***Raptor's stock price may be volatile, and an investment in Raptor's stock could suffer a decline in value.***

If Raptor establishes a trading market for its common stock, the market price of that stock is likely to fluctuate due to factors including:

results of its preclinical studies and clinical trials;

commencement and progress of its drug product candidates through the regulatory process;

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announcements of technological innovations or new products by Raptor or its competitors;

government regulatory action affecting Raptor's drug product candidates or its competitors' drug products in both the U.S. and foreign countries;

developments or disputes concerning patent or proprietary rights;

general market conditions and fluctuations for the emerging growth biotechnology and pharmaceutical market sectors;

economic conditions and broad market fluctuations in the U.S. or abroad; and

actual or anticipated fluctuations in Raptor's operating results.

***Anti-takeover provisions under Delaware law may make an acquisition of Raptor, which may be beneficial to its stockholders, more difficult.***

Raptor is incorporated in Delaware. Certain anti-takeover provisions of Delaware law as currently in effect may make a change in control of Raptor more difficult, even if a change in control would be beneficial to the stockholders. In December 2008, Raptor entered into a stockholder rights plan with Nevada Agency and Transfer Company, as Rights Agent. The terms of the stockholder rights plan provide for a dividend distribution, as authorized and declared by Raptor's board of directors, of one preferred stock purchase right for each outstanding share of Raptor's common stock to stockholders of record on and after the close of business on December 19, 2008. Each such right entitles the registered holder to purchase from Raptor one one-thousandth of one share of Series A junior participating preferred stock, par value \$0.001 per share, of Raptor, at a purchase price equal to \$5.50 per right, subject to adjustment. The rights will, subject to certain exceptions, cause substantial dilution to a person or group that acquires 20% or more of Raptor's common stock on terms not approved by Raptor's board of directors. However, the rights may have the effect of making an acquisition of Raptor, which may be beneficial to its stockholders, more difficult, and the existence of such rights may prevent or reduce the likelihood of a third-party making an offer for an acquisition of Raptor. In connection with the stockholder rights plan, Raptor's board of directors designated 1,000,000 shares of preferred stock as Series A junior participating preferred stock, as set forth in the Certificate of Designation of Series A Junior Participating Preferred Stock. The Certificate of Designation, which amended Raptor's Certificate of Incorporation, was filed with the Secretary of State of the State of Delaware on December 9, 2008. On July 27, 2009, Raptor and the Rights Agent amended the stockholder rights plan to exclude the merger between TorreyPines and Raptor from becoming a triggering event under the plan.

Raptor's board of directors has the authority to issue up to 10,000,000 shares of preferred stock, none of which are issued or outstanding and to determine without any further action by Raptor's stockholders the terms of 9,000,000 shares of such preferred stock. The rights of holders of Raptor's common stock are subject to the rights of the holders of any preferred stock that may be issued. The issuance of preferred stock could make it more difficult for a third-party to acquire a majority of Raptor's outstanding voting stock. Raptor's charter contains provisions that may enable Raptor's management to resist an unwelcome takeover attempt by a third party, including: a prohibition on actions by written consent of Raptor's stockholders; the fact that stockholder meetings must be called by Raptor's board of directors; and provisions requiring stockholders to provide advance notice of proposals. Delaware law also prohibits corporations from engaging in a business combination with any holders of 15% or more of their capital stock until the holder has held the stock for three years unless, among other possibilities, the board of directors approves the transaction. Raptor's board of directors may use these provisions to prevent changes in the management and control of Raptor. Also, under applicable Delaware law, Raptor's board of directors may adopt additional anti-takeover measures in the future.

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**Risks Related to the Combined Company**

*In determining whether you should approve the merger, the issuance of shares of TorreyPines common stock and other matters related to the merger, as the case may be, you should carefully read the following risk factors in addition to the risks described under Risk Factors Risks Related to TorreyPines and Risk Factors Risks Related to Raptor, which will also apply to the combined company.*

***The combined company's stock price is expected to be volatile, and the market price of its common stock may drop following the merger.***

The market price of the combined company's common stock could be subject to significant fluctuations following the merger. Market prices for securities of early-stage pharmaceutical, biotechnology and other life sciences companies have historically been particularly volatile. Some of the factors that may cause the market price of the combined company's common stock to fluctuate include:

the results of the combined company's current and any future clinical trials of its drug candidates;

the results of ongoing preclinical studies and planned clinical trials of the combined company's preclinical drug candidates;

the entry into, or termination of, key agreements, including key strategic alliance agreements;

the results and timing of regulatory reviews relating to the approval of the combined company's drug candidates;

the initiation of, material developments in, or conclusion of litigation to enforce or defend any of the combined company's intellectual property rights;

failure of any of the combined company's drug candidates, if approved, to achieve commercial success;

general and industry-specific economic conditions that may affect the combined company's research and development expenditures;

the results of clinical trials conducted by others on drugs that would compete with the combined company's drug candidates;

issues in manufacturing the combined company's drug candidates or any approved products;

the loss of key employees;

the introduction of technological innovations or new commercial products by competitors of the combined company;

changes in estimates or recommendations by securities analysts, if any, who cover the combined company's common stock;

future sales of the combined company's common stock;

changes in the structure of health care payment systems; and

period-to-period fluctuations in the combined company's financial results.

Moreover, the stock markets in general have experienced substantial volatility that has often been unrelated to the operating performance of individual companies. These broad market fluctuations may also adversely affect the trading price of the combined company's common stock.

In the past, following periods of volatility in the market price of a company's securities, stockholders have often instituted class action securities litigation against those companies. Such litigation, if instituted, could result in substantial costs and diversion of management attention and resources, which could significantly harm the combined company's profitability and reputation.

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***The combined company's management will be required to devote substantial time to comply with public company regulations.***

The Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, as well as rules subsequently implemented by the SEC and NASDAQ, impose various requirements on public companies, including with respect to corporate governance practices. The combined company's management and other personnel will need to devote a substantial amount of time to these requirements.

In addition, the Sarbanes-Oxley Act requires, among other things, that the combined company maintain effective internal controls for financial reporting and disclosure controls and procedures. In particular, the combined company must perform system and process evaluation and testing of its internal controls over financial reporting to allow management to report on the effectiveness of its internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. The combined company's compliance with Section 404 will require that it incur substantial accounting and related expense and expend significant management efforts. The combined company may need to hire additional accounting and financial staff to satisfy the ongoing requirements of Section 404. Moreover, if the combined company is not able to comply with the requirements of Section 404, or if the combined company or its independent registered public accounting firm identifies deficiencies in its internal controls over financial reporting that are deemed to be material weaknesses, the market price of the combined company's stock could decline and the combined company could be subject to sanctions or investigations by NASDAQ, the SEC or other regulatory authorities.

***Anti-takeover provisions in the combined company's stockholder rights plan and in its certificate of incorporation and bylaws may prevent or frustrate attempts by stockholders to change the board of directors or current management and could make a third-party acquisition of the combined company difficult.***

The combined company will be party to a stockholder rights plan, also referred to as a poison pill, which is intended to deter a hostile takeover of the combined company by making such proposed acquisition more expensive and less desirable to the potential acquirer. The stockholder rights plan and the combined company's certificate of incorporation and bylaws, as amended, will contain provisions that may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could limit the price that investors might be willing to pay in the future for shares of the combined company's common stock.

***The pro forma financial statements are presented for illustrative purposes only and may not be an indication of the combined company's financial condition or results of operations following the merger.***

The pro forma financial statements contained in this proxy statement/prospectus are presented for illustrative purposes only and may not be an indication of the combined company's financial condition or results of operations following the merger for several reasons. For example, the pro forma financial statements have been derived from the historical financial statements of TorreyPines and Raptor and certain adjustments and assumptions have been made regarding the combined company after giving effect to the merger. The information upon which these adjustments and assumptions have been made is preliminary, and these kinds of adjustments and assumptions are difficult to make with complete accuracy. Moreover, the pro forma financial statements do not reflect all costs that are expected to be incurred by the combined company in connection with the merger. For example, the impact of any incremental costs incurred in integrating the two companies is not reflected in the pro forma financial statements. As a result, the actual financial condition and results of operations of the combined company following the merger may not be consistent with, or evident from, these pro forma financial statements.



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*The combined company may continue to incur losses for the foreseeable future, and might never achieve profitability.*

TorreyPines began operations in 1997 and has incurred a net operating loss in each year since its inception, and TorreyPines may never achieve profitability. As of June 30, 2009, TorreyPines had an accumulated deficit of approximately \$121.9 million. Raptor began operations in 2005 and has incurred a net operating loss in each year since its inception, and Raptor may never achieve profitability. As of May 31, 2009, Raptor had an accumulated deficit of approximately \$19.9 million. Raptor expects to continue to incur losses for the foreseeable future and will have to raise substantial cash to fund its planned operations.

Raptor believes that its cash and cash equivalents balances as of August 27, 2009, will be sufficient to meet its obligations into the first calendar quarter of 2010. Raptor is currently in the process of reviewing strategic partnerships and collaborations in order to fully fund its preclinical and clinical programs through the end of 2010. If Raptor is not able to close a strategic transaction, it anticipates raising additional capital in the fourth calendar quarter of 2009. These estimates are based on assumptions that may prove to be wrong. In addition to the activities described herein above, Raptor anticipates that it will need to raise funds in the future for the continued development of its drug development programs. Raptor will need to sell equity or debt securities to raise significant additional funds. The sale of additional securities is likely to result in additional dilution to Raptor's stockholders. Additional financing, may not be available in amounts or on terms satisfactory to Raptor or at all. Raptor may be unable to raise additional financing due to a variety of factors, including its financial condition, the status of its research and development programs, and the general condition of the financial markets. If Raptor fails to raise significant additional financing, it will have to delay or terminate some or all of its research and development programs, its financial condition and operating results will be adversely affected and it may have to cease its operations.

Based upon the combined company's plan to seek strategic partners or seek program-based funding for the TorreyPines pain programs within the TorreyPines subsidiary and the continuation of Raptor's existing plan of operations, the combined company anticipates that the cash estimated to be available at the time of the merger closing, should be sufficient to fund the combined company's operations into the first quarter of 2010. After the merger closing, the combined company will continue to seek strategic development partnerships for ex-US markets for some of its clinical programs, which may defer or negate the need to raise more capital in the fourth quarter of 2009. There can be no assurance that the combined company will be able to identify appropriate strategic development partners or, if it is able to, that it will be able to enter into mutually acceptable agreements with them on terms that are satisfactory to the combined company, or at all. If the combined company is unable to enter into such strategic partnerships, the combined company anticipates raising additional capital in the fourth quarter of 2009; however, there can be no assurance that the combined company will be able to obtain any funding as described herein.

The combined company may never become profitable, even if the combined company is able to commercialize additional products. The combined company will need to conduct significant research, development, testing and regulatory compliance activities that, together with projected general and administrative expenses, is expected to result in substantial increased operating losses for at least the next several years. Even if the combined company does achieve profitability, it may not be able to sustain or increase profitability on a quarterly or annual basis.

*The combined company may be required to suspend, repeat or terminate its clinical trials if they do not meet regulatory requirements, the results are negative or inconclusive, or if the trials are not well designed, which may result in significant negative repercussions on the combined company's business and financial condition.*

Before regulatory approval for any potential product can be obtained, the combined company must undertake extensive clinical testing on humans to demonstrate the tolerability and efficacy of the product, both on its own terms, and as compared to the other principal drugs on the market that have the same therapeutic

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indication. The combined company cannot assure you that it will obtain authorization to permit product candidates that are already in the preclinical development phase to enter the human clinical testing phase. In addition, the combined company cannot assure you that any authorized preclinical or clinical testing will be completed successfully within any specified time period by the combined company, or without significant additional resources or expertise to those originally expected to be necessary. The combined company cannot assure you that such testing will show potential products to be safe and efficacious or that any such product will be approved for a specific indication. Further, the results from preclinical studies and early clinical trials may not be indicative of the results that will be obtained in later-stage clinical trials. In addition, the combined company or regulatory authorities may suspend clinical trials at any time on the basis that the participants are being exposed to unacceptable health risks.

Completion of clinical tests depends on, among other things, the number of patients available for testing, which is a function of many factors, including the number of patients with the relevant conditions, the nature of the clinical testing, the proximity of patients to clinical testing centers, the eligibility criteria for tests as well as competition with other clinical testing programs involving the same patient profile but different treatments. The combined company will rely on third parties, such as contract research organizations and/or co-operative groups, to assist it in overseeing and monitoring clinical trials as well as to process the clinical results and manage test requests, which may result in delays or failure to complete trials, if the third parties fail to perform or to meet the applicable standards. A failure by the combined company or such third parties to keep to the terms of a product program development for any particular product candidate or to complete the clinical trials for a product candidate in the envisaged time frame could have significant negative repercussions on the combined company's business and financial condition.

***Even if the combined company's drug candidates are successful in clinical trials, the combined company may not be able to successfully commercialize them, which may adversely affect the combined company's future revenues and financial condition.***

Since TorreyPines' inception in 1997 and since Raptor began operations in 2002, both companies have dedicated substantially all of their resources to the research and development of their technologies and related compounds. All of TorreyPines' and Raptor's compounds currently are preclinical or clinical development, and none have been submitted for marketing approval. The combined company's preclinical compounds may not enter human clinical trials on a timely basis, if at all, and the combined company may not develop any product candidates suitable for commercialization.

Prior to commercialization, each product candidate will require significant additional research, development and preclinical testing and extensive clinical investigation before submission of any regulatory application for marketing approval. Potential products that appear to be promising at early stages of development may not reach the market for a number of reasons, including that they may:

be found ineffective or cause harmful side effects during preclinical testing or clinical trials;

fail to receive necessary regulatory approvals;

be difficult to manufacture on a large scale;

be uneconomical to produce;

fail to achieve market acceptance; or

be precluded from commercialization by proprietary rights of third parties.

The combined company's product development efforts or the combined company's collaborative partners' efforts may not be successfully completed and the combined company may not obtain required regulatory approvals. Any products, if introduced, may not be successfully marketed nor achieve customer acceptance, which may adversely affect the combined company's future revenues and financial condition.



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***If the combined company fails to establish and maintain collaborations or if its partners do not perform, the combined company may be unable to develop and commercialize its product candidates, which may adversely affect the combined company's future revenues and financial condition.***

Raptor has entered into collaborative arrangements with third parties to develop and/or commercialize product candidates. Additional collaborations might be necessary in order for the combined company to fund its research and development activities and third-party manufacturing arrangements, seek and obtain regulatory approvals and successfully commercialize existing and future product candidates. If the combined company fails to maintain the existing collaborative arrangements held by Raptor or fails to enter into additional collaborative arrangements, the number of product candidates from which the combined company could receive future revenues would decline.

The combined company's dependence on collaborative arrangements with third parties will subject it to a number of risks that could harm the combined company's ability to develop and commercialize products:

collaborative arrangements might not be on terms favorable to the combined company;

disagreements with partners may result in delays in the development and marketing of products, termination of collaboration agreements or time consuming and expensive legal action;

the combined company cannot control the amount and timing of resources partners devote to product candidates or their prioritization of product candidates, and partners may not allocate sufficient funds or resources to the development, promotion or marketing of the combined company's products, or may not perform their obligations as expected;

partners may choose to develop, independently or with other companies, alternative products or treatments, including products or treatments which compete with the combined company's;

agreements with partners may expire or be terminated without renewal, or partners may breach collaboration agreements with the combined company;

business combinations or significant changes in a partner's business strategy might adversely affect that partner's willingness or ability to complete its obligations to the combined company; and

the terms and conditions of the relevant agreements may no longer be suitable.

TorreyPines and Raptor cannot assure you that the combined company will be able to negotiate future collaboration agreements or that those currently in existence will make it possible for the combined company to fulfill its objectives.

***The combined company may not complete its clinical trials in the time expected, which could delay or prevent the commercialization of its products, which may adversely affect the combined company's future revenues and financial condition.***

Although for planning purposes TorreyPines and Raptor forecast the commencement and completion of clinical trials, the actual timing of these events can vary dramatically due to factors such as delays, scheduling conflicts with participating clinicians and clinical institutions and the rate of patient enrollment. Clinical trials involving the combined company's product candidates may not commence nor be completed as forecasted. In certain circumstances the combined company will rely on academic institutions or clinical research organizations to conduct, supervise or monitor some or all aspects of clinical trials involving the combined company's products. The combined company will have less control over the timing and other aspects of these clinical trials than if it conducted them entirely on its own. These trials may not commence or be completed as either TorreyPines or Raptor expect. They may not be conducted successfully. Failure to commence or complete, or delays in, any of the combined company's planned clinical trials could delay or prevent the commercialization of the combined company's products and harm its

business and may adversely affect the combined company's future revenues and financial condition.

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***If the combined company fails to keep pace with rapid technological change in the biotechnology and pharmaceutical industries, its products could become obsolete, which may adversely affect the combined company's future revenues and financial condition.***

Biotechnology and related pharmaceutical technology have undergone and are subject to rapid and significant change. TorreyPines and Raptor expect that the technologies associated with biotechnology research and development will continue to develop rapidly. The combined company's future will depend in large part on its ability to maintain a competitive position with respect to these technologies. Any compounds, products or processes that the combined company develops may become obsolete before the combined company recovers any expenses incurred in connection with developing these products, which may adversely affect the combined company's future revenues and financial condition.

***If the combined company loses key personnel or is unable to attract and retain additional personnel, the combined company may be unable to pursue collaborations or develop its own products, which could negatively impact the combined company's product candidate development timelines and may adversely affect the combined company's future revenues and financial condition.***

The success of the merger will depend in part on the combined company's ability to retain personnel currently employed by Raptor and those key TorreyPines employees who continue employment with the combined company or an affiliate thereof for a transitional period after the merger. It is possible that these employees might decide not to remain with the combined company after the merger is completed. The loss of any key members of the combined company's scientific or management staff, or failure to attract or retain other key scientific employees, could prevent the combined company from pursuing collaborations or developing its products and core technologies. Recruiting and retaining qualified scientific personnel to perform research and development work are critical to the combined company's success. There is intense competition for qualified scientists and managerial personnel from numerous pharmaceutical and biotechnology companies, as well as from academic and government organizations, research institutions and other entities. In addition, the combined company will rely on consultants and advisors, including scientific and clinical advisors, to assist it in formulating its research and development strategy. All of the combined company's consultants and advisors will be employed by other employers or be self-employed, and will have commitments to or consulting or advisory contracts with other entities that may limit their availability to the combined company. There is no assurance that the combined company will be able to retain key employees and/or consultants. If key employees terminate their employment, or if insufficient numbers of employees are retained to maintain effective operations, the combined company's development activities might be adversely affected, management's attention might be diverted from successfully integrating operations to hiring suitable replacements, and the combined company's business might suffer. In addition, the combined company might not be able to locate suitable replacements for any key employees that leave TorreyPines prior to closing the merger or Raptor, and the combined company may not be able to offer employment to potential replacements on reasonable terms, which could negatively impact the combined company's product candidate development timelines and may adversely affect the combined company's future revenues and financial condition.

***TorreyPines stockholders will have limited ability to influence the combined company's actions and decisions following the merger.***

Following the merger, original TorreyPines stockholders will own 5 percent of the outstanding shares of common stock of the combined company. As a result, original TorreyPines stockholders will have only limited ability to influence the combined company's business. Original TorreyPines stockholders will not have separate approval rights with respect to any actions or decisions of the combined company or have separate representation on the combined company's board of directors.

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***If the combined company is not successful in integrating TorreyPines and Raptor, then the benefits of the merger will not be fully realized and the market price of the combined company's common stock may be negatively affected.***

The combined company may not achieve successful integration of TorreyPines and Raptor's assets in a timely manner, or at all, and the combined company may not realize the benefits and synergies of the merger to the extent, or in the timeframe, anticipated. TorreyPines and Raptor entered into the merger agreement with the expectation that the merger will result in benefits arising out of the combination of the companies. The successful integration of TorreyPines and Raptor will require, among other things, integration of assets. It is possible that the integration process could result in the loss of key employees, diversion of management's attention, the disruption or interruption of, or the loss of momentum in, on-going business or inconsistencies in standards, controls, procedures and policies, any of which could adversely affect either company's ability to maintain relationships with licensors, collaborators, partners, suppliers and employees or the combined company's ability to achieve the anticipated benefits of the merger, or could otherwise adversely affect the business and financial results of the combined company and, as a result, adversely affect the market price of the combined company's common stock and reduce the combined company's cash position.

***TorreyPines and Raptor do not expect the combined company to pay cash dividends, and accordingly, stockholders must rely on stock appreciation for any return on their investment in the combined company.***

TorreyPines and Raptor anticipate that the combined company will retain its earnings, if any, for future growth and therefore does not anticipate paying cash dividends in the future. As a result, only appreciation of the price of the combined company's common stock will provide a return to stockholders. Investors seeking cash dividends should not invest in the combined company's common stock.

***NASDAQ considers the anticipated merger a reverse merger and therefore has required that TorreyPines submit a new listing application on behalf of the combined company, which requires certain actions on TorreyPines' and Raptor's part which may not be successful and, if unsuccessful, could make it more difficult for holders of shares of the combined company to sell their shares.***

NASDAQ considers the merger proposed in this joint proxy statement/prospectus as a reverse merger and has required that TorreyPines, on behalf of the combined company, submit a new listing application. NASDAQ may not approve the combined company's new listing application. If this occurs and the merger is still consummated, stockholders of the combined company may have difficulty converting shares into cash effectively. Additionally, as part of the new listing application, TorreyPines, on behalf of the combined company, will be required to submit, among other things, a plan for TorreyPines to conduct a reverse stock split. A reverse stock split would increase the per share trading price by a yet undetermined multiple. The change in share price may affect the volatility and liquidity of the combined company's stock after the merger, as well as the marketplace's perception of the stock. As a result, the relative price of the combined company's common stock may decline and/or fluctuate more than TorreyPines' or Raptor's common stock has in the past.

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**FORWARD-LOOKING STATEMENTS**

This joint proxy statement/prospectus contains forward-looking statements of TorreyPines and Raptor within the meaning of the Private Securities Litigation Reform Act of 1995, which is applicable to TorreyPines and Raptor because they are each a public company subject to the reporting requirements of the Exchange Act. These forward-looking statements include:

the potential value and other benefits created by the proposed merger for TorreyPines and Raptor's stockholders;

the efficacy, safety and intended utilization of TorreyPines and Raptor's drug candidates;

the conduct and results of TorreyPines and Raptor's research, discovery and preclinical efforts and clinical trials;

TorreyPines and Raptor's plans regarding future research, discovery and preclinical efforts and clinical activities and collaborative, intellectual property and regulatory activities;

the period in which each of TorreyPines and Raptor expects its cash will be available to fund its current operating plan, both before and after giving effect to the merger;

the listing of the shares of TorreyPines common stock to be issued in the merger on the NASDAQ Capital Market and The NASDAQ Stock Market LLC's acceptance of the initial listing application in connection with the merger;

the amount of net cash TorreyPines anticipates it will hold on the closing date of the merger;

the exchange ratio, the amount of shares TorreyPines expects to issue in connection with the merger and the ratio for the reverse stock split; and

each of TorreyPines and Raptor's results of operations, financial condition and businesses, and products and drug candidates under development and the expected impact of the proposed merger on the combined company's financial and operating performance.

Words such as anticipates, believes, forecast, potential, contemplates, expects, intends, plans, believes, seeks, estimates, can and similar expressions identify forward-looking statements. These forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements, including the following:

TorreyPines and Raptor may not be able to complete the proposed merger;

The NASDAQ Stock Market LLC may not approve the listing of the shares of TorreyPines common stock to be issued in the merger on the NASDAQ Capital Market or may reject the initial listing application to be filed in connection with the merger;



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TorreyPines net cash at closing may be lower than currently anticipated;

TorreyPines and Raptor's drug candidates that appear promising in early research and clinical trials may not demonstrate safety and efficacy in subsequent clinical trials;

risks associated with reliance on collaborative partners for further clinical trials and other development activities; and

risks involved with development and commercialization of drug candidates.

Many of the important factors that will determine these results and values are beyond TorreyPines and Raptor's ability to control or predict. You are cautioned not to put undue reliance on any forward-looking statements. Except as otherwise required by law, TorreyPines and Raptor do not assume any obligation to update any forward-looking statements. In evaluating the merger, you should carefully consider the discussion of risks and uncertainties in the section titled, "Risk Factors" in this joint proxy statement/prospectus.

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### THE ANNUAL MEETING OF TORREYPINES STOCKHOLDERS

#### General

TorreyPines is furnishing this joint proxy statement/prospectus to holders of TorreyPines common stock in connection with the solicitation of proxies by the TorreyPines board of directors for use at the TorreyPines annual meeting to be held on September 28, 2009 and at any adjournment or postponement thereof. This joint proxy statement/prospectus is first being furnished to the stockholders of TorreyPines on or about September 1, 2009.

#### Date, Time and Place

The annual meeting of TorreyPines stockholders will be held on September 28, 2009, at Cooley Godward Kronish LLP at 4401 Eastgate Mall, San Diego, CA 92121 commencing at 10:00 a.m. local time.

#### Purposes of the TorreyPines Annual Meeting

The purposes of the TorreyPines annual meeting are:

1. To consider and vote upon a proposal to approve the issuance of TorreyPines common stock and the resulting change in control pursuant to the Agreement and Plan of Merger and Reorganization, dated as of July 27, 2009, by and among TorreyPines, ECP Acquisition, Inc., a wholly-owned subsidiary of TorreyPines, and Raptor Pharmaceuticals Corp., a Delaware corporation, as described in this joint proxy statement/prospectus.
2. To approve an amendment to TorreyPines certificate of incorporation effecting the reverse stock split, at one of seventeen reverse split ratios: 1-for-10, 1-for-11, 1-for-12, 1-for-13, 1-for-14, 1-for-15, 1-for-17, 1-for-20, 1-for-25, 1-for-30, 1-for-35, 1-for-40, 1-for-45, 1-for-50, 1-for-55, 1-for-60 or 1-for-70, as described in this joint proxy statement/prospectus.
3. To approve an amendment to TorreyPines certificate of incorporation to change the name TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp.
4. To elect the four directors nominated by the TorreyPines board of directors and named herein; provided, however, that if the merger is completed, it is anticipated that the TorreyPines board of directors will consist of the four people identified in this joint proxy statement/prospectus.
5. To consider and vote upon an adjournment of the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of TorreyPines Proposal Nos. 1, 2 and 3.
6. To transact such other business as may properly come before the TorreyPines annual meeting or any adjournment, postponement or continuation thereof.

#### Recommendation of TorreyPines Board of Directors

**The TorreyPines board of directors has determined and believes that the issuance of shares of TorreyPines common stock pursuant to the merger and the resulting change in control is advisable to, and in the best interests of, TorreyPines and its stockholders and has approved such items. The TorreyPines board of directors unanimously recommends that TorreyPines stockholders vote FOR TorreyPines Proposal No. 1 to approve the issuance of shares of TorreyPines common stock in the**

**merger and the resulting change in control.**

**The TorreyPines board of directors has determined and believes that it is advisable to, and in the best interests of, TorreyPines and its stockholders to approve an amendment to TorreyPines certificate of incorporation effecting the reverse stock split, as described in this joint proxy statement/prospectus.**

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**The TorreyPines board of directors unanimously recommends that TorreyPines stockholders vote FOR TorreyPines Proposal No. 2 to approve the amendment to TorreyPines certificate of incorporation effecting the reverse stock split, as described in this joint proxy statement/prospectus.**

**The TorreyPines board of directors has determined and believes that the amendment of TorreyPines certificate of incorporation to change the name of TorreyPines to Raptor Pharmaceutical Corp. is advisable to, and in the best interests of, TorreyPines and its stockholders and has approved such name change. The TorreyPines board of directors unanimously recommends that TorreyPines stockholders vote FOR TorreyPines Proposal No. 3 to approve the name change.**

**The TorreyPines board of directors unanimously recommends a vote FOR each named nominee in Proposal No. 4.**

**The TorreyPines board of directors has determined and believes that adjourning the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of TorreyPines Proposal Nos. 1, 2 and 3 is advisable to, and in the best interests of, TorreyPines and its stockholders and has approved and adopted the proposal. The TorreyPines board of directors unanimously recommends that TorreyPines stockholders vote FOR TorreyPines Proposal No. 5 to adjourn the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of TorreyPines Proposal Nos. 1, 2 and 3.**

### **Record Date; Shares of Common Stock Outstanding and Entitled to Vote**

TorreyPines has fixed the close of business on August 27, 2009 as the record date for determination of the holders of TorreyPines common stock entitled to notice of and to attend and vote at the TorreyPines annual meeting or any adjournment or postponement thereof. There were approximately 330 holders of record of TorreyPines common stock at the close of business on the record date. At the close of business on the record date, 15,999,058 shares of TorreyPines common stock were issued and outstanding. Each share of TorreyPines common stock entitles the holder thereof to one vote at the TorreyPines annual meeting on all matters properly presented at the TorreyPines annual meeting. See the section titled, Principal Stockholders of TorreyPines in this joint proxy statement/prospectus for information regarding persons known to the management of TorreyPines to be the beneficial owners of more than 5% of the outstanding shares of TorreyPines common stock.

### **Voting and Revocation of Proxies**

The proxy accompanying this joint proxy statement/prospectus is solicited on behalf of the board of directors of TorreyPines for use at the TorreyPines annual meeting.

If you are a stockholder of record of TorreyPines as of the record date referred to above, you may vote in person at the TorreyPines annual meeting or vote by proxy using the enclosed proxy card. Whether or not you plan to attend the TorreyPines annual meeting, TorreyPines urges you to vote by proxy to ensure your vote is counted. You may still attend the TorreyPines annual meeting and vote in person if you have already voted by proxy.

To vote in person, come to the TorreyPines annual meeting and TorreyPines will give you a ballot when you arrive.

To vote using the proxy card, simply mark, sign and date your proxy card and return it promptly in the postage-paid envelope provided. If you return your signed proxy card to TorreyPines before the TorreyPines annual meeting, TorreyPines will vote your shares as you direct.

To vote over the telephone, dial the toll-free number on your proxy card or voting instruction form using a touch-tone phone and follow the recorded instructions. You will be asked to provide the company number and control number from the enclosed proxy card. Your vote must be received by 11:59 p.m., Eastern Time on September 27, 2009 to be counted.



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To vote on the Internet, go to the website on the proxy card or voting instruction form to complete an electronic proxy card. You will be asked to provide the company number and control number from the enclosed proxy card. Your vote must be received by 11:59 p.m., Eastern Time on September 27, 2009 to be counted.

If your TorreyPines shares are held by your broker as your nominee (that is, in street name), you will need to obtain a proxy card from the institution that holds your shares and follow the instructions included on that proxy card regarding how to instruct your broker to vote your TorreyPines shares. If you do not give instructions to your broker, your broker can vote your TorreyPines shares with respect to discretionary items but not with respect to non-discretionary items. On non-discretionary items for which you do not give your broker instructions, the TorreyPines shares will be treated as broker non-votes.

All properly executed proxies that are not revoked will be voted at the TorreyPines annual meeting and at any adjournments or postponements of the TorreyPines annual meeting in accordance with the instructions contained in the proxy. If a holder of TorreyPines common stock executes and returns a proxy and does not specify otherwise, the shares represented by that proxy will be voted **FOR** TorreyPines Proposal No. 1 to approve the issuance of shares of TorreyPines common stock in the merger, and for the resulting change in control; **FOR** TorreyPines Proposal No. 2 to approve an amendment to TorreyPines certificate of incorporation effecting the reverse stock split described in this joint proxy statement/prospectus; **FOR** TorreyPines Proposal No. 3 to approve an amendment to TorreyPines certificate of incorporation to change the name of TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. ; **FOR** TorreyPines Proposal No. 4 for the election of each named nominee to TorreyPines board of directors; and **FOR** TorreyPines Proposal No. 5 to adjourn the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of TorreyPines Proposal Nos. 1, 2 and 3 in accordance with the recommendation of the TorreyPines board of directors.

TorreyPines stockholders of record, other than those TorreyPines stockholders who have executed voting agreements, may change their vote at any time before their proxy is voted at the TorreyPines annual meeting in one of three ways. First, a stockholder of record of TorreyPines can send a written notice to the Secretary of TorreyPines stating that the stockholder would like to revoke its proxy. Second, a stockholder of record of TorreyPines can submit new proxy instructions either on a new proxy card, by telephone or via the Internet. Third, a stockholder of record of TorreyPines can attend the TorreyPines annual meeting and vote in person. Attendance alone will not revoke a proxy. If a stockholder of record of TorreyPines has instructed a broker to vote its shares of TorreyPines common stock, the stockholder must follow directions received from its broker to change those instructions.

## **Quorum and Vote of TorreyPines Stockholders Required**

A quorum of stockholders is necessary to hold a valid meeting. The presence, in person or represented by proxy, at the TorreyPines annual meeting of the holders of a majority of the shares of TorreyPines common stock issued and outstanding and entitled to vote at the TorreyPines annual meeting is necessary to constitute a quorum at the meeting. If a quorum is not present at the TorreyPines annual meeting, TorreyPines expects that the meeting will be adjourned or postponed to solicit additional proxies.

Abstentions and broker non-votes will be counted towards a quorum. Approval of each of TorreyPines Proposal Nos. 1 and 5 requires the affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting. Approval of each of TorreyPines Proposal Nos. 2 and 3 requires the affirmative vote of the holders of a majority of the TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting. For the election of directors (TorreyPines Proposal No. 4), the four nominees receiving the most **FOR** votes from the shares having voting power present in person or represented by proxy will be elected.

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Votes will be counted by the inspector of election appointed for the meeting, who will separately count **FOR**, with respect to proposals other than TorreyPines Proposal No. 4, and **AGAINST** votes, abstentions and broker non-votes. Abstentions will be counted towards the vote total for each proposal (other than the election of directors) and will have the same effect as **AGAINST** votes. Broker non-votes will have the same effect as **AGAINST** votes for Proposal Nos. 2 and 3. For TorreyPines Proposal Nos. 1 and 5, broker non-votes will have no effect and will not be counted towards the vote total.

If you do not submit a proxy card or vote at the TorreyPines annual meeting, your shares of TorreyPines common stock will not be counted as present for the purpose of determining a quorum and will have the same effect as votes against the amendment to TorreyPines certificate of incorporation effecting the reverse stock split and the amendment to TorreyPines certificate of incorporation to change the name of TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp., but will not affect the outcome of the election of directors and will not be counted for any purpose in determining whether to approve the issuance of shares of TorreyPines common stock in the merger, and for the resulting change in control or whether to adjourn the TorreyPines annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of TorreyPines Proposal Nos. 1, 2 and 3 in accordance with the recommendation of the TorreyPines board of directors.

At the record date for the TorreyPines annual meeting, the directors and executive officers of TorreyPines owned approximately 1% of the outstanding shares of TorreyPines common stock entitled to vote at the TorreyPines annual meeting. TorreyPines stockholders owning approximately 151,040 shares of TorreyPines common stock, representing approximately 1% of the outstanding shares of TorreyPines common stock as of the record date, are subject to voting agreements. Each stockholder that entered into a voting agreement has agreed to vote all shares of TorreyPines common stock owned by him or her in favor of the approval of the issuance of the shares of TorreyPines common stock pursuant to the merger, the amendment to TorreyPines certificate of incorporation effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. and any action in furtherance of the foregoing, and against any matter that would result in a breach of the merger agreement by TorreyPines and any other action which is intended to, or could reasonably be expected to, impede, interfere with, delay, postpone, discourage or adversely affect the merger or any of the transactions contemplated by the merger agreement. All of these stockholders are officers and directors of TorreyPines. Please see the section titled, **Agreements Related to the Merger Voting Agreements** in this joint proxy statement/prospectus.

## **Solicitation of Proxies**

In addition to solicitation by mail, the directors, officers, employees and agents of TorreyPines may solicit proxies from TorreyPines stockholders by personal interview, telephone, telegram or otherwise. TorreyPines and Raptor will pay the costs of the solicitation of their respective proxies. Raptor has agreed to pay all fees and expenses, other than fees and expenses of attorneys, accountants and financial advisors, incurred in connection with the filing with the SEC, printing and mailing of this joint proxy statement/prospectus (and the registration statement of which it is a part) and any amendments or supplements thereto. Arrangements will also be made with brokerage firms and other custodians, nominees and fiduciaries who are record holders of TorreyPines common stock for the forwarding of solicitation materials to the beneficial owners of TorreyPines common stock. TorreyPines and Raptor will pay the cost of reimbursing their respective applicable brokers, custodians, nominees and fiduciaries for the reasonable out-of-pocket expenses they incur in connection with the forwarding of solicitation materials.

## **Other Matters**

As of the date of this joint proxy statement/prospectus, the TorreyPines board of directors does not know of any business to be presented at the TorreyPines annual meeting other than as set forth in the notice accompanying this joint proxy statement/prospectus. If any other matters should properly come before the TorreyPines annual meeting, it is intended that the shares represented by proxies will be voted with respect to such matters in accordance with the judgment of the persons voting the proxies.

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**THE ANNUAL MEETING OF RAPTOR STOCKHOLDERS**

**General**

Raptor is furnishing this joint proxy statement/prospectus to holders of Raptor common stock in connection with the solicitation of proxies by the Raptor board of directors for use at the Raptor annual meeting to be held on September 28, 2009 and at any adjournment or postponement thereof. This joint proxy statement/prospectus is first being furnished to stockholders of Raptor on or about September 1, 2009.

**Date, Time and Place**

The annual meeting of Raptor stockholders will be held on September 28, 2009 at 10:00 a.m., local time, at Raptor's corporate offices at 9 Commercial Blvd., Suite 200, Novato, CA 94949.

**Purposes of the Raptor Annual Meeting**

The purposes of the Raptor annual meeting are:

1. To consider and vote upon a proposal to adopt the merger agreement.
2. To elect four directors named herein to serve until the next annual meeting of stockholders or until their respective successors are duly elected and qualified.
3. To ratify Raptor's Audit Committee's appointment of Burr, Pilger & Mayer, LLP as Raptor's independent registered public accounting firm for the fiscal year ending August 31, 2009.
4. To consider and vote on adjournment of the Raptor annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement.
5. To transact such other business as may properly come before the Raptor annual meeting or any adjournment, postponement or continuations of the Raptor annual meeting.

**Recommendations of Raptor's Board of Directors**

**The Raptor board of directors has determined and believes that the merger is advisable and fair to, and in the best interests of, Raptor and its stockholders and has approved the merger and the merger agreement. The Raptor board of directors unanimously recommends that Raptor stockholders vote FOR Raptor Proposal No. 1 to adopt the merger agreement.**

**The Raptor board of directors unanimously recommends that Raptor stockholders vote FOR Raptor Proposal No. 2 to elect its Board of Directors.**

**The Raptor board of directors unanimously recommends that Raptor stockholders vote FOR Raptor Proposal No. 3 to ratify the appointment of Burr, Pilger & Mayer, LLP as Raptor's independent registered public accounting firm for the year ending August 31, 2009.**



**The Raptor board of directors has concluded that the proposal to adjourn the Raptor annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement is advisable to, and in the best interests of, Raptor and its stockholders and has approved and adopted the proposal. Accordingly, the Raptor board of directors unanimously recommends that Raptor stockholders vote FOR Raptor Proposal No. 4 to adjourn the Raptor annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement.**

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### **Record Date; Shares of Common Stock Outstanding and Entitled to Vote**

Raptor has fixed the close of business on August 27, 2009 as the record date for determination of the holders of Raptor common stock entitled to notice of and to attend and vote at the Raptor annual meeting or at any adjournment or postponement thereof. There were approximately 49 holders of record of Raptor common stock as of the close of business on the record date. As of the close of business on August 27, 2009, there were 76,601,297 shares of Raptor common stock outstanding and entitled to vote. Each share of Raptor common stock entitles the holder thereof to one vote at the Raptor annual meeting on all matters properly presented at the Raptor annual meeting. See the section titled, "Principal Stockholders of Raptor" in this joint proxy statement/prospectus for information regarding persons known to the management of Raptor to be the beneficial owners of more than 5% of the outstanding shares of Raptor common stock.

### **Voting and Revocation of Proxies**

The proxy accompanying this joint proxy statement/prospectus is solicited on behalf of the board of directors of Raptor for use at the Raptor annual meeting.

If you are a stockholder of record of Raptor as of the record date referred to above, you may vote in person at the Raptor annual meeting or vote by proxy using the enclosed proxy card. Whether or not you plan to attend the Raptor annual meeting, Raptor urges you to vote by proxy to ensure your vote is counted. You may still attend the Raptor annual meeting and vote in person if you have already voted by proxy.

To vote in person, come to the Raptor annual meeting and Raptor will give you a ballot when you arrive.

To vote using the proxy card, simply mark, sign and date your proxy card and return it promptly in the postage-paid envelope provided. If you return your signed proxy card to Raptor before the Raptor annual meeting, Raptor will vote your shares as you direct.

If your Raptor shares are held by your broker as your nominee (that is, in street name), you will need to obtain a proxy card from the institution that holds your shares and follow the instructions included on that proxy card regarding how to instruct your broker to vote your Raptor shares. If you do not give instructions to your broker, your broker can vote your Raptor shares with respect to discretionary items but not with respect to non-discretionary items. On non-discretionary items for which you do not give your broker instructions, the Raptor shares will be treated as broker non-votes.

All properly executed proxies that are not revoked will be voted at the Raptor annual meeting and at any adjournments or postponements of the Raptor annual meeting in accordance with the instructions contained in the proxy. If a holder of Raptor common stock executes and returns a proxy and does not specify otherwise, the shares represented by that proxy will be voted **FOR** Raptor Proposal No. 1 to adopt the merger agreement; **FOR** Raptor Proposal No. 2 for the election of four directors to serve until the next annual meeting of the stockholders or until their respective successors are duly elected and qualified; **FOR** Raptor Proposal No. 3 to ratify the appointment by the audit committee of Raptor's board of directors of Burr, Pilger & Mayer, LLP as Raptor's independent registered public accounting firm for the fiscal year ending August 31, 2009; and **FOR** Raptor Proposal No. 4 to adjourn the Raptor annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement.

Raptor stockholders of record, other than those Raptor stockholders who have executed voting agreements, may change their vote at any time before their proxy is voted at the Raptor annual meeting in one of three ways. First, a stockholder of record of Raptor can send a written notice to the Secretary of Raptor stating that the stockholder would like to revoke its proxy. Second, a stockholder of record of Raptor can submit new proxy instructions on a new proxy card. Third, a stockholder of record of Raptor can attend the Raptor annual meeting and vote in person. Attendance alone will not revoke a proxy. If a stockholder of record of Raptor has instructed a broker to vote its shares of Raptor common stock, the stockholder must follow directions received from its broker to change those instructions.

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### **Quorum and Vote of Raptor Stockholders Required**

A quorum of stockholders is necessary to hold a valid meeting. The presence, in person or by proxy, at the Raptor annual meeting of the holders of a majority of the shares of Raptor common stock issued and outstanding and entitled to vote at the Raptor annual meeting is necessary to constitute a quorum at the Raptor annual meeting. If a quorum is not present at the Raptor annual meeting, Raptor expects that the meeting will be adjourned or postponed to solicit additional proxies.

Abstentions and broker non-votes will be counted towards a quorum. Approval of Raptor Proposal No. 1 requires the affirmative vote of the holders of a majority of the shares of Raptor common stock outstanding on the record date and entitled to vote at the Raptor annual meeting. Approval of each of Raptor Proposal Nos. 3 and 4 requires the affirmative vote of the holders of a majority of the shares of Raptor common stock having voting power present in person or represented by proxy at the Raptor annual meeting. For the election of directors (Raptor Proposal No. 2), the affirmative vote of a plurality of the voting power of the shares present in person or represented by proxy at the Raptor annual meeting is required.

Votes will be counted by the inspector of election appointed for the meeting, who will separately count **FOR**, with respect to proposals other than Raptor Proposal No. 2, and **AGAINST** votes, abstentions and broker non-votes. Abstentions will be counted towards the vote total for each proposal (other than the election of directors) and will have the same effect as **AGAINST** votes. Broker non-votes will have the same effect as **AGAINST** votes for Proposal No. 1. For Raptor Proposal Nos. 3 and 4, broker non-votes will have no effect and will not be counted towards the vote total.

If you do not submit a proxy card or vote at the Raptor annual meeting, your shares of Raptor common stock will not be counted as present for the purpose of determining a quorum and will have the same effect as votes against the adoption of the merger agreement, but will not affect the outcome of the election of directors and will not be counted for any purpose in determining whether to ratify the selection of Burr, Pilger & Mayer, LLP as Raptor's registered public accounting firm for the fiscal year ending August 31, 2009 or whether to adjourn the Raptor annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement.

At the record date for the Raptor annual meeting, the directors and executive officers of Raptor owned approximately 10% of the outstanding shares of Raptor common stock entitled to vote at the Raptor's annual meeting. As of July 27, 2009, stockholders of Raptor that collectively owned 7,412,500 shares of common stock, representing approximately 11% of the outstanding common stock of Raptor, have entered into agreements to vote their shares of common stock in favor of the adoption of the merger agreement and to adjourn the Raptor annual meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of the adoption of the merger agreement. All of these stockholders are officers and directors of Raptor. Please see the section titled, "Agreements Related to the Merger Voting Agreements" in this joint proxy statement/prospectus.

### **Solicitation of Proxies**

In addition to solicitation by mail, the directors, officers, employees and agents of Raptor may solicit proxies from Raptor's stockholders by personal interview, telephone, telegram or otherwise. TorreyPines and Raptor will pay the costs of the solicitation of their respective proxies. Raptor has agreed to pay all fees and expenses, other than fees and expenses of attorneys, accountants and financial advisors, incurred in connection with the filing with the SEC, printing and mailing of this joint proxy statement/prospectus (and the registration statement of which it is a part) and any amendments or supplements thereto. Arrangements will also be made with brokerage firms and other custodians, nominees and fiduciaries who are record holders of Raptor common stock for the forwarding of solicitation materials to the beneficial owners of Raptor common stock. TorreyPines and Raptor will pay the cost of reimbursing their respective applicable brokers, custodians, nominees and fiduciaries for the reasonable out-of-pocket expenses they incur in connection with the forwarding of solicitation materials.

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**Other Matters**

As of the date of this joint proxy statement/prospectus, the Raptor board of directors does not know of any business to be presented at the Raptor annual meeting other than as set forth in the notice accompanying this joint proxy statement/prospectus. If any other matters should properly come before the Raptor annual meeting, it is intended that the shares represented by proxies will be voted with respect to such matters in accordance with the judgment of the persons voting the proxies.

**Appraisal Rights**

Under the DGCL, holders of Raptor common stock who do not vote in favor of the adoption of the merger agreement will have the ability to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery if the merger is completed, but only if they submit a written demand for an appraisal prior to the vote on the adoption of the merger agreement and they comply with the other procedures under the DGCL. For more information, please see "The Merger Appraisal Rights" beginning on page 105 of this joint proxy statement/prospectus.

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### **THE MERGER**

*This section and the section titled, **The Merger Agreement** in this joint proxy statement/prospectus describe the material aspects of the merger, including the merger agreement. While TorreyPines and Raptor believe that this description covers the material terms of the merger and the merger agreement, it may not contain all of the information that is important to you. You should read carefully this entire joint proxy statement/prospectus for a more complete understanding of the merger and the merger agreement, including the merger agreement, attached as Annex A, and the other documents to which you are referred herein. See the section titled, **Where You Can Find More Information** in this joint proxy statement/prospectus.*

#### **Background of the Merger**

On September 11, 2008, the board of directors and management of Raptor initiated a process to evaluate the advantages and disadvantages of various strategic options for Raptor that would allow Raptor to recapitalize the company and obtain a listing on a national exchange, including a reverse split or a merger transaction. As part of this process, they conducted a review of potential merger partners that included United States based public companies. In parallel, the board and management of Raptor performed an exploratory assessment of the risks associated with a reverse split.

On December 1, 2008, TorreyPines announced that oral administration of NGX426, its orally delivered clinical stage product candidate in development for the treatment of acute and chronic pain, demonstrated a statistically significant reduction in spontaneous pain, hyperalgesia (abnormally increased pain state) and allodynia (pain resulting from normally non-painful stimuli to the skin) compared to placebo following intradermal injections of capsaicin in a human experimental model of cutaneous pain, hyperalgesia and allodynia. This was the completion of the clinical trial of NGX426 that was initiated in June 2008. On December 2, 2008, TorreyPines announced positive results from its Phase II clinical trial evaluating three single doses of NGX267 as a treatment for xerostomia, or dry mouth, in patients with Sjögren's syndrome that was initiated in May 2008. NGX267 met the primary endpoint of a statistically significant increase in salivary flow production compared to placebo at all three doses: 10 mg, 15 mg, and 20 mg. These doses were safe and well tolerated with few reports of excessive sweating and gastrointestinal complaints.

On December 2, 2008, TorreyPines engaged JMP Securities LLC, or JMP, to evaluate a potential equity financing for TorreyPines to advance these product candidates. From December 2008 through March 2009, JMP contacted 55 potential investors. TorreyPines did not receive a term sheet from the efforts of JMP and the management and directors of TorreyPines.

Additionally, from December 2008 through March 2009, TorreyPines, with assistance from P2 Partners LLC, or P2 Partners, contacted over 80 prospective strategic partners, both domestic and international, to assist in advancing its product candidates. The list of prospects represented companies that were active in the pain, xerostomia or cognitive disorders markets or whom TorreyPines believed could have an interest in one or more of those markets. This resulted in approximately 25 companies signing non-disclosure agreements and receiving non-public evaluation materials. TorreyPines did not receive any expressions of interest as a result of these efforts.

In January 2009, TorreyPines implemented the first in a series of cost savings measures including reduction in office space with accompanying decrease in rent, scaled back use of third party consultants and implementation of a maintenance-only development plan for each of its three product candidates. This plan substantially reduced development expenditures by suspending all new clinical and preclinical projects and using internal resources to finalize all clinical reports from recently completed studies.

On March 2, 2009, as a further cost saving measure, TorreyPines reduced 50% of its remaining employees' work schedules to 20 hours per week. At a March 19, 2009 meeting of TorreyPines' board of directors, management recommended the implementation of additional cost saving measures because TorreyPines had not

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received any meaningful expressions of interest either from potential investors or potential strategic partners. TorreyPines' board of directors after reviewing TorreyPines' financial condition approved additional cost saving measures that included the termination of TorreyPines' engagement with P2 Partners, a reduction of TorreyPines' workforce to three employees (TorreyPines' Chief Executive Officer, Chief Financial Officer, and Vice President and General Counsel) on March 31, 2009 and the repayment of TorreyPines' outstanding debt to Comerica Bank in April 2009. The three remaining TorreyPines employees were tasked with assisting the board of directors in assessing and completing a possible strategic transaction. Additionally, TorreyPines' board of directors established a Strategic Transactions Committee consisting of two independent directors, Drs. Peter Davis and Steven H. Ferris to evaluate potential strategic options for TorreyPines, including, but not limited to, a sale, financing or orderly liquidation and dissolution of TorreyPines. TorreyPines' board of directors also reviewed the timing and procedures associated with an orderly dissolution and liquidation of TorreyPines and the amount of funding projected to be available to continue pursuing a strategic transaction in order to maximize returns to TorreyPines' stockholders.

On April 1, 2009, Raptor learned that TorreyPines had initiated a reduction in staff and was considering strategic alternatives for TorreyPines, including a possible sale of the company as described in TorreyPines' March 31, 2009 press release. Through Raptor's financial advisor, Beal Advisors, Raptor learned that TorreyPines was considering all potential structures for a strategic transaction, including an asset sale or reverse merger, as well as potential licensing or partnering arrangements related to its product candidates.

On April 3, 2009, Raptor's financial advisor had a conversation with Mr. Craig Johnson, Chief Financial Officer of TorreyPines, to discuss Raptor's interest in the company. Based on this preliminary discussion, the parties were sufficiently interested in discussing a merger, and as a result, Raptor and TorreyPines entered into a confidentiality agreement. The parties subsequently exchanged confidential management presentations. Based on continuing conversations between the parties, Raptor began to evaluate a merger with TorreyPines as a public shell.

On April 6, 2009, Raptor notified TorreyPines that Raptor would be postponing any further discussions with TorreyPines as Raptor was considering other acquisition opportunities. From April 7 to May 20, 2009, through its financial advisor, Raptor continued to provide to TorreyPines, and received from TorreyPines, periodic updates on their respective strategic transaction evaluation processes, while Raptor considered two other acquisition opportunities.

At a meeting of TorreyPines' board of directors on April 14, 2009, the board of directors approved terminating the services of JMP and retaining the services of Merriman Curhan Ford, or Merriman, as TorreyPines' financial advisor to assist in the evaluation of strategic options, including the possible sale of TorreyPines or its assets. From April 15, 2009 through May 19, 2009 Merriman and TorreyPines contacted more than 85 prospective strategic partners, more than half of whom had previously been contacted by TorreyPines or its previous advisors. These efforts resulted in 5 additional companies signing non-disclosure agreements and receiving non-public evaluation materials. As of May 19, 2009, TorreyPines had not received any written expression of interest with respect to a strategic transaction.

On May 19, 2009, TorreyPines' board of directors held a meeting for the purpose of considering a Plan of Liquidation and Dissolution, or Plan of Dissolution, and the other alternatives available to TorreyPines and the board of directors received information concerning TorreyPines' cash position and financial forecast. Also present at this meeting was a representative from Cooley Godward Kronish LLP, TorreyPines' outside legal counsel, who presented a summary of the terms of the proposed plan of dissolution and discussed TorreyPines' board of directors' fiduciary duties. TorreyPines' management presented its analysis of the alternatives available to TorreyPines and its assessment that it would be unlikely given TorreyPines' then-current cash position that any assets would be available for distribution to the stockholders pursuant to the Plan of Dissolution. After lengthy discussions and consideration of TorreyPines' financial position and the status of the partnering/licensing and strategic alternatives process, TorreyPines' board of directors, upon recommendation of TorreyPines

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Strategic Transaction Committee, adopted the Plan of Dissolution and approved TorreyPines' dissolution, subject to stockholder approval. TorreyPines' board of directors concluded that after consideration of the financing and strategic alternatives available to the company, the Plan of Dissolution and TorreyPines' liquidation and dissolution were advisable and in the best interests of TorreyPines and its stockholders. TorreyPines continued to seek a potential acquirer of its assets or TorreyPines as a whole as it proceeded with the dissolution process.

By May 20, 2009, Raptor's evaluation process of the two other acquisition opportunities it had been considering had ended and Raptor notified TorreyPines of this development.

On May 22, 2009, Raptor submitted to TorreyPines' management a written, non-binding preliminary term sheet that proposed a merger between Raptor and TorreyPines that evaluated TorreyPines as a public shell with no assets. Raptor received additional confidential information regarding TorreyPines' pharmaceutical product portfolio.

On May 27, 2009, Dr. Starr, Raptor's CEO, instructed Raptor's financial advisor to rescind the May 22 term sheet, and the financial advisor did so. TorreyPines was also informed that while Raptor remained interested in a possible merger transaction, any future discussions regarding a potential transaction would have to be more strategic in nature and would have to include the pharmaceutical assets of TorreyPines, specifically NGX426. TorreyPines subsequently submitted a development plan and proposed development budget for NGX426 to Raptor.

On June 1, 2009, the management teams of Raptor and TorreyPines had a conference call to introduce their respective management teams and discuss the development plans for NGX426.

On June 1, 2009, TorreyPines entered in a confidentiality agreement with Company A, which was interested in a possible merger with TorreyPines.

On June 4, 2009, the Raptor management team met with a third party investor, interested in potentially funding the further development of NGX426, to introduce the management team of Raptor and discuss Raptor's product portfolio and corporate development goals. The contemplated transaction with TorreyPines and the development plans for NGX426 were also discussed.

On June 5, 2009, Mr. Johnson, following conversations with the third party investor, communicated to Raptor's financial advisor that the initial feedback from the third party was that such party was generally not interested in further involvement in the potential transaction, but more specific feedback would be provided by the third party.

On June 11, 2009, Mr. Johnson provided additional feedback to Raptor's financial advisor that there was little to no interest from this third party at this time to act as an investor in the merger transaction between Raptor and TorreyPines. TorreyPines and Raptor agreed that there did not seem to be a path forward, but TorreyPines and Raptor agreed to update each other with any new information.

On June 15, 2009, following a meeting between members of TorreyPines' management team and members of Company A's management team, TorreyPines received a non-binding term sheet from Company A regarding a possible merger with TorreyPines. The proposed merger transaction would have involved a multi-step process that would result in TorreyPines stockholders holding, at most, 20% of the combined company following the transaction, although the percentage could decrease substantially between signing a definitive agreement and the proposed completion of the final step in the proposed merger process approximately one year later. The proposed transaction was contingent upon TorreyPines having \$400,000 at the closing of the transaction and had a high degree of execution risk of completion because of the multi-step process and a requirement that TorreyPines regain compliance with the NASDAQ Global Market continued listing requirements prior to consummation of the transaction.

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On June 19, 2009 TorreyPines filed its definitive proxy for its special meeting of stockholders to approve the Plan of Dissolution of TorreyPines. The definitive proxy highlighted the on-going efforts of TorreyPines to complete an asset sale or sale of TorreyPines and noted that TorreyPines requested additional term sheets prior to June 30, 2009.

On June 23, 2009, Raptor's financial advisor called Mr. Johnson and provided an update on Raptor's internal discussions regarding pursuing a potential transaction with TorreyPines. Raptor's financial advisor and Mr. Johnson discussed potential deal structures under which a merger between Raptor and TorreyPines might be pursued on terms acceptable to both parties.

On June 24, 2009, Raptor discussed with its financial advisor its options with regard to a merger with TorreyPines. Raptor concluded that there remained sufficient interest in TorreyPines absent a third party investment in TorreyPines' product candidates, tezampanel and NGX426.

On June 26, 2009, Raptor's financial advisor communicated to Mr. Johnson that Raptor remained interested in acquiring TorreyPines, including its existing product candidates, and proposed submitting another written non-binding preliminary term sheet to that effect. Mr. Johnson communicated to Raptor's financial advisor that TorreyPines would be willing to consider an offer.

On June 29, 2009, Raptor submitted a revised, written non-binding preliminary term sheet to TorreyPines that proposed a merger between the two companies. Such term sheet included the acquisition of TorreyPines as a whole, including its pharmaceutical assets, specifically NGX426, as well as retention of TorreyPines' existing employees for a specified period after the completion of the merger.

On June 29 and 30, 2009, TorreyPines received one additional non-binding term sheet from Company B relating to a merger with TorreyPines and two non-binding term sheets related to the sale of TorreyPines' assets, NGX426 and tezampanel from Company C and Company D, respectively. Following a review of these three additional proposals by the TorreyPines board of directors and discussions between members of the TorreyPines board of directors and management regarding the terms of the offers and the other strategic alternatives available to TorreyPines, TorreyPines' management informed each of the parties interested in acquiring NGX426 and tezampanel, Company C and Company D, that each of their respective non-binding offers for TorreyPines' assets needed to be substantially improved in order to be considered a reasonable alternative by TorreyPines' board of directors to the offer received from either Company B or Raptor. Neither Company C nor Company D submitted a revised term sheet, and discussions with Company C and Company D thereafter ceased.

From June 29 to July 12, 2009, TorreyPines continued negotiations with Company B's financial advisor regarding the proposed term sheet. The term sheet initially proposed by Company B provided TorreyPines' stockholders with approximately 1-2% of the combined company post-closing and satisfied TorreyPines' creditors in full.

From June 29, 2009 to July 13, 2009, Raptor and TorreyPines, together with their respective legal counsel and financial advisors, continued their mutual due diligence and engaged in discussions regarding the proposed terms of the merger, including among other things the general structure of the merger, the relative ownership of the stockholders of TorreyPines and Raptor following the merger, the listing requirements of the combined company following the merger, and the retention and proposed activities of the existing management team at TorreyPines following the merger.

On July 9, 2009, TorreyPines announced the adjournment until July 16, 2009 of its special meeting of stockholders to approve the Plan of Dissolution of TorreyPines.

On July 13, 2009, Company B's financial advisor contacted TorreyPines' management to indicate that the board of directors of Company B decided to withdraw their offer for TorreyPines.



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On July 14, 2009, the board of directors, management of, and legal counsel and financial advisor to Raptor met by conference call to discuss the proposed terms of the merger with TorreyPines. The Raptor board of directors discussed the proposed timeline for completing the merger with TorreyPines and proposed deal terms including among other things the general structure of the merger, the relative ownership of the stockholders of TorreyPines and Raptor following the merger, a range for the exchange ratio in the merger and potential adjustments to such exchange ratio and the retention and activities of TorreyPines management team following the merger. Following the discussion, the board of directors of Raptor unanimously approved the management of Raptor and its outside legal counsel to continue due diligence of TorreyPines and its subsidiaries and their operations, properties and assets, continue discussions related to a potential merger with TorreyPines and negotiate deal terms and definitive documentation related thereto, subject to approval of the final deal terms and definitive documentation by Raptor's board of directors.

From July 14 to July 23, 2009, TorreyPines and Raptor, together with their respective legal counsel and financial advisors, continued their mutual due diligence and engaged in negotiations regarding the merger agreement and voting agreements, including potential adjustments to the exchange ratio in the merger, Net Cash requirements of TorreyPines, the requirement that TorreyPines file a listing application as part of the merger and obtain conditional approval for listing of the combined company on the NASDAQ Capital Market, the requirement that TorreyPines effect a reverse stock split in connection with the merger, the terms of retaining the existing management team of TorreyPines following the merger and their specific activities and obligations, termination rights and representations and warranties and covenants of the parties. Final agreement on these and other issues was reached over the course of numerous discussions involving members of TorreyPines and Raptor's respective management, financial advisors and legal counsel.

On July 16, 2009, TorreyPines announced the adjournment until July 30, 2009 of its special meeting of stockholders to approve the Plan of Dissolution of TorreyPines.

On July 20, 2009, the TorreyPines board of directors held a meeting to evaluate the terms of the draft agreement with Raptor and progress toward a final agreement with Raptor. Based on the terms and the likelihood of signing the draft agreement with Raptor, TorreyPines informed Company A that TorreyPines would not be moving forward with Company A.

On July 23, 2009, the final merger documentation was distributed for review to the boards of directors of TorreyPines and Raptor.

On July 24, 2009, the board of directors of Raptor held a meeting to discuss the proposed merger with TorreyPines. Following a discussion of the final terms, a review of the merger documentation, including a discussion of the proposed exchange ratio and listing of the combined company following the merger, the board of directors of Raptor unanimously approved the merger, the merger agreement, the voting agreements and the transactions contemplated by the merger agreement and recommended the adoption of the merger agreement by the stockholders of Raptor.

On July 24, 2009, the board of directors of TorreyPines held a meeting to discuss the proposed merger with Raptor. Following a discussion of all the strategic alternatives available to TorreyPines, including continuing to pursue the dissolution of the company or a possible bankruptcy, pursuing the offers received for tezampanel and NGX426, and after a review of the final terms of the draft merger agreement with Raptor and the related ancillary documents, including a discussion of the proposed exchange ratio and a valuation comparison to the other potential offers presented to TorreyPines, the board of directors of TorreyPines determined that the Raptor merger was the best strategic alternative available to TorreyPines and its stockholders, and unanimously approved the merger, the merger agreement, the voting agreements and the transactions contemplated by the merger agreement and recommended the issuance of the shares to Raptor stockholders, the amendment of TorreyPines certificate of incorporation for the reverse stock split and to change the name of TorreyPines following the merger and the nomination of the Raptor directors to the TorreyPines board of directors following

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the merger, all as set forth in the merger agreement, for approval by the stockholders of TorreyPines. The board of directors of TorreyPines also approved the cancellation of the adjourned stockholders' meeting related to TorreyPines' proposed Plan of Dissolution as required by Raptor as a condition to signing the merger agreement.

On July 27, 2009, a definitive merger agreement was signed between Raptor, TorreyPines and merger sub. In addition, certain directors and officers of Raptor executed voting agreements with TorreyPines and certain directors and officers of TorreyPines executed voting agreements with Raptor. Prior to the opening of trading markets on July 28, 2009, the parties issued a joint press release announcing the execution of the merger agreement.

On July 30, 2009, TorreyPines announced the cancellation of its special meeting of stockholders to approve the Plan of Dissolution of TorreyPines.

## **Reasons for the Merger**

The following discussion of the parties' reasons for the merger contains a number of forward-looking statements that reflect the current views of Raptor and/or TorreyPines with respect to future events that may have an effect on their future financial performance. Forward-looking statements are subject to risks and uncertainties. Actual results and outcomes may differ materially from the results and outcomes discussed in the forward-looking statements. Cautionary statements that identify important factors that could cause or contribute to differences in results and outcomes include those discussed in the sections titled, "Risk Factors" and "Forward Looking Statements" in this joint proxy statement/prospectus.

### ***Mutual Reasons for the Merger***

TorreyPines and Raptor believe that the merger will result in a biopharmaceutical company with the following potential advantages:

*Pipeline.* The combined company will have an expanded product candidate pipeline that is more diversified, and targets unmet and underserved markets. The pipeline will consist of six clinical programs either in, or ready to begin, Phase II or Phase III clinical trials as well as three preclinical programs, one of which is partnered with a large pharmaceutical company.

*Markets.* The combined company can better manage clinical development risk by having development capabilities across a wider spectrum of diseases and markets. Raptor's orphan product strategy of applying reformulated versions of already approved compounds to new disease indications may provide a balance to the development risks of TorreyPines' novel compounds for the potential treatment of pain. The orphan and non-orphan markets that may be addressed by the clinical and preclinical stage programs of the combined company represent well documented underserved or unmet medical needs.

*Capital Structure.* The combined company provides the opportunity to combine and reorganize both TorreyPines' and Raptor's capital structure and the contemplated listing on the NASDAQ Capital Market may provide the combined company with access to a more liquid market for the combined company's common stock.

*Management Team.* The combined company will be led by an experienced senior management team from Raptor who has significant experience in the development, registration, and commercialization of product candidates and a board of directors with representation from Raptor. The existing senior management team from TorreyPines will remain with a wholly-owned subsidiary of the combined company for a transition period and will focus on advancing TorreyPines' product candidates for the treatment of moderate to severe pain.

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### *TorreyPines Reasons for the Merger*

The TorreyPines board of directors approved the merger based on a number of factors, including the following:

*Strategic Alternatives.* The consideration of TorreyPines efforts to pursue strategic alternatives to the merger, including engaging in a merger transaction with another company, an asset sale or licensing/partnering transaction for TorreyPines pain program or undertaking a bankruptcy or liquidation of TorreyPines; and

*Stockholder Opportunity.* The opportunity for TorreyPines stockholders to participate in the short and long-term value of Raptor's preclinical and clinical development programs as a result of the merger.

In addition to considering the strategic factors outlined above, the TorreyPines board of directors considered the following factors in reaching its conclusion to approve the merger and to recommend that the TorreyPines stockholders approve the issuance of shares of TorreyPines common stock in the merger and the resulting change of control of TorreyPines, all of which it viewed as supporting its decision to approve the business combination with Raptor:

the results of the due diligence review of Raptor's business and operations by TorreyPines management and financial advisors which review supported TorreyPines belief that the addition of the Raptor programs would broaden the combined company's pipeline;

the aggregate value to be received by TorreyPines stockholders in the merger;

the terms and conditions of the merger agreement, including the following related factors:

the determination that the relative percentage ownership of TorreyPines stockholders and Raptor stockholders is consistent with market practice for a merger of this type and captures the respective ownership interests of the TorreyPines and Raptor stockholders in the combined company based on TorreyPines perceived valuations of each company at the time of the TorreyPines board of directors approval of the merger agreement;

the expectation that the merger will be treated as a reorganization for United States federal income tax purposes, with the result that in the merger TorreyPines stockholders will generally not recognize taxable gain or loss for United States federal income tax purposes;

the nature of the conditions to Raptor's obligation to consummate the merger and the perceived risk of non-satisfaction of such conditions;

the limited number and nature of the conditions to Raptor's obligation to consummate the merger;

TorreyPines rights under the merger agreement to consider certain unsolicited acquisition proposals under certain circumstances should TorreyPines receive a superior proposal;

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the no solicitation provisions governing Raptor's ability to engage in negotiations with, provide any confidential information or data to, and otherwise have discussions with, any person relating to an alternative acquisition proposal;

the belief that the terms of the merger agreement, including the parties' representations, warranties and covenants, and the conditions to their respective obligations, are reasonable under the circumstances; and

the voting agreements entered into by officers and directors of Raptor representing approximately 11% of the outstanding capital stock as of July 27, 2009, pursuant to which those officers and directors agreed, solely in their capacity as stockholders, to vote all of their shares of Raptor capital stock in favor of adoption of the merger agreement;

the likelihood of retaining key Raptor employees to help manage the combined company;

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the likelihood that the merger will be consummated on a timely basis, including the likelihood that the merger will receive all necessary regulatory approvals;

the opportunity for TorreyPines stockholders to potentially participate in the short and long-term value of Raptor's product candidate development programs as a result of the merger;

the belief that the combination with Raptor would result in a combined company with the potential for future growth and value as compared to TorreyPines;

the possibility that the combined entity would be able to take advantage of the potential benefits resulting from Raptor's experienced management team;

the reimbursement of up to \$250,000 for incurred expenses payable by Raptor and the circumstances under which it is payable are typical for transactions of this size and type; and

its understanding of Raptor's business including its product candidates, Raptor's experienced management team, and the prospects for value creation for TorreyPines stockholders in connection with the merger.

In the course of its deliberations, TorreyPines board of directors also considered a variety of risks and other countervailing factors related to entering into the merger agreement, including:

the possibility that the merger might not be completed and the potential adverse effect of the public announcement of the merger on the reputation of TorreyPines and TorreyPines' ability to obtain financing in the future in the event the merger is not completed;

the risk that TorreyPines may be delisted from the NASDAQ Global Market, may not be able to qualify the shares to be issued in the merger for listing on the NASDAQ Capital Market, or that The NASDAQ Stock Market LLC may reject the initial listing application that TorreyPines will be required to file in connection with the merger;

the risk that Raptor may terminate the merger agreement if TorreyPines' Net Cash balance at closing is not greater than zero dollars;

the risk that Raptor may terminate the merger agreement;

the requirement under the terms of the merger agreement that TorreyPines reimburse Raptor up to \$250,000 of incurred expenses under certain circumstances, and that TorreyPines' obligation to pay the expense reimbursement may deter third parties from proposing or pursuing alternative business combinations that might result in greater value to TorreyPines stockholders than the merger;

the immediate and substantial dilution of equity interest and voting power of TorreyPines stockholders upon completion of the merger;

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the restrictions on the conduct of TorreyPines' business prior to the consummation of the merger, which, subject to specific limitations, may delay or prevent it from taking certain actions during the time that the merger agreement remains in effect;

the risks, challenges and costs inherent in combining the operations of the two companies and the substantial expenses to be incurred in connection with the merger, including the possibility that delays or difficulties in completing the integration could adversely affect the combined company's operating results and preclude the achievement of some of the benefits anticipated from the merger;

the possible volatility, at least in the short term, of the trading price of TorreyPines' common stock resulting from the merger announcement;

the risk of diverting management's attention from other strategic priorities to implement merger integration efforts;

the risk that the merger might not be consummated in a timely manner or at all;

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the risk to TorreyPines' business, operations and financial results in the event that the merger is not consummated;

the strategic direction of the combined company's board of directors;

the interest of TorreyPines' directors and officers may be different in certain respects from the interests of TorreyPines' stockholders; and

various other risks associated with the combined company and the merger, including the risks associated with obtaining a positive Raptor stockholder vote and those described in the section titled, "Risk Factors" in this joint proxy statement/prospectus.

The foregoing information and factors considered by TorreyPines' board of directors are not intended to be exhaustive but are believed to include all of the material factors considered by TorreyPines' board of directors. In view of the wide variety of factors considered in connection with its evaluation of the merger and the complexity of these matters, TorreyPines' board of directors did not find it useful, and did not attempt, to quantify, rank or otherwise assign relative weights to these factors. In considering the factors described above, individual members of TorreyPines' board of directors may have given different weight to different factors. TorreyPines' board of directors conducted an overall analysis of the factors described above, including thorough discussions with, and questioning of, TorreyPines' management and TorreyPines' legal and financial advisors, and considered the factors overall to be favorable to, and to support, its determination.

TorreyPines' board of directors unanimously determined that the merger agreement and the merger are advisable, fair to and in the best interest of TorreyPines' stockholders and unanimously approved the merger agreement.

The foregoing discussion of TorreyPines' board of directors' considerations concerning the merger is forward looking in nature. This information should be read in light of the discussions under the heading "Forward-Looking Statements."

### ***Raptor's Reasons for the Merger***

Raptor's board of directors approved the merger based on a number of factors, including the following:

*Expanded Pipeline.* The combined company will have an expanded product candidate pipeline that is more diversified, and targets unmet and underserved markets. The pipeline will consist of six clinical programs either in, or ready to begin, Phase II or Phase III clinical trials as well as three preclinical programs, one of which is partnered with a large pharmaceutical company.

*Markets.* The combined company can better manage clinical development risk by having development capabilities across a wider spectrum of diseases and markets. Raptor's orphan product strategy of applying reformulated versions of already approved compounds to new disease indications may provide a balance to the development risks of TorreyPines' novel compounds for the potential treatment of pain. The orphan and non-orphan markets that may be addressed by the clinical and preclinical stage programs of the combined company represent well documented underserved or unmet medical needs.

*Capital Structure.* The combined company provides the opportunity to combine and reorganize both TorreyPines' and Raptor's capital structure and the contemplated listing on the NASDAQ Capital Market may provide the combined company with access to a more liquid market for the combined company's common stock.

In addition to considering the strategic factors outlined above, the Raptor board considered the following factors in reaching its conclusion to approve the merger, all of which it viewed as supporting its decision to approve the business combination with TorreyPines:

TorreyPines' attractiveness as a merger partner, including the significant synergy between the product candidate pipelines of Raptor and TorreyPines;





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the results of the due diligence review of TorreyPines' business and operations by Raptor's management, legal advisors and financial advisors which review supported Raptor's belief that the addition of the TorreyPines' product candidates would broaden Raptor's product pipeline;

the aggregate value to be received by Raptor stockholders in the merger;

Raptor's ability to gain a NASDAQ listing and potentially increase its visibility as a nationally listed company;

the terms and conditions of the merger agreement, including the following related factors:

the determination that the relative percentage ownership of TorreyPines stockholders and Raptor stockholders is consistent with market practice for a merger of this type and captures the respective ownership interests of the TorreyPines and Raptor stockholders in the combined company based on Raptor's perceived valuations of each company at the time of the Raptor board of directors' approval of the merger agreement;

the expectation that the merger will be treated as a reorganization for United States federal income tax purposes, with the result that in the merger Raptor stockholders will generally not recognize taxable gain or loss for United States federal income tax purposes;

the nature of the conditions to TorreyPines' obligation to consummate the merger and the limited risk of non-satisfaction of such conditions;

the limited number and nature of Raptor's obligation to consummate the merger;

Raptor's rights under the merger agreement to consider certain unsolicited acquisition proposals under certain circumstances should Raptor receive a superior proposal;

the no solicitation provisions governing TorreyPines' ability to engage in negotiations with, provide any confidential information or data to, and otherwise have discussions with, any person relating to an alternative acquisition proposal;

the belief that the terms of the merger agreement, including the parties' representations, warranties, and covenants, and the conditions to their respective obligations, are reasonable under the circumstances; and

the fact that shares of TorreyPines common stock issued to Raptor stockholders will be registered on Form S-4 and will be freely tradable for Raptor stockholders;

the likelihood of retaining key TorreyPines employees to help manage TPTX, Inc. for a transition period;

the likelihood that the merger will be consummated on a timely basis, including the likelihood that the merger will receive all necessary regulatory approvals;

the opportunity for Raptor's stockholders to participate in the potential long-term value of TorreyPines' product candidate development programs as a result of the merger;

the belief that the combination with TorreyPines would result in a combined company with the potential for enhanced future growth and value as compared to Raptor as an independent, stand-alone company;

the Raptor board of director's consideration of strategic alternatives to the merger, including engaging in a merger transaction with another company or continuing to operate Raptor on a stand-alone basis;

the reimbursement of up to \$250,000 for incurred expenses payable by TorreyPines and the circumstances under which it is payable are typical for transactions of this size and type; and

its understanding of TorreyPines' business including its product candidates, TorreyPines' experienced management team, and the prospects for value creation for Raptor's stockholders in connection with the merger.

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In the course of its deliberations, Raptor's board of directors also considered a variety of risks and other countervailing factors related to entering into the merger agreement, including the following:

the possibility that the merger might not be completed and the potential adverse effect of the public announcement of the merger on the reputation of Raptor and Raptor's ability to obtain financing in the future in the event the merger is not completed;

the risk that TorreyPines may terminate the merger agreement;

the requirement under the terms of the merger agreement that Raptor reimburse TorreyPines up to \$250,000 of incurred expenses under certain circumstances, and that Raptor's obligation to pay the expense reimbursement may deter third parties from proposing or pursuing alternative business combinations that might result in greater value to Raptor stockholders than the merger;

the risk of diverting management's attention from other strategic priorities to implement the merger and integrate each company's operations and infrastructure following the merger;

the risk that the merger might not be consummated in a timely manner or at all;

the risk to Raptor's business, operations and financial results in the event that the merger is not consummated;

the interest of Raptor's directors and officers may be different in certain respects from the interest of Raptor's stockholders;

the risks, challenges and costs of combining each company's operations and the substantial expenses to be incurred in connection with the merger, including the risks that delays or difficulties in completing integration activities and such other expenses, could adversely affect the combined company's operating results and preclude the achievement of some benefits anticipated from the merger; and

various other applicable risks associated with the combined company and the merger, including the risks associated with obtaining a positive TorreyPines stockholder vote and including those described in the section titled, "Risk Factors" in this joint proxy statement/prospectus.

The foregoing information and factors considered by Raptor's board of directors are not intended to be exhaustive but are believed to include all of the material factors considered by Raptor's board of directors. In view of the wide variety of factors considered in connection with its evaluation of the merger and the complexity of these matters, the Raptor board of directors did not find it useful, and did not attempt, to quantify, rank or otherwise assign relative weights to these factors. In considering the factors described above, individual members of the Raptor board of directors may have given different weight to different factors. The Raptor board of directors conducted an overall analysis of the factors described above, including thorough discussions with, and questioning of, Raptor's management and Raptor's legal and financial advisors, and considered the factors overall to be favorable to, and to support, its determination.

Raptor's board of directors unanimously determined that the merger agreement and the merger are advisable, fair to and in the best interest of Raptor's stockholders and unanimously approved the merger agreement.

The foregoing discussion of Raptor's board of directors' considerations concerning the merger is forward looking in nature. This information should be read in light of the discussions under the heading "Forward-Looking Information."

## **Interests of TorreyPines' Directors and Executive Officers in the Merger**

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In considering the recommendation of the TorreyPines board of directors with respect to issuing shares of TorreyPines common stock as contemplated by the merger agreement and the other matters to be acted upon by TorreyPines stockholders at the TorreyPines annual meeting, TorreyPines stockholders should be aware that

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certain members of the board of directors and executive officers of TorreyPines have interests in the merger that may be different from, or in addition to, the interests of TorreyPines stockholders. These interests relate to or arise from, among other things, the fact that TorreyPines executive officers have entered into amended and restated employment agreements with TPTX, Inc., a wholly-owned subsidiary of TorreyPines, which will become effective on the closing of the merger, assuming the TorreyPines stockholders approve the merger. Pursuant to the amended employment agreements each of the current TorreyPines executive officers will be paid by TPTX, Inc. following the merger through February 28, 2010, whether or not they remain employees of TPTX, Inc. following the merger. In addition, these employment agreements provide for bonus payments to each of these executives in the event that TPTX, Inc. is able to secure funding, a partnership, sale or similar transaction related to NGX426, TPTX's pain program product candidate, prior to February 28, 2010, in excess of \$10 million, as described in further detail below under Amended Employment Agreements Following Merger.

Each member of TorreyPines board of directors was aware of these potential conflicts of interest and considered them, among other matters, in reaching their respective decisions to approve the merger agreement and the merger, and to recommend that TorreyPines stockholders approve the Proposal Nos. 1, 2 and 3 in connection with the merger, as described in this joint proxy statement/prospectus.

***Ownership Interests***

As of August 27, 2009, all directors and executive officers of TorreyPines, together with their affiliates, beneficially owned approximately 8.9% of the shares of TorreyPines common stock. The affirmative vote of the holders of a majority of the TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting is required for approval of TorreyPines Proposal Nos. 1 and 5. The affirmative vote of the holders of a majority of the TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting is required for approval of TorreyPines Proposal Nos. 2 and 3. For the election of directors (Proposal No. 4), the four nominees receiving the most **FOR** votes from the shares of TorreyPines common stock having voting power present in person or represented by proxy at the TorreyPines annual meeting will be elected.

***Employment Agreements Currently in Effect***

TorreyPines entered into employment agreements in 2008, as amended in 2009, with Evelyn Graham, its Chief Executive Officer, Craig Johnson, its Chief Financial Officer and Paul Schneider, its Vice President and General Counsel. Under these agreements, as amended, each executive will be entitled to certain severance benefits if his or her respective employment is terminated under either of the following circumstances:

the executive's employment is terminated by TorreyPines without cause (as described below) at any time; or

within the period commencing three (3) months before and ending twelve (12) months following the occurrence of a change of control.

For purposes of these agreements, cause is generally defined to mean: (a) executive's conviction of, or plea of guilty or no contest to, any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (b) executive's commission of (or attempted commission of), or participation in, a fraud or act of dishonesty against TorreyPines; (c) executive's material violation of any statutory duty owed to TorreyPines or material violation of any policy or rule of TorreyPines; (d) executive's unauthorized use or disclosure of TorreyPines confidential information or trade secrets; (e) executive's gross misconduct; or (f) executive's conduct that constitutes gross insubordination or habitual neglect of duties that is not cured within the reasonable period provided by the TorreyPines board of directors or a committee designated by the board of directors in its written notice to executive of such conduct.

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For purposes of these employment agreements, "good reason" is generally defined to mean: (a) a material breach of the employment agreement by TorreyPines; (b) a material reduction in the executive's duties, authority or responsibilities relative to the duties, or authority or responsibilities in effect immediately prior to such reduction; (c) a material reduction in the duties, authority or responsibilities of the supervisor to whom the executive is required to report, including a requirement that the executive report to a corporate officer or employee instead of reporting directly to the TorreyPines board of directors; (d) a material reduction in the executive's base salary or target bonus opportunity as in effect immediately prior to such reduction for any reason other than in connection with, and proportionate to, a company-wide pay reduction (provided that the executive's target bonus is part of the executive's base compensation for purposes of Section 409A, as defined below); or (e) an increase in the executive's one-way driving distance from the executive's principal personal residence to the principal office or business location at which the executive is required to perform services of more than 50 miles, except for required travel for TorreyPines' business to an extent substantially consistent with executive's prior business travel obligations.

In the event of an executive's qualifying termination of employment, the executive will be entitled to receive the following:

a continuation of pay of the executive's base salary during the period following the termination or resignation of the executive for a period equal to twelve (12) months, plus the greater of (i) the average of the three annual bonuses paid to the executive by TorreyPines prior to the date of termination or resignation, or (ii) the last annual bonus paid to the executive by TorreyPines prior to the date of termination or resignation;

the right to continue participation for a one-year period in any group health plan sponsored by TorreyPines in which the executive was participating on the date of his or her termination or resignation, at a cost to the executive equal to the amount charged by TorreyPines to its then-current employees; and

the immediate accelerated vesting of the number of shares that would have vested in accordance with the applicable vesting had executive remained employed by TorreyPines for an additional twelve (12) months as of the date of termination.

Set forth below is an estimate of the value of the severance benefits that would become payable to Ms. Graham and Messrs. Johnson and Schneider under the employment agreements, assuming a qualifying termination of each individual's employment and excluding the value of any accelerated vesting of stock options or lapsing of any post-termination stock option exercise restrictions. The amounts shown below are in addition to the values shown in the next table regarding the accelerated vesting of stock options.

| Name and Principal Position  | Severance Period | Total Severance Payments | Other Benefits                               |
|--|------------------|--------------------------|--|
| Evelyn Graham<br>Chief Executive Officer                             | 12 months        | \$ 507,500               | Full acceleration of all outstanding options |
| Craig Johnson<br>Vice President, Finance and Chief Financial Officer | 12 months        | \$ 351,200               | Full acceleration of all outstanding options |
| Paul Schneider<br>Vice President and General Counsel                 | 12 months        | \$ 272,125               | Full acceleration of all outstanding options |

***Employment Agreements Following Merger***

On July 27, 2009, TorreyPines and TPTX, Inc., or TPTX, a wholly-owned subsidiary of TorreyPines, entered into a second amended and restated employment agreement with each of Ms. Graham, Mr. Johnson and Mr. Schneider. The second amended and restated employment agreements amend and restate the previous employment agreement between TorreyPines, TPTX, Inc. and each of Ms. Graham, Mr. Johnson and Mr. Schneider, as applicable, described above. Each second amended and restated employment agreement was



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entered into in connection with the merger with Raptor and will become effective only upon the closing of the merger. Upon effectiveness each second amended and restated employment agreement shall replace and supersede all prior employment agreements between Ms. Graham, Mr. Johnson and Mr. Schneider, respectively, and TPTX, Inc. and/or TorreyPines.

Each second amended and restated agreement, once effective, will remain effective through February 28, 2010 and may be terminated by each of Ms. Graham, Mr. Johnson and Mr. Schneider, as applicable, or TPTX, as the employer, at any time, with or without cause. Each of Ms. Graham's, Mr. Johnson's and Mr. Schneider's second amended and restated employment agreement reflects their respective current annual base salary in effect at the time of the signing of the merger agreement of \$350,000, \$282,000 and \$217,700, respectively. Each of those agreements states that the employee shall not be eligible for any bonus or receive or accrue any vacation.

Pursuant to the terms of each of Ms. Graham's, Mr. Johnson's and Mr. Schneider's second amended and restated employment agreement, in the event that Ms. Graham, Mr. Johnson and Mr. Schneider, as applicable, is terminated for any reason, such individual will be entitled to continue to receive their respective base salary through February 28, 2010.

In addition, if, following the effective time of each such second amended and restated employment agreement and prior to February 28, 2010, TPTX, Inc. (i) sells to a third party buyer any equity securities of TPTX, Inc. and the proceeds from such sale are used primarily for the development NGX426, (ii) completes a change of control transaction or (iii) enters into a partnership, option, or similar arrangement and such sale or equivalent transaction as described in clauses (i), (ii) or (iii) above is approved by the board of directors of TPTX, Inc. and is for aggregate cash consideration (net of all costs and expenses associated with the sale) received by TPTX, Inc. on or before February 28, 2010 of not less than \$10 million, then promptly following the closing of such sale or equivalent transaction, (A) TPTX, Inc. shall pay to each of Ms. Graham, Mr. Johnson and Mr. Schneider, respectively, an amount equal to (a) 3.0% of the aggregate cash consideration (net of all costs and expenses associated with the sale or equivalent transaction) received by TPTX, Inc. in the sale or equivalent transaction multiplied by (b) a percentage equivalent to Ms. Graham's, Mr. Johnson's and Mr. Schneider's respective salary compared to the aggregate salary of these three individuals, payable in cash, and (B) TorreyPines shall pay to each of Ms. Graham, Mr. Johnson and Mr. Schneider an amount equal to (x) 2.0% of the aggregate cash consideration (net of all costs and expenses associated with the sale or equivalent transaction) received by TPTX, Inc. in the sale or equivalent transaction multiplied by (y) each of Ms. Graham's, Mr. Johnson's and Mr. Schneider's respective salary compared to the aggregate salary of these three individuals, payable in the form of TorreyPines common stock.

### ***Stock Options***

Each of TorreyPines' executive officers and non-employee directors holds options to purchase shares of TorreyPines common stock. The options were granted under TorreyPines' equity participation plans pursuant to a stock option agreement. Each option grant typically vests in a series of annual installments over a number of years. However, the option agreements provide that each option will vest and become exercisable as to all shares covered by such option upon the consummation of a merger involving TorreyPines, subject to certain exceptions that would not apply to the contemplated merger. As a result, all of the outstanding options held by TorreyPines' executive officers and non-employee directors will immediately vest and become exercisable in full upon consummation of the merger.



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The following table shows the total number of option shares held as of June 30, 2009 by each director and executive officer of TorreyPines. The options have exercise prices ranging between \$0.23 and \$6.37 per share.

| Name                       | Total Options Held | Vested  | Unvested | Weighted Average Exercise Price Per Share |
|----------------------------|--------------------|---------|----------|---|
| <b>Executive Officers:</b> |                    |         |          |   |
| Evelyn A. Graham           | 674,100            | 459,412 | 214,688  | \$ 0.57                                   |
| Craig A. Johnson           | 574,100            | 392,745 | 181,355  | \$ 0.63                                   |
| Paul R. Schneider          | 429,875            | 323,911 | 105,964  | \$ 1.24                                   |
| <b>Directors:</b>          |                    |         |          |   |
| Peter Davis                | 21,624             | 21,624  | 0        | \$ 4.01                                   |
| Steven Ferris              | 45,687             | 45,687  | 0        | \$ 16.79                                  |
| Steven Ratoff              | 56,662             | 56,662  | 0        | \$ 7.33                                   |

**Indemnification of TorreyPines Officers and Directors**

The merger agreement provides that, for a period of six years following the effective time of the merger, the combined company will, to the fullest extent permitted by Delaware law, indemnify and hold harmless all present and former directors and officers of TorreyPines against all claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys' fees and disbursements, incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (other than any such proceeding as set forth under the section titled, "TorreyPines Business Legal Proceedings" in this joint proxy statement/prospectus), arising out of or pertaining to the fact that such person is or was a director or officer of TorreyPines. In addition, for a period of six years following the effective time of the merger, the certificate of incorporation and bylaws of the combined company and surviving company will contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers of TorreyPines than are presently set forth in the certificate of incorporation and bylaws of TorreyPines.

The merger agreement also provides that, for a period of six years following the consummation of the merger, the combined company will maintain in effect a directors' and officers' liability insurance policy covering the directors and officers of TorreyPines, with coverage in amount and scope of at least \$5 million of coverage containing terms and conditions that are not materially less favorable than TorreyPines' existing policy as of the time the merger becomes effective; *provided, however*, that in no event shall Raptor be required to expend more than an amount equal to \$65,000 for such insurance.

**Interests of Raptor's Directors and Executive Officers in the Merger**

In considering the recommendation of the Raptor board of directors with respect to adopting the merger agreement, Raptor's stockholders should be aware that certain members of the board of directors and executive officers of Raptor have interests in the merger that may be different from, or in addition to, interests they may have as Raptor's stockholders. Each of TorreyPines' and Raptor's board of directors was aware of these potential conflicts of interest and considered them, among other matters, in reaching their respective decisions to approve the merger agreement and the merger, and, in the case of each board of directors, to recommend that their respective stockholders approve the TorreyPines and Raptor proposals, as applicable, contemplated by this joint proxy statement/prospectus to be presented to their stockholders for consideration at their respective stockholder meetings.

**Table of Contents****Ownership Interests**

As of August 27, 2009, all directors and executive officers of Raptor beneficially owned (including through ownership of options and warrants) approximately 13% of the shares of Raptor capital stock. Raptor cannot complete the merger unless the merger agreement is adopted by the affirmative vote of the holders of a majority of the shares of Raptor common stock outstanding on the record date and entitled to vote at the Raptor annual meeting. Certain Raptor officers and directors have also entered into voting agreements in connection with the merger. For a more detailed discussion of the voting agreements see the section titled, *Agreements Related to the Merger Voting Agreements* in this joint proxy statement/prospectus.

**TorreyPines Board of Directors After the Merger**

The merger agreement provides that, following the merger, the combined company will initially have a four member board of directors, comprised of Christopher M. Starr, Ph.D., Raymond W. Anderson, Erich Sager and Richard L. Franklin, M.D., Ph.D., the current directors of Raptor.

**Stock Options**

At the effective time of the merger, each outstanding stock option to purchase Raptor common stock not exercised prior to the merger will be assumed by TorreyPines and become exercisable (a) for such number of shares of TorreyPines common stock as is determined by multiplying the number of shares of Raptor common stock subject to the option by the exchange ratio and rounding that result down to the nearest whole number of shares of TorreyPines common stock, and (b) at a per share exercise price as is determined by dividing the existing exercise price of the option by the exchange ratio and rounding that result up to the nearest whole cent, not taking into effect the proposed reverse stock split.

The table below sets forth, as of August 27, 2009, information with respect to options held by each of Raptor's current executive officers and directors.

| Name                             | Total Options<br>Held | Vested    | Unvested | Weighted<br>Average<br>Exercise Price<br>Per Share |
|----------------------------------|-----------------------|-----------|----------|--|
| <b>Executive Officers:</b>       |                       |           |          |  |
| Christopher M. Starr, Ph.D.      | 250,000               | 250,000   | 0        | \$ 0.66  |
| Todd C. Zankel, Ph.D.            | 250,000               | 250,000   | 0        | \$ 0.66  |
| Thomas E. Daley                  | 250,000               | 96,873    | 153,127  | \$ 0.49  |
| Kim R. Tsuchimoto, C.P.A.        | 327,500               | 290,832   | 36,668   | \$ 0.60  |
| Patrice P. Rioux, M.D., Ph.D.    | 150,000               | 0         | 150,000  | \$ 0.20  |
| <b>Directors(1):</b>             |                       |           |          |  |
| Raymond W. Anderson              | 600,000               | 554,166   | 45,834   | \$ 0.60  |
| Erich Sager                      | 1,100,000             | 1,054,166 | 45,834   | \$ 0.60  |
| Richard L. Franklin, M.D., Ph.D. | 150,000               | 40,624    | 109,376  | \$ 0.52  |

(1) Christopher M. Starr, Ph.D., the chief executive officer of Raptor, is also a director of Raptor.

**Stock Options and Warrants**

Raptor has granted options to purchase shares of its common stock under its 2006 Equity Incentive Plan. Each outstanding option to purchase shares of Raptor common stock that is not exercised prior to the effective time of the merger will be assumed by TorreyPines at the effective time of the merger in accordance with the terms of the 2006 Equity Incentive Plan and the terms of the related stock option agreement and will become an option to purchase shares of TorreyPines common stock. The number of shares of TorreyPines common stock subject to each assumed option will be determined by multiplying the number of shares of Raptor common stock



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that was subject to each option prior to the effective time of the merger by the exchange ratio and rounding that result down to the nearest whole number of shares of TorreyPines common stock. The per share exercise price for the assumed options will be determined by dividing the per share exercise price of the Raptor common stock subject to each option as in effect immediately prior to the effective time of the merger by the exchange ratio and rounding that result up to the nearest whole cent, not taking into effect the proposed reverse stock split.

Raptor has issued warrants to purchase shares of its common stock. Each outstanding warrant to purchase shares of Raptor common stock not terminated or exercised at or prior to the merger will be assumed by TorreyPines at the effective time of the merger in accordance with its terms and will become a warrant to purchase shares of TorreyPines common stock. The number of shares of TorreyPines common stock subject to each assumed warrant will be determined by multiplying the number of shares of Raptor common stock, issuable upon exercise of such warrant, as applicable, that were subject to such warrant prior to the effective time of the merger by the exchange ratio and rounding that result down to the nearest whole number of shares of TorreyPines common stock. The per share exercise price for the assumed warrants will be determined by dividing the per share exercise price of the common stock subject to each warrant as in effect immediately prior to the effective time of the merger by the exchange ratio and rounding that result up to the nearest whole cent, not taking into effect the proposed reverse stock split.

For a more detailed discussion of the exchange ratio and possible adjustments to the exchange ratio to reflect certain events that could occur prior to closing, see the section titled, *The Merger Agreement Merger Consideration and Adjustment* in this joint proxy statement/prospectus. If there is no adjustment to the exchange ratio to reflect certain events that could occur prior to closing, the exchange ratio will be that number of shares of TorreyPines common stock equal to the 303,982,102 shares of TorreyPines common stock to be issued in the merger divided by 69,145,047 shares of Raptor common stock outstanding as of the signing of the merger agreement plus 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options outstanding as of the signing of the merger agreement plus any additional shares of Raptor common stock and securities exercisable for or exchangeable or convertible into Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger, subject to adjustment to account for the reverse stock split to be implemented prior to the consummation of the merger.

## **Form of the Merger**

The merger agreement provides that at the effective time, merger sub will be merged with and into Raptor. Upon the consummation of the merger, Raptor will continue as the surviving corporation and will be a wholly-owned subsidiary of TorreyPines.

After completion of the merger, assuming TorreyPines Proposal No. 3 is approved by TorreyPines stockholders at the TorreyPines annual meeting, TorreyPines will be renamed Raptor Pharmaceutical Corp. and expects to trade on the NASDAQ Capital Market under the symbol RPTP.

## **Merger Consideration and Adjustment**

At the effective time of the merger,

each share of Raptor common stock outstanding immediately prior to the effective time of the merger is expected to automatically convert into the right to receive the number of shares of TorreyPines common stock equal to the 303,982,102 shares of TorreyPines common stock to be issued in the merger divided by 69,145,047 shares of Raptor common stock outstanding as of the signing of the merger agreement plus 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options outstanding as of the signing of the merger agreement plus any additional shares of Raptor common stock and securities exercisable for or exchangeable or convertible into Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger, subject to adjustment to account for the reverse stock split to be implemented prior to the consummation of the merger, which is referred to as the exchange ratio;

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each option to purchase shares of Raptor common stock outstanding and unexercised immediately prior to the effective time of the merger will be assumed by TorreyPines and will become an option to purchase shares of TorreyPines common stock equal to the product of the number of shares of Raptor common stock subject to the option multiplied by the exchange ratio, rounded down to the nearest whole number of shares of TorreyPines common stock, subject to adjustment to account for the reverse stock split to be implemented prior to the consummation of the merger; and

each warrant to purchase shares of Raptor common stock outstanding and unexercised immediately prior to the effective time of the merger will be assumed by TorreyPines and will become a warrant to purchase shares of TorreyPines common stock equal to the product of the number of shares of Raptor common stock issuable upon exercise of the Raptor warrant multiplied by the exchange ratio, rounded down to the nearest whole number of shares of TorreyPines common stock, subject to adjustment to account for the reverse stock split to be implemented prior to the consummation of the merger.

Immediately after the merger, based on the exchange ratio Raptor stockholders will hold 95% of the outstanding shares of common stock of the combined company with TorreyPines stockholders holding 5% of the outstanding shares of common stock of the combined company, in each case without taking into account any of the other shares of TorreyPines common stock that may be issuable pursuant to outstanding options or warrants to acquire TorreyPines common stock outstanding as of the signing of the merger agreement or any other shares of Raptor common stock that may be issuable pursuant to outstanding options or warrants, other than the 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options included in the calculation of the exchange ratio. Other than the 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options included in the calculation of the exchange ratio, none of the options to purchase shares of Raptor common stock or TorreyPines common stock, respectively, or warrants to purchase shares of Raptor common stock or TorreyPines common stock, respectively, were included in the calculation of the exchange ratio because such options and warrants were out-of-the-money as determined by the boards of directors of TorreyPines and Raptor, respectively, given that the exercise prices of such options and warrants were higher than the trading prices of the common stock for which such options and warrants were exercisable as of July 27, 2009, the date of the merger agreement. Assuming that all of such options and warrants were included in the calculation of the exchange ratio, then, immediately after the merger, based on the exchange ratio as calculated in such manner, Raptor stockholders would hold approximately 94.4% of the outstanding shares of common stock of the combined company on a fully-diluted basis, and TorreyPines stockholders would hold approximately 5.6% of the outstanding shares of common stock of the combined company on a fully-diluted basis.

The merger agreement does not include a price-based termination right, so there will be no adjustment to the total number of shares of TorreyPines common stock that Raptor stockholders will be entitled to receive for changes in the market price of TorreyPines common stock. Accordingly, the market value of the shares of TorreyPines common stock issued pursuant to the merger will depend on the market value of the shares of TorreyPines common stock at the time the merger closes, and could vary significantly from the market value on the date of this joint proxy statement/prospectus.

No fractional shares of TorreyPines common stock will be issuable pursuant to the merger to Raptor stockholders. Instead, each Raptor stockholder who would otherwise be entitled to receive a fraction of a share of TorreyPines common stock, after aggregating all fractional shares of TorreyPines common stock issuable to such stockholder, will be entitled to receive in cash the dollar amount, rounded to the nearest whole cent, without interest, determined by multiplying such fraction by the closing price of a share of TorreyPines common stock as quoted on the NASDAQ Global Market, on the date the merger becomes effective.

The merger agreement provides that, at the effective time of the merger, TorreyPines will deposit with an exchange agent acceptable to TorreyPines and Raptor stock certificates representing the shares of TorreyPines common stock issuable to the Raptor stockholders, and a sufficient amount of cash to make payments in lieu of fractional shares.

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The merger agreement provides that, promptly after the effective time of the merger, the exchange agent will mail to each record holder of Raptor common stock immediately prior to the effective time of the merger a letter of transmittal and instructions for surrendering and exchanging the record holder's Raptor stock certificates for shares of TorreyPines common stock. Upon surrender of a Raptor common stock certificate for exchange to the exchange agent, together with a duly signed letter of transmittal and such other documents as the exchange agent or TorreyPines may reasonably require, the Raptor stock certificate surrendered will be cancelled and the holder of the Raptor stock certificate will be entitled to receive the following:

a certificate representing the number of whole shares of TorreyPines common stock that such holder has the right to receive pursuant to the provisions of the merger agreement;

cash in lieu of any fractional share of TorreyPines common stock; and

dividends or other distributions, if any, declared or made with respect to TorreyPines common stock with a record date after the effective time of the merger.

At the effective time of the merger, all holders of certificates representing shares of Raptor common stock that were outstanding immediately prior to the effective time of the merger will cease to have any rights as stockholders of Raptor. In addition, no transfer of Raptor common stock after the effective time of the merger will be registered on the stock transfer books of Raptor.

If any Raptor stock certificate has been lost, stolen or destroyed, TorreyPines or the exchange agent may, in their discretion, and as a condition to the delivery of any shares of TorreyPines common stock, require the owner of such lost, stolen or destroyed certificate to deliver an affidavit claiming such certificate has been lost, stolen or destroyed and post a bond indemnifying TorreyPines against any claim suffered by TorreyPines related to the lost, stolen or destroyed certificate or any TorreyPines common stock issued in exchange for such certificate as TorreyPines or the exchange agent may reasonably request.

From and after the effective time of the merger, until it is surrendered, each certificate that previously evidenced Raptor common stock will be deemed to represent only the right to receive shares of TorreyPines common stock and cash in lieu of any fractional share of TorreyPines common stock. TorreyPines will not pay dividends or other distributions on any shares of TorreyPines common stock to be issued in exchange for any unsurrendered Raptor stock certificate until the Raptor stock certificate is surrendered as provided in the merger agreement.

## **Effective Time of the Merger**

The merger agreement requires the parties to consummate the merger after all of the conditions to the consummation of the merger contained in the merger agreement are satisfied or waived, including the adoption of the merger agreement by the stockholders of Raptor and the approval by the TorreyPines stockholders of the issuance of TorreyPines common stock and the resulting change in control of TorreyPines, the amendment to TorreyPines' certificate of incorporation effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceuticals Corp. The merger will become effective upon the filing of a certificate of merger with the Secretary of State of the State of Delaware or at such later time as is agreed by TorreyPines and Raptor and specified in the certificate of merger. Neither TorreyPines nor Raptor can predict the exact timing of the consummation of the merger.

## **Regulatory Approvals**

As of the date of this joint proxy statement/prospectus, neither TorreyPines nor Raptor is required to make filings or to obtain approvals or clearances from any antitrust regulatory authorities in the United States or other countries to consummate the merger. In the United States, TorreyPines must comply with applicable federal and state securities laws and the rules and regulations of the The NASDAQ Stock Market LLC in connection with the issuance of shares of TorreyPines common stock and the resulting change in control of TorreyPines and the filing of this joint proxy statement/prospectus with the SEC.

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### **Tax Treatment of the Merger**

TorreyPines and Raptor intend the merger to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, or the Code. Each of TorreyPines and Raptor will use its reasonable best efforts to cause the merger to qualify as a reorganization within the meaning of Section 368(a) of the Code, and not to, and not to permit or cause any affiliate or any subsidiary of TorreyPines or Raptor to, take any action or cause any action to be taken which would cause the merger to fail to qualify as a reorganization under Section 368(a) of the Code. For a description of the material United States federal tax considerations of the merger, see the section titled, **Material United States Federal Income Tax Consequences of the Merger** below. TorreyPines and Raptor will cooperate and use their reasonable best efforts in order for TorreyPines to obtain from Cooley Godward Kronish LLP, and Raptor to obtain from Paul, Hastings, Janofsky & Walker LLP, an opinion that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Code.

### **Material United States Federal Income Tax Consequences of the Merger**

The following discussion summarizes the anticipated material U.S. federal income tax consequences of the merger to Raptor stockholders who exchange their Raptor common stock for TorreyPines common stock in the merger. This summary is based upon current provisions of the Internal Revenue Code, existing regulations under the Internal Revenue Code and current administrative rulings and court decisions, all of which are subject to change. Any such change, which may or may not be retroactive, could alter the tax consequences to TorreyPines, Raptor or the stockholders of Raptor described in this summary. No attempt has been made to comment on all federal income tax consequences of the merger that may be relevant to particular Raptor stockholders, including stockholders:

who are subject to special tax rules, such as dealers in securities, foreign persons, mutual funds, insurance companies and tax-exempt entities;

who are subject to the alternative minimum tax provisions of the Internal Revenue Code;

who acquired their shares in connection with stock option or stock purchase plans or in other compensatory transactions;

who hold their shares as a hedge or as part of a hedging, straddle or other risk reduction strategy; or

who do not hold their shares as capital assets.

In addition, the following discussion does not address the tax consequences of the merger under state, local and foreign tax laws. Furthermore, the following discussion does not address:

the tax consequences of transactions effectuated before, after or at the same time as the merger, whether or not they are in connection with the merger, including, without limitation, transactions in which Raptor shares are acquired or TorreyPines shares are disposed of;

the tax consequences to holders of options issued by Raptor that are assumed, exercised or converted, as the case may be, in connection with the merger; or

the tax consequences of the receipt of TorreyPines shares other than in exchange for Raptor shares.

Accordingly, holders of Raptor common stock are advised and expected to consult their own tax advisors regarding the federal income tax consequences of the merger in light of their personal circumstances and the consequences under state, local and foreign tax laws.

## Edgar Filing: TorreyPines Therapeutics, Inc. - Form 424B3

Cooley Godward Kronish LLP has delivered to TorreyPines, and Paul, Hastings, Janofsky & Walker LLP has delivered to Raptor, an opinion stating that the merger will constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code. These opinions are attached as Exhibits 8.1 and 8.2 to the registration statement on Form S-4 filed with the Securities and Exchange Commission, which includes this



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proxy statement/prospectus. The tax opinions discussed in this section assume and are conditioned upon the following:

the truth and accuracy of the statements, covenants, representations and warranties contained in the merger agreement, in the tax representations received from TorreyPines, merger sub and Raptor to support the tax opinions and in all other instruments and documents related to the formation, organization and operation of TorreyPines, merger sub and Raptor examined by and relied upon by Cooley Godward Kronish LLP and Paul, Hastings, Janofsky & Walker LLP in connection with the merger;

that original documents submitted to such counsel are authentic, that documents submitted to such counsel as copies conform to the original documents and that all of these documents have been (or will be by the effective time) duly and validly executed and delivered where due execution and delivery are a prerequisite to the effectiveness of these documents;

that all covenants contained in the merger agreement and the tax representations described above are performed without waiver or breach of any material provision of these covenants; and

that any representation or statement made to the best of knowledge or similarly qualified is correct without that qualification. No ruling from the Internal Revenue Service has been or will be requested in connection with the merger. In addition, stockholders of Raptor should be aware that the tax opinions discussed in this section are not binding on the IRS or any court. The IRS could adopt a contrary position and a contrary position could be sustained by a court.

Subject to the assumptions and limitations discussed above, it is the opinion of Paul, Hastings, Janofsky & Walker LLP, tax counsel to Raptor, and Cooley Godward Kronish LLP, tax counsel to TorreyPines, that:

the merger will be treated for federal income tax purposes as a reorganization;

TorreyPines, merger sub and Raptor will each be a party to the reorganization;

TorreyPines, merger sub and Raptor will not recognize any gain or loss solely as a result of the merger;

stockholders of Raptor will not recognize any gain or loss upon the receipt of solely TorreyPines common stock for their Raptor common stock;

the aggregate basis of the shares of TorreyPines common stock that are received by a Raptor stockholder in the merger (including any fractional share deemed received) will be the same as the aggregate basis of the shares of Raptor common stock surrendered in exchange therefor;

the holding period of the shares of TorreyPines common stock received by a Raptor stockholder in the merger will include the holding period of the shares of Raptor common stock surrendered in the merger if such shares of Raptor common stock are held as capital assets at the effective time of the merger; and

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a stockholder of Raptor who receives cash instead of a fractional share of TorreyPines common stock will recognize gain or loss equal to the difference, if any, between such stockholder's basis in the fractional share and the amount of cash received. Such gain or loss will be a capital gain or loss if the Raptor common stock is held by such stockholder as a capital asset at the effective time of the merger.

a stockholder of Raptor who exercises appraisal rights and receives cash in exchange for such stockholder's Raptor common stock will generally recognize gain or loss measured by the difference between the amount of cash received and the adjusted basis of the Raptor common stock surrendered.

In addition to the foregoing, there are other tax-related issues that you should be aware of, such as:

**Reporting Requirements.** Each Raptor stockholder that receives TorreyPines common stock in the merger will be required to file a statement with his, her or its federal income tax return setting forth the

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stockholder's basis in the Raptor stock surrendered and the fair market value of the TorreyPines stock and cash received in the merger, and to retain permanent records of these facts relating to the merger.

**Backup Withholding.** Unless an exemption applies under applicable law and regulations, the exchange agent is required to withhold, and will withhold, 28% of any cash payments to a Raptor stockholder in the merger unless the stockholder provides the appropriate form as described below.

Each Raptor stockholder should complete and sign the substitute Form W-9 included as part of the letter of transmittal to be sent to each Raptor stockholder, so as to provide the information, including such stockholder's taxpayer identification number, and certification necessary to avoid backup withholding, unless an applicable exemption exists and is proved in a manner satisfactory to TorreyPines and the exchange agent.

**Consequences of IRS Challenge.** A successful IRS challenge to the reorganization status of the merger would result in significant tax consequences. Raptor stockholders would recognize gain or loss with respect to each share of Raptor common stock surrendered in the merger. Such gain or loss would be equal to the difference between the stockholder's basis in such share and the sum of the fair market value, as of the effective time, of the TorreyPines common stock received in the merger and any cash received instead of a fractional share of TorreyPines common stock. In such event, a stockholder's aggregate basis in the TorreyPines common stock so received would equal its fair market value as of the effective time and the stockholder's holding period for such stock would begin the day after the merger is consummated.

THE SUMMARY OF MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES SET FORTH ABOVE IS INTENDED TO PROVIDE ONLY A GENERAL SUMMARY AND IS NOT INTENDED TO BE A COMPLETE ANALYSIS OR DESCRIPTION OF ALL POTENTIAL FEDERAL INCOME TAX CONSEQUENCES OF THE MERGER. IN ADDITION, THE SUMMARY DOES NOT ADDRESS TAX CONSEQUENCES THAT MAY VARY WITH, OR ARE CONTINGENT ON, INDIVIDUAL CIRCUMSTANCES. MOREOVER, THE SUMMARY DOES NOT ADDRESS ANY NON-INCOME TAX OR ANY FOREIGN, STATE OR LOCAL TAX CONSEQUENCES OF THE MERGER. THE SUMMARY DOES NOT ADDRESS THE TAX CONSEQUENCES OF ANY TRANSACTION OTHER THAN THE MERGER. ACCORDINGLY, EACH RAPTOR STOCKHOLDER IS STRONGLY URGED TO CONSULT WITH A TAX ADVISOR TO DETERMINE THE PARTICULAR FEDERAL, STATE, LOCAL OR FOREIGN INCOME OR OTHER TAX CONSEQUENCES OF THE MERGER TO SUCH STOCKHOLDER.

**NASDAQ Stock Market Listing**

TorreyPines common stock currently is listed on the NASDAQ Global Market under the symbol TPTX. TorreyPines has agreed to use its commercially reasonable efforts to obtain approval for listing of the combined company on the NASDAQ Capital Market or, to the extent agreed by the parties, the NASDAQ Global Market, of the TorreyPines common stock.

Prior to consummation of the merger, TorreyPines intends to file an initial listing application with the NASDAQ Capital Market. Acceptance of the initial listing application and the listing of the shares of TorreyPines common stock on the NASDAQ Capital Market is a condition to closing the merger. Because the listing standards of the NASDAQ Capital Market will require TorreyPines to have, among other things, a \$4.00 per share minimum bid price, the reverse stock split will be necessary in order to consummate the merger, but there is no assurance that the reverse stock split will be sufficient from The NASDAQ Stock Market LLC's perspective in order to approve the listing application. If such application is accepted, TorreyPines anticipates that the combined company's common stock will be listed on the NASDAQ Capital Market upon the closing of the merger and will trade under the combined company's new name, Raptor Pharmaceutical Corp., and new trading symbol, RPTP.

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### **Conditions Precedent**

The obligation of Raptor to complete the merger is subject to the satisfaction or waiver of the following conditions:

TorreyPines must have obtained all necessary permits and authorizations under any state blue sky laws, the Securities Act and the Exchange Act relating to the issuance of the TorreyPines common stock to be issued in the merger and such permits and authorizations shall be in effect at the closing of the merger;

TorreyPines must have more than \$0 in Net Cash as measured on closing date of the merger agreement;

TorreyPines must have completed the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. ;

TorreyPines must have delivered to Raptor written resignations of the officers and directors of TorreyPines and merger sub;

the stockholders of Raptor holding not more than 10% of the Raptor common stock outstanding immediately prior to the effective time of the merger shall have exercised their dissenters' rights under Section 262 of the DGCL; *provided, however*; that such percentage shall not include any shares of Raptor common stock held by a director or executive officer of Raptor or the 13,128,332 shares of Raptor common stock held by Aran Asset Management SA as of the date of the merger agreement;

Raptor must have received the opinion of Paul, Hastings, Janofsky & Walker LLP, dated as of the closing date of the merger, to the effect that, on the basis of the facts, representations and assumptions set forth or referred to in such opinion, the merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code;

Each of TorreyPines existing directors must resign; and

Raptor must have received an executed release and waiver of claims agreement from each of Evelyn Graham, Craig Johnson and Paul Schneider, TorreyPines' Chief Executive Officer, Chief Financial Officer and Vice President and General Counsel, respectively.

### **Anticipated Accounting Treatment**

The merger will be treated by TorreyPines as a reverse merger under the purchase method of accounting in accordance with United States generally accepted accounting principles. For accounting purposes, Raptor is considered to be acquiring TorreyPines in this transaction. Therefore, the aggregate consideration paid in connection with the merger, together with the direct costs of acquisition, will be allocated to TorreyPines' tangible and intangible assets and liabilities based on their fair market values. The assets and liabilities and results of operations of TorreyPines will be consolidated into the results of operations of Raptor as of the effective time of the merger. These allocations will be based upon a valuation that has not yet been finalized.

### **Appraisal Rights**

In connection with the merger, Raptor stockholders are entitled to appraisal rights under Section 262 of the DGCL, or Section 262, provided that they comply with the conditions established by Section 262.

The discussion below is not a complete summary regarding an Raptor stockholder's appraisal rights under Delaware law and is qualified in its entirety by reference to the text of the relevant provisions of Delaware law, which are attached to this joint proxy statement/prospectus as *Annex B*. Stockholders intending to exercise appraisal rights should carefully review *Annex B*. Failure to follow precisely any of the statutory

procedures set forth in *Annex B* may result in a termination or waiver of these rights.

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A record holder of shares of Raptor's common stock who makes the demand described below with respect to such shares, who continuously is the record holder of such shares through the effective time of the merger, who otherwise complies with the statutory requirements of Section 262 and who neither votes in favor of the merger nor consents thereto in writing will be entitled to an appraisal by the Delaware Court of Chancery, or the Delaware Court, of the fair value of his, her or its shares of Raptor's common stock in lieu of the consideration that such stockholder would otherwise be entitled to receive pursuant to the merger agreement. All references in this summary of appraisal rights to a stockholder or holders of shares of Raptor's common stock are to the record holder or holders of shares of Raptor's common stock. Except as set forth herein, stockholders of Raptor will not be entitled to appraisal rights in connection with the merger.

Under Section 262, where a merger is to be submitted for approval at a meeting of stockholders, such as the Raptor annual meeting, not less than 20 days prior to the meeting, a constituent corporation must notify each of the holders of its stock for whom appraisal rights are available that such appraisal rights are available and include in each such notice a copy of Section 262. This joint proxy statement/prospectus shall constitute such notice to the record holders of Raptor's common stock.

Stockholders who desire to exercise their appraisal rights must satisfy all of the conditions of Section 262. Those conditions include the following:

Stockholders electing to exercise appraisal rights must not vote for the adoption of the merger agreement. Voting for the adoption of the merger agreement will result in the waiver of appraisal rights. Also, because a submitted proxy not marked against or abstain will be voted for the proposal to adopt the merger agreement, the submission of a proxy not marked against or abstain will result in the waiver of appraisal rights.

A written demand for appraisal of shares must be filed with Raptor before the taking of the vote on the merger agreement at the annual meeting. The written demand for appraisal should specify the stockholder's name and mailing address, and that the stockholder is thereby demanding appraisal of his or her Raptor common stock. The written demand for appraisal of shares is in addition to and separate from a vote against the merger agreement or an abstention from such vote. That is, failure to return your proxy, voting against, or abstaining from voting on, the merger will not satisfy your obligation to make a written demand for appraisal.

A demand for appraisal must be executed by or for the stockholder of record, fully and correctly, as such stockholder's name appears on the stock certificate. If the shares are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, this demand must be executed by or for the fiduciary. If the shares are owned by or for more than one person, as in a joint tenancy or tenancy in common, such demand must be executed by or for all joint owners. An authorized agent, including an agent for two or more joint owners, may execute the demand for appraisal for a stockholder of record. However, the agent must identify the record owner and expressly disclose the fact that, in exercising the demand, he is acting as agent for the record owner. A person having a beneficial interest in Raptor's common stock held of record in the name of another person, such as a broker or nominee, must act promptly to cause the record holder to follow the steps summarized below in a timely manner to perfect whatever appraisal rights the beneficial owners may have.

A stockholder who elects to exercise appraisal rights should mail or deliver his, her or its written demand to Raptor at 9 Commercial Blvd., Suite 200, Novato, CA 94949, Attention: Kim Tsuchimoto.

Within ten days after the effective time of the merger, Raptor must provide notice of the effective time of the merger to all Raptor stockholders who have complied with Section 262 and have not voted in favor of the adoption of the merger agreement.

Within 120 days after the effective time of the merger, either Raptor or any stockholder who has complied with the required conditions of Section 262 may commence an appraisal proceeding by filing a petition in the

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Delaware Court, with a copy served on Raptor in the case of a petition filed by a stockholder, demanding a determination of the fair value of the shares of all dissenting stockholders. There is no present intent on the part of Raptor to file an appraisal petition and stockholders seeking to exercise appraisal rights should not assume that Raptor will file such a petition or that Raptor will initiate any negotiations with respect to the fair value of such shares. Accordingly, holders of Raptor's common stock who desire to have their shares appraised should initiate any petitions necessary for the perfection of their appraisal rights within the time periods and in the manner prescribed in Section 262.

Within 120 days after the effective time of the merger, any stockholder who has satisfied the requirements of Section 262 will be entitled, upon written request, to receive from Raptor a statement setting forth the aggregate number of shares of Raptor's common stock not voting in favor of the adoption of the merger agreement and with respect to which demands for appraisal were received by Raptor and the aggregate number of holders of such shares. Such statement must be mailed within 10 days after the stockholder's request has been received by Raptor or within 10 days after the expiration of the period for the delivery of demands as described above, whichever is later. Notwithstanding the foregoing, a person who is the beneficial owner of shares of Raptor's common stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the surviving corporation the statement described in this paragraph.

If a petition for an appraisal is timely filed and a copy thereof is served upon Raptor, Raptor will then be obligated, within 20 days after service, to file with the Register in Chancery a duly verified list containing the names and addresses of all stockholders who have demanded an appraisal of their shares and with whom agreements as to the value of their shares have not been reached. After notice to stockholders, as required by the Delaware Court, at the hearing on such petition, the Delaware Court will determine which stockholders are entitled to appraisal rights. The appraisal proceeding shall be conducted in accordance with the rules of the Delaware Court, including any rules specifically governing appraisal proceedings. The Delaware Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Delaware Court may dismiss the proceedings as to such stockholder. Where proceedings are not dismissed, the Delaware Court will appraise the shares of Raptor's common stock owned by such stockholders, determining the fair value of such shares exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest, if any, to be paid upon the amount determined to be the fair value. Unless the Delaware Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment.

Although the board of directors of Raptor believes that the merger consideration is fair, no representation is made as to the outcome of the appraisal of fair value as determined by the Delaware Court and stockholders should recognize that such an appraisal could result in a determination of a value higher or lower than, or the same as, the consideration they would receive pursuant to the merger agreement. Moreover, Raptor does not anticipate offering more than the merger consideration to any stockholder exercising appraisal rights and reserves the right to assert, in any appraisal proceeding, that, for purposes of Section 262, the fair value of a share of Raptor's common stock is less than the merger consideration. In determining fair value, the Delaware Court is required to take into account all relevant factors. The cost of the appraisal proceeding, which does not include attorneys' or experts' fees, may be determined by the Delaware Court and taxed against the dissenting stockholder and/or Raptor as the Delaware Court deems equitable in the circumstances. Each dissenting stockholder is responsible for his or her attorneys' and expert witness expenses, although, upon application of a dissenting stockholder, the Delaware Court may order that all or a portion of the expenses incurred by any dissenting stockholder in connection with the appraisal proceeding, including without limitation, reasonable attorneys' fees and the fees and expenses of experts, be charged pro rata against the value of all shares of stock entitled to appraisal.

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Any stockholder who has duly demanded appraisal in compliance with Section 262 will not, after the effective time of the merger, be entitled to vote for any purpose any shares subject to such demand or to receive payment of dividends or other distributions on such shares, except for dividends or distributions payable to stockholders of record at a date prior to the effective time of the merger.

At any time within 60 days after the effective time of the merger, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party will have the right to withdraw his, her or its demand for appraisal and to accept the terms offered in the merger agreement. After this period, a stockholder may withdraw his, her or its demand for appraisal and receive payment for his, her or its shares as provided in the merger agreement only with the consent of Raptor. If no petition for appraisal is filed with the court within 120 days after the effective time of the merger, stockholders' rights to appraisal, if available, will cease. Inasmuch as Raptor has no obligation to file such a petition, any stockholder who desires a petition to be filed is advised to file it on a timely basis. Any stockholder may withdraw such stockholder's demand for appraisal by delivering to Raptor a written withdrawal of his, her or its demand for appraisal and acceptance of the merger consideration, except (i) that any such attempt to withdraw made more than 60 days after the effective time of the merger will require written approval of Raptor and (ii) that no appraisal proceeding in the Delaware Court shall be dismissed as to any stockholder without the approval of the Delaware Court, and such approval may be conditioned upon such terms as the Delaware Court deems just; provided, however, that any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party may withdraw his, her or its demand for appraisal and accept the merger consideration offered pursuant to the merger agreement within 60 days after the effective date of the merger.

Failure by any Raptor stockholder to comply fully with the procedures described above and set forth in *Annex B* to this joint proxy statement/prospectus may result in termination of such stockholder's appraisal rights. In view of the complexity of exercising appraisal rights under Delaware law, any Raptor stockholder considering exercising these rights should consult with legal counsel.

A stockholder who elects to exercise appraisal rights should mail or deliver his, her or its written demand to Raptor at 9 Commercial Blvd., Suite 200, Novato, CA 94949, Attention: Kim Tsuchimoto.



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**THE MERGER AGREEMENT**

*The following is a summary of the material terms of the merger agreement. A copy of the merger agreement is attached as Annex A to this joint proxy statement/prospectus and is incorporated by reference into this joint proxy statement/prospectus. The merger agreement has been attached to this joint proxy statement/prospectus to provide you with information regarding its terms. It is not intended to provide any other factual information about TorreyPines, Raptor or merger sub. Such information can be found elsewhere in this proxy statement/prospectus and in the other public filings each of TorreyPines and Raptor makes with the Securities and Exchange Commission, which are available without charge at [www.sec.gov](http://www.sec.gov). TorreyPines and Raptor encourage you to read the merger agreement in its entirety, as it is the legal document governing the merger, and the provisions of the merger agreement are not easily summarized. The following description does not purport to be complete and is qualified in its entirety by reference to the merger agreement. You should refer to the full text of the merger agreement for details of the merger and the terms and conditions of the merger agreement.*

*The merger agreement contains representations and warranties that TorreyPines and merger sub, on the one hand, and Raptor, on the other hand, have made to one another as of specific dates. These representations and warranties have been made for the benefit of the parties to the merger agreement and may be intended not as statements of fact but rather as a way of allocating the risk to one of the parties if those statements prove to be incorrect. In addition, the assertions embodied in the representations and warranties are qualified by information in confidential disclosure schedules exchanged by the parties in connection with signing the merger agreement. While TorreyPines and Raptor do not believe that these disclosure schedules contain information required to be publicly disclosed under the applicable securities laws, other than information that has already been so disclosed, the disclosure schedules do contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the attached merger agreement. Accordingly, you should not rely on the representations and warranties as current characterizations of factual information about TorreyPines, merger sub or Raptor, because they were made as of specific dates, may be intended merely as a risk allocation mechanism between TorreyPines, merger sub and Raptor and are modified by the disclosure schedules.*

**Structure of the Merger**

Under the merger agreement, merger sub, a wholly-owned subsidiary of TorreyPines formed by TorreyPines in connection with the merger, will merge with and into Raptor, with Raptor surviving and continuing as a wholly-owned subsidiary of TorreyPines.

**Merger Consideration and Adjustment**

At the effective time of the merger, pursuant to the merger agreement each share of Raptor common stock outstanding immediately prior to the effective time of the merger, other than shares of Raptor common stock held by Raptor, TorreyPines or any wholly-owned subsidiary of TorreyPines or Raptor, will be converted into the right to receive, upon surrender of the certificate representing such share of Raptor common stock in the manner provided in the merger agreement, the number of shares of TorreyPines common stock equal to the 303,982,102 shares of TorreyPines common stock to be issued in the merger divided by 69,145,047 shares of Raptor common stock outstanding as of the signing of the merger agreement plus 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options outstanding as of the signing of the merger agreement plus any additional shares of Raptor common stock and securities exercisable for or exchangeable or convertible into Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger, subject to adjustment as described below, which is referred to as the exchange ratio.

The exchange ratio will be adjusted to account for the effect of (i) any stock split, the reverse stock split as described below, any reclassification, any recapitalization or any other like change with respect to TorreyPines' common stock or Raptor's common stock occurring after the date of the merger agreement and prior to the

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effective time of the merger and (ii) certain additional shares of Raptor common stock and securities exercisable for or exchangeable or convertible into Raptor common stock that may be issued following the execution of the merger agreement and prior to the effective time of the merger.

Following the merger, assuming that TorreyPines Proposal No. 3 is approved by TorreyPines stockholders at the TorreyPines annual meeting, TorreyPines will be renamed Raptor Pharmaceutical Corp. and the common stock of the combined company is expected to trade on the NASDAQ Capital Market under the symbol RPTP. Immediately after the merger, Raptor stockholders will hold 95% of the outstanding shares of common stock of the combined company and TorreyPines stockholders will hold 5% of the outstanding shares of common stock of the combined company, in each case without taking into account any of the other shares of TorreyPines common stock that may be issuable pursuant to outstanding options or warrants to acquire TorreyPines common stock outstanding as of the signing of the merger agreement or any other shares of Raptor common stock that may be issuable pursuant to outstanding options or warrants, other than the 350,000 shares of Raptor common stock issuable pursuant to Raptor stock options included in the calculation of the exchange ratio.

The merger will be completed at the time of filing a certificate of merger with the Secretary of State of the State of Delaware or at such later time as may be specified in such certificate of merger with the consent of the parties to the merger agreement. The completion of the merger will take place on the date that is no later than three business days after the satisfaction or waiver of all of the conditions to completion of the merger set forth in the merger agreement. However, because the merger is subject to a number of conditions, neither TorreyPines nor Raptor can predict exactly when the closing will occur or if it will occur at all.

### **Assumption of Raptor Stock Options and Warrants**

At the effective time of the merger, each outstanding stock option to purchase Raptor common stock not exercised immediately prior to the effective time of the merger, whether or not vested, will be assumed by TorreyPines and become exercisable (a) for such number of shares of TorreyPines common stock as is determined by multiplying the number of shares of Raptor common stock subject to the option by the exchange ratio and rounding that result down to the nearest whole number of shares of TorreyPines common stock, and (b) at a per share exercise price as is determined by dividing the existing exercise price of the option by the exchange ratio and rounding that result up to the nearest whole cent, subject to adjustment to account for the reverse stock split. Any restrictions on the exercise of any Raptor option assumed by TorreyPines will continue following the conversion and the term, exercisability, vesting schedules and other provisions of assumed Raptor options will generally remain unchanged; provided, that any Raptor options assumed by TorreyPines may be subject to adjustment to reflect changes in TorreyPines capitalization after the effective time of the merger and that the TorreyPines board of directors will succeed to the authority of the Raptor board with respect to each assumed Raptor option.

At the effective time of the merger, each outstanding warrant to purchase shares of Raptor common stock not terminated or exercised immediately prior to the effective time of the merger will be assumed by TorreyPines and will become exercisable (a) for such number of shares of TorreyPines common stock as is determined by multiplying the number of shares of Raptor common stock subject to each warrant by the exchange ratio and rounding that result down to the nearest whole number of shares of TorreyPines common stock, and (b) at a per share exercise price determined by dividing the per share exercise price of the Raptor common stock subject to each warrant as in effect immediately prior to the effective time of the merger by the exchange ratio and rounding that result up to the nearest whole cent, subject to adjustment to account for the reverse stock split.

All outstanding options and warrants, respectively, to purchase Raptor common stock will be assumed by TorreyPines in the merger and will become exercisable for shares of TorreyPines common stock based on the exchange ratio as discussed in the section titled, "The Merger Stock Options and Warrants" in this joint proxy statement/prospectus.

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### **Fractional Shares**

TorreyPines will not issue any fractional shares of common stock in connection with the merger. Instead, the merger agreement provides that each holder of Raptor common stock who would otherwise be entitled to receive, after aggregating all fractional shares of TorreyPines common stock that would otherwise be received by such Raptor stockholder, a fraction of a share of TorreyPines common stock will be entitled to receive cash, without interest, in an amount equal to such fraction multiplied by the closing price of TorreyPines common stock on the date the merger is completed, as reported on the NASDAQ Global Market.

### **Exchange of Raptor Stock Certificates for TorreyPines Stock Certificates**

The merger agreement provides that on or prior to the completion of the merger, TorreyPines and Raptor will select a reputable bank, transfer agent or trust company to act as exchange agent for the merger. Promptly after the effective time of the merger, TorreyPines will deposit with the exchange agent: (i) certificates representing the shares of TorreyPines common stock issuable to Raptor stockholders, and (ii) cash sufficient to make payments in lieu of fractional shares. In addition, promptly following the effective time of the merger, the exchange agent will mail to each record holder of Raptor common stock a letter of transmittal and instructions for surrendering the record holder's stock certificates in exchange for the merger consideration.

Holders of Raptor common stock who properly surrender their Raptor stock certificates in accordance with the exchange agent's instructions will receive:

a certificate representing the number of whole shares of TorreyPines common stock to which such holder is entitled pursuant to the merger agreement; and

cash in lieu of any fractional share of TorreyPines common stock.

The Raptor stock certificates so surrendered will be canceled. After the effective time of the merger, outstanding Raptor stock certificates that have not been surrendered will represent only the right to receive the shares of TorreyPines common stock (and any dividends or distributions with respect to such shares of TorreyPines common stock), and cash in lieu of fractional shares enumerated above. Following the completion of the merger, TorreyPines will not register any transfers of Raptor common stock on its stock transfer books.

**Holders of Raptor common stock should not send in their Raptor stock certificates until they receive a letter of transmittal from the exchange agent with instructions for the surrender of Raptor stock certificates. In all cases, the certificates representing shares of TorreyPines common stock and cash in lieu of fractional shares will be delivered only in accordance with the procedures set forth in the letter of transmittal.**

### **Distributions with Respect to Unexchanged Shares**

Holders of Raptor common stock are not entitled to receive any dividends or other distributions on TorreyPines common stock until the merger is completed. After the merger is completed, holders of Raptor common stock will be entitled to receive dividends and other distributions declared or made after completion of the merger with respect to the number of shares of TorreyPines common stock that they are entitled to receive upon exchange of their Raptor common stock, but they will not be paid any such dividends or other distributions until they surrender their Raptor stock certificates to the exchange agent in accordance with the exchange agent's instructions. After surrender of the Raptor stock certificates, such holders will receive any such dividends or other distributions to which they are entitled without interest.

### **Lost, Stolen or Destroyed Stock Certificates**

If any Raptor stock certificate has been lost, stolen or destroyed, TorreyPines or the exchange agent may, in its discretion and as a condition precedent to the issuance of any certificate representing TorreyPines common

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stock in exchange therefor pursuant to the merger agreement, require the owner of such certificate to deliver an affidavit claiming that such certificate has been lost, stolen or destroyed and a bond in such sum as TorreyPines or the exchange agent may reasonably direct as indemnity against any claim that may be made with respect to that certificate against TorreyPines, Raptor or the exchange agent.

### **Directors and Officers of TorreyPines Following the Merger**

Effective as of the closing of the merger, the combined company's officers are expected to be Christopher M. Starr, Ph.D. (Chief Executive Officer), Todd C. Zankel, Ph.D. (Chief Scientific Officer), and Kim R. Tsuchimoto (Chief Financial Officer, Treasurer and Secretary), each of whom currently holds the same position at Raptor. The combined company will initially have a four member board of directors, comprised of the four individuals from Raptor's current board of directors, Christopher M. Starr, Ph.D., Raymond W. Anderson, Erich Sager and Richard L. Franklin, M.D., Ph.D.

### **Amendment to TorreyPines Certificate of Incorporation**

The merger agreement provides that TorreyPines' stockholders must approve, as a condition to closing the merger and in order to meet The NASDAQ Capital Market's initial listing standard of a \$4.00 per share minimum bid price, the amendment to TorreyPines' certificate of incorporation to effect a reverse stock split of TorreyPines common stock, which requires the affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting. Upon the effectiveness of the amendment to TorreyPines' certificate of incorporation effecting the reverse stock split, or the split effective time, the issued shares of TorreyPines common stock immediately prior to the split effective time will be combined into a smaller number of shares. Depending on the ratio for the reverse stock split, each ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, twenty, twenty-five, thirty, thirty-five, forty, forty-five, fifty, fifty-five, sixty or seventy shares, of existing TorreyPines common stock held by a TorreyPines stockholder immediately prior to the split effective time will be converted into one new share of TorreyPines common stock. The number of shares of common stock issued and outstanding will therefore be reduced, depending upon the reverse stock split ratio determined by the TorreyPines board of directors and approved by the Raptor board of directors. The amendment to the restated certificate of incorporation that is filed to effect the reverse stock split, if any, will include only the reverse split ratio determined by the boards of directors of TorreyPines and Raptor, respectively, that causes the combined company's stock price to be at least \$4.00 per share and which is determined to be in the best interests of the stockholders of TorreyPines and Raptor, respectively, and all of the other proposed amendments at different ratios will be abandoned. The exact split ratio will be publicly announced by TorreyPines.

Stockholders of record of TorreyPines common stock on the record date for the TorreyPines annual meeting will also be asked to approve the amendment to TorreyPines' certificate of incorporation to change the name of the corporation from TorreyPines Therapeutics, Inc. to Raptor Pharmaceuticals Corp. upon consummation of the merger, which requires the affirmative vote of the holders of a majority of the shares of TorreyPines common stock having voting power outstanding on the record date for the TorreyPines annual meeting.

### **Conditions to the Completion of the Merger**

Each party's obligation to complete the merger is subject to the satisfaction or waiver by each of the parties, at or prior to the effective time of the merger, of various conditions, which include the following:

the registration statement on Form S-4, of which this joint proxy statement/prospectus is a part, must have been declared effective by the SEC in accordance with the Securities Act and must not be subject to any stop order, or any proceeding initiated or threatened by the SEC, seeking a stop order;

stockholders of Raptor must have adopted the merger agreement, and stockholders of TorreyPines must have approved the issuance of TorreyPines common stock, and the amendment to TorreyPines

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certificate of incorporation effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. ;

TorreyPines must have caused the shares of TorreyPines common stock Raptor stockholders will be entitled to receive pursuant to the merger to be approved for listing on the NASDAQ Capital Market, or if agreed to by TorreyPines and Raptor, the NASDAQ Global Market, following the closing of the merger;

there must not have been issued and remain in effect any temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the merger, and no law, statute, rule, regulation, ruling or other legal requirement shall be in effect which has the effect of making the consummation of the merger illegal or otherwise prohibits or interferes with the consummation of the merger;

there must not be any legal proceeding pending by any governmental body: (1) challenging or seeking to restrain or prohibit the consummation of the merger or any other transaction contemplated by the merger agreement; (2) relating to the merger and seeking to obtain from TorreyPines, merger sub or Raptor any damages or other relief that may be material to TorreyPines or Raptor; (3) seeking to prohibit or limit in any material respect a Raptor s stockholder s ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of TorreyPines; (4) that could materially and adversely affect the right or ability of TorreyPines or Raptor to own the assets or operate the business of TorreyPines or Raptor; (5) seeking to compel Raptor, TorreyPines or any of their respective subsidiaries to dispose of or hold separate any material assets as a result of the merger or any other transaction contemplated by the merger agreement; or (6) or which, if adversely determined, would reasonably be expected to have a material adverse affect on TorreyPines or Raptor.

In addition, each party s obligation to complete the merger is further subject to the satisfaction (or waiver by that party) of the following additional conditions:

all representations and warranties of the other non-affiliated party (or parties) in the merger agreement must be true and correct on the date of the merger agreement and on the closing date of the merger with the same force and effect as if made on the date on which the merger is to be completed or, if such representations and warranties address matters as of a particular date, then as of that particular date, except where the failure of these representations and warranties to be true and correct, disregarding any materiality qualifications, individually or in the aggregate, would not reasonably be expected to have a material adverse effect on the non-affiliated party (or parties) making the representations and warranties, or except to the extent that any representation and/or warranty shall not be true and correct due to those activities specifically permitted by the merger agreement, and such non-affiliated party (or parties) shall have delivered a certificate of its (or their) chief executive officer and chief financial officer to such effect;

the other non-affiliated party (or parties) to the merger agreement must have performed or complied with in all material respects all covenants and obligations required to be performed or complied with by it (or them) on or before the closing of the merger and such non-affiliated party (or parties) shall have delivered a certificate of one of its (or their) executive officers to such effect;

there shall not have occurred and be continuing a material adverse effect on the other non-affiliated party (or parties);

all consents from any third person required to be obtained by the other non-affiliated party (or parties) shall have been obtained, made or given and such consents must be in full force and effect at the closing of the merger; and

the other non-affiliated party (or parties) must have delivered the documents required under the merger agreement for the closing of the merger.



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In addition, the obligation of TorreyPines and the merger sub to complete the merger is further subject to the satisfaction or waiver of the following condition:

TorreyPines must have received the opinion of Cooley Godward Kronish LLP, dated as of the closing date of the merger, to the effect that, on the basis of the facts, representations and assumptions set forth or referred to in such opinion, the merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code.

In addition, the obligation of Raptor to complete the merger is further subject to the satisfaction or waiver of the following conditions:

TorreyPines must have obtained all necessary permits and authorizations under any state blue sky laws, the Securities Act and the Exchange Act relating to the issuance of the TorreyPines common stock to be issued in the merger and such permits and authorizations shall be in effect at the closing of the merger;

TorreyPines must have more than \$0 in Net Cash as measured on closing date of the merger agreement;

TorreyPines must have completed the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. ;

TorreyPines must have delivered to Raptor written resignations of the officers and directors of TorreyPines and merger sub;

the stockholders of Raptor holding not more than 10% of the Raptor common stock outstanding immediately prior to the effective time of the merger shall have exercised their dissenters' rights under Section 262 of the DGCL; *provided, however*; that such percentage shall not include any shares of Raptor common stock held by a director or executive officer of Raptor or the 13,128,332 shares of Raptor common stock held by Aran Asset Management SA as of the date of the merger agreement;

Raptor must have received the opinion of Paul, Hastings, Janofsky & Walker LLP, dated as of the closing date of the merger, to the effect that, on the basis of the facts, representations and assumptions set forth or referred to in such opinion, the merger will be treated for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code;

Each of TorreyPines existing directors must resign; and

Raptor must have received an executed release and waiver of claims agreement from each of Evelyn Graham, Craig Johnson and Paul Schneider, TorreyPines' Chief Executive Officer, Chief Financial Officer and Vice President and General Counsel, respectively.

Net Cash is defined in the merger agreement, generally, as the sum of (a) (i) TorreyPines' cash and cash equivalents, short-term investments, net and restricted cash, and (ii) all tax refunds and refunds of prepaid expenses due and owing to TorreyPines or any of its subsidiaries that have not been received as of the closing of the merger agreement, minus (b) the sum of all liabilities and obligations of TorreyPines and any of its subsidiaries (other than all costs and expenses which are the exclusive responsibility of Raptor as described in the merger agreement).

## **No Solicitation**

Each of TorreyPines and Raptor agreed that, except as described below, TorreyPines and Raptor and any of their respective subsidiaries will not, nor will either party or any of its subsidiaries authorize or permit any of the officers, directors, Raptor, employees, agents, attorneys, accountants, advisors and representatives retained by it or any of its subsidiaries to, directly or indirectly:

solicit, initiate, encourage, induce or knowingly facilitate the making, submission or announcement of, any acquisition proposal, as defined below, or any action that could reasonably be expected to lead to an acquisition proposal;



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furnish any information regarding such party or any of its subsidiaries to any person in connection with or in response to an acquisition proposal or an inquiry or indication of interest that could reasonably be expected to lead to an acquisition proposal;

engage in discussions or negotiations with any person with respect to any acquisition proposal;

approve, endorse or recommend an acquisition proposal; or

enter into any letter of intent or similar document or any contract contemplating or otherwise relating to an acquisition transaction, as defined below.

An acquisition proposal means any offer, proposal, inquiry or indication of interest (other than by a party to the merger agreement) with respect to an acquisition transaction, as defined below.

An acquisition transaction means any transaction or series of transactions involving:

any merger, consolidation, share exchange, business combination, issuance or acquisition of securities, tender offer, exchange offer or similar transaction: (1) in which Raptor, TorreyPines or merger sub (or any of their respective subsidiaries) is a constituent corporation, (2) in which any individual, entity, governmental entity, or group, as defined under applicable securities laws, directly or indirectly acquires beneficial or record ownership of securities representing more than 15% of the outstanding securities of any class of voting securities of Raptor, TorreyPines or merger sub or any of their respective subsidiaries or (3) in which Raptor, TorreyPines or merger sub or any of their respective subsidiaries issues or sells securities representing more than 15% of the outstanding voting securities of any class of voting securities of such party or any of its respective subsidiaries; and

any sale, lease (other than in the ordinary course of business), exchange, transfer, license (other than in the ordinary course of business), acquisition or disposition of any business or assets that constitute 15% or more of the consolidated net revenues, net income or book value of the assets (on a book value or fair market value basis) of Raptor, TorreyPines or merger sub and their respective subsidiaries, as applicable.

Notwithstanding the foregoing, the following transactions have been excluded from the definition of acquisition transaction and the non-solicitation provisions do not restrict any of the following activities:

any issuance of securities or series of issuances of securities by Raptor at any time, which is for capital-raising purposes;

any one or a series of transactions involving a licensing, partnership, joint or collaborative venture, co-development or co-promotion agreement or similar arrangement involving one or more of Raptor's product candidates or potential product candidates or the acquisition of assets, a business or a product line so long as such transactions, individually or in the aggregate, do not result in a change of control transaction (as defined below); or

contacting potential partners with regard to a potential transaction related to NGX426 as contemplated in the amended and restated employment agreements with TPTX, Inc. (as described in this joint proxy statement/prospectus), any contract for which, or the consummation of which, has been approved by Raptor in writing.

For purposes of the merger agreement, change of control transaction means (i) a merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction as a result of which either (A) Raptor's stockholders immediately prior to such transaction in the aggregate cease to own at least 50% of the voting securities of the entity surviving or resulting from such transaction (or the ultimate parent entity thereof) or (B) in which a person or group (as defined in the Exchange Act and the rules promulgated thereunder) directly or indirectly acquires beneficial or record ownership of

securities representing 50% or more

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of Raptor's capital stock or (ii) a sale, lease, exchange, transfer, license or disposition of any business or other disposition of at least 50% of the assets (on a book value or fair market value basis) or intellectual property of Raptor and its subsidiaries, taken as a whole, as applicable, in a single transaction or a series of related transactions.

However, before obtaining the applicable TorreyPines or Raptor stockholder approvals required to consummate the merger, each party may furnish non-public information regarding such party to, and may enter into discussions or negotiations with, any third party in response to a superior proposal (as defined below) or a bona fide unsolicited written acquisition proposal made or received after the date of the merger agreement, that is reasonably likely to result in a superior proposal if:

neither such party nor any representative of such party has breached the no solicitation provisions of the merger agreement described above;

that party's board of directors concludes in good faith, after having taken into account the advice of outside legal counsel, that the failure to take such action is reasonably likely to result in a breach of the fiduciary duties of such board of directors under applicable legal requirements;

such party gives the other party at least two business days' prior notice of the identity of the third party and of such party's intention to furnish non-public information to, or enter into discussions or negotiations with, such third party before furnishing any non-public information or entering into discussions or negotiations with such person;

such party receives from the third party an executed confidentiality agreement containing customary limitations on the use and disclosure of all nonpublic information furnished to such third party and standstill provisions at least as favorable to such party as those contained in the confidentiality agreement between TorreyPines and Raptor; and

at least two business days' prior to the furnishing of any non-public information to a third party, such party furnishes the same non-public information to the other party to the extent not previously furnished.

For purposes of the merger agreement, superior proposal means, with respect to a party to the merger agreement, an unsolicited, bona fide written offer made by a third person to enter into (i) a merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction as a result of which either (A) such party's stockholders immediately prior to such transaction in the aggregate cease to own at least 50% of the voting securities of the entity surviving or resulting from such transaction (or the ultimate parent entity thereof) or (B) in which a person or group (as defined in the Exchange Act and the rules promulgated thereunder) directly or indirectly acquires beneficial or record ownership of securities representing 50% or more of such party's capital stock or (ii) a sale, lease, exchange transfer, license or disposition of any business or other disposition of at least 50% of the assets (on a book value or fair market value basis) of such party or its subsidiaries, taken as a whole, in a single transaction or a series of related transactions that: (a) was not obtained or made as a direct or indirect result of a breach of (or in violation of) the no-solicitation provisions of the merger agreement; and (b) is on terms and conditions that the board of directors of such party, determines, in its good faith judgment, after obtaining and taking into account such matters that its board of directors deems relevant following consultation with its outside legal counsel and financial advisor: (x) is more favorable, from a financial point of view, to such party's stockholders, than the terms of the merger; and (y) is reasonably capable of being consummated.

An offer shall not be deemed to be a superior proposal if (i) any financing required to consummate the transaction contemplated by such offer is not committed unless the board of directors of TorreyPines or Raptor, as applicable, determines in good faith, that any required financing is reasonably capable of being obtained by such third person, or (ii) the consummation of such transaction is contingent on any such financing being obtained.

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The merger agreement also provides that each party will as of the date of the merger agreement, cease and cause to be terminated any then-existing discussions with any third person that relate to any acquisition proposal, and further will promptly advise the other of the status and terms of, and keep the other party fully informed with respect to, any acquisition proposal or any inquiry or indication of interest that could reasonably be expected to lead to an acquisition proposal or request for nonpublic information relating to such party or its subsidiaries.

### **TorreyPines Stockholders Meeting; Obligation of the TorreyPines Board of Directors**

TorreyPines has agreed to take all action necessary to call, give notice of and, as promptly as practicable after the registration statement (of which this joint proxy statement/prospectus is a part) is declared effective under the Securities Act, hold a meeting of its stockholders to vote on the issuance of the TorreyPines common stock to be issued in the merger, the amendment to TorreyPines certificate of incorporation effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. . TorreyPines obligation to call, give notice of and hold a stockholders meeting shall not be limited or otherwise affected by the commencement, public proposal, public disclosure or communication of any acquisition proposal, or by any withdrawal or modification of the TorreyPines board recommendation, as discussed below.

TorreyPines has also agreed to include a statement in this joint proxy statement/prospectus to the effect that the TorreyPines board of directors unanimously recommends that TorreyPines stockholders vote to approve the issuance of the TorreyPines common stock to be issued in the merger, the amendment to TorreyPines certificate of incorporation effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp., such recommendation being referred to as the TorreyPines board recommendation. The merger agreement provides that the TorreyPines board recommendation may not be withdrawn or modified in a manner adverse to Raptor, and no resolution by the TorreyPines board of directors or any committee thereof to withdraw or modify the TorreyPines board recommendation in a manner adverse to Raptor may be adopted or proposed, except as provided below.

The merger agreement provides that the TorreyPines board of directors is entitled to withdraw or modify the TorreyPines board recommendation in a manner adverse to Raptor under the following conditions: (i) if an acquisition proposal is made to TorreyPines and is not withdrawn; (ii) TorreyPines provides Raptor with at least three business days prior notice of any meeting of the TorreyPines board of directors at which such board will consider and determine whether such acquisition proposal is a superior proposal; (iii) the TorreyPines board of directors determines in good faith that such acquisition proposal constitutes a superior proposal; (iv) the TorreyPines board of directors determines in good faith, after taking into account such matters as it deems relevant following consultation with of TorreyPines outside legal counsel, that, in light of such superior proposal, the failure to withdraw or modify the TorreyPines board recommendation is reasonably likely to result in a breach of such board of directors fiduciary obligations under applicable law; and (v) none of TorreyPines nor any of its representatives shall have violated any of the solicitation restrictions on it as described above.

### **Raptors Stockholders Meeting; Obligation of the Raptor Board of Directors**

Raptor has agreed to take all action necessary to call, give notice of and, as promptly as practicable after the registration statement (of which this joint proxy statement/prospectus is a part) is declared effective under the Securities Act, hold a meeting of its stockholders to vote on the adoption of the merger agreement. Raptor s obligation to call, give notice of and hold a stockholders meeting shall not be limited or otherwise affected by the commencement, public proposal, public disclosure or communication of any acquisition proposal, or by any withdrawal or modification of the Raptor board recommendation, as discussed below.

Raptor has also agreed to include a statement in this joint proxy statement/prospectus to the effect that the Raptor board of directors unanimously recommends that Raptor s stockholders vote to adopt the merger agreement at Raptor s stockholders meeting, such recommendation being referred to as the Raptor board recommendation. The merger agreement provides that the Raptor board recommendation may not be withdrawn

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or modified in a manner adverse to TorreyPines, and no resolution by the Raptor board of directors or any committee thereof to withdraw or modify the Raptor board recommendation in a manner adverse to TorreyPines may be adopted or proposed, except as provided below.

The merger agreement provides that the Raptor board of directors is entitled to withdraw or modify the Raptor board recommendation in a manner adverse to TorreyPines under the following conditions: (i) if an acquisition proposal is made to Raptor and is not withdrawn; (ii) Raptor provides TorreyPines with at least three business days prior notice of any meeting of the Raptor board of directors at which such board will consider and determine whether such acquisition proposal is a superior proposal; (iii) the Raptor board of directors determines in good faith that such acquisition proposal constitutes a superior proposal; (iv) the Raptor board of directors determines in good faith, after taking into account the advice of Raptor's outside legal counsel, that, in light of such superior proposal, the failure to withdraw or modify the Raptor board recommendation is reasonably likely to result in a breach of such board of directors' fiduciary obligations under applicable law; and (v) none of Raptor nor any of its representatives shall have violated any of the solicitation restrictions on it as described above.

### **Covenants; Conduct of Business Pending the Merger**

TorreyPines agreed that it will conduct its business in compliance with all applicable laws, regulations, and certain contracts, to keep in full force its insurance policies, and to take other agreed-upon actions. TorreyPines also agreed that, subject to certain limited exceptions, without the consent of Raptor, it would not, during the period prior to closing of the merger:

declare, set aside or pay any dividends on, any of its capital stock or other equity or voting interests;

split, combine or reclassify any of its capital stock;

purchase, redeem or otherwise acquire any shares of capital stock or any options, warrants, calls or rights to acquire any such shares;

issue, deliver, sell, pledge or otherwise encumber any shares of its capital stock, any other equity or voting interests or any securities convertible into, or exchangeable for, or any options, warrants, calls or rights to acquire or receive, any such shares, interests or securities (excluding other than the issuance of shares upon the exercise of outstanding options or warrants);

amend or propose to amend any of its certificate of incorporation or bylaws or effect or become a party to any merger, consolidation, share exchange, business combination, recapitalization or similar transaction;

acquire any business or any corporation, partnership, limited liability company, joint venture, association or division thereof;

acquire any material assets or a license therefor other than in the ordinary course of business consistent with past practices or incur any capital expenditures, except pursuant to existing contracts or that, in the aggregate, would not exceed \$25,000 during any fiscal quarter;

enter into any lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee);

sell, grant a license in, mortgage or otherwise encumber or dispose of any of its material properties or assets;

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repurchase, prepay or incur any indebtedness or guarantee any indebtedness of another person or issue or sell any debt securities or options, warrants, calls or other rights to acquire any of its debt securities, guarantee any debt securities of another person, or enter into any keep well or other agreement to maintain any financial statement condition of another person;

make any loans, advances or capital contributions to, or investments in, any other person, other than TorreyPines or any of its subsidiaries and except for customary travel advances to employees;

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pay, discharge, settle or satisfy any material claims, liabilities or obligations (excluding payments, discharges, settlements or satisfaction as required by their terms as in effect on the date of the merger agreement of claims, liabilities or obligations reflected or reserved against in the most recent audited financial statements (or the notes thereto) of TorreyPines included in its SEC reports (other than settlements or discharges of any legal proceedings);

waive, release, grant or transfer any right of material value other than in the ordinary course of business consistent with past practices;

commence any legal proceeding;

enter into any material contract except in the ordinary course of business consistent with past practices;

change or terminate any contract to which TorreyPines or any of its subsidiaries is a party, or waive, release or assign any rights or claims thereunder;

adopt or enter into any collective bargaining agreement or other labor union contract applicable to the employees of TorreyPines or any of its subsidiaries;

hire any new employee or promote any employee or engage any independent contractor;

increase in any manner the compensation or benefits of any employee, officer, director or independent contractor of TorreyPines or any of its subsidiaries;

except as required to comply with applicable laws or any contract or benefit plan in effect on the date of the merger agreement, (i) pay to any employee, officer, director or independent contractor of TorreyPines or any of its subsidiaries any benefit not provided for under any such contract or benefit plan, (ii) grant any awards under any benefit plan, (iii) take any action to fund or in any other way secure the payment of compensation or benefits under any contract or benefit plan, (iv) take any action to accelerate the vesting or payment of any compensation or benefit under any contract or benefit plan, (v) adopt, enter into or amend any benefit plan or (vi) make any material determination under any benefit plan;

(i) fail to accrue a reserve in its books and records and financial statements in accordance with past practice for taxes payable by TorreyPines or any of its subsidiaries, (ii) settle or compromise any legal proceeding relating to any material tax or (iii) revoke any material tax election;

except as required by GAAP or applicable laws, change its fiscal year, revalue any of its material assets or make any changes in financial or tax accounting methods, principles or practices;

take any action (or omit to take any action) if such action (or omission) would, or would be reasonably likely to result in any representation and warranty of TorreyPines or any of its subsidiaries set forth in this Agreement becoming untrue in any material respect;

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take any action with respect to the dissolution, liquidation or winding up of TorreyPines or any of its subsidiaries; or

authorize any of, or commit, resolve or agree to take any of, the foregoing actions.

Raptor agreed that it will conduct its business in the ordinary course consistent with past practices and in compliance with all applicable laws, regulations and certain contracts, and to take other agreed-upon actions. Raptor also agreed that, subject to certain exceptions, without the consent of TorreyPines, it would not, during the period prior to the closing of the merger:

take any action (or omit to take any action) if such action (or omission) would, or would be reasonably likely to result in any representation and warranty of Raptor or any of its subsidiaries set forth in this Agreement becoming untrue in any material respect;  
or

authorize any of, or commit, resolve or agree to take any of, the foregoing actions.



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Notwithstanding the foregoing, pursuant to the merger agreement, Raptor may, without the consent of TorreyPines, (i) issue securities at any time for capital-raising purposes and (ii) enter into any transactions involving a licensing, partnership, joint or collaborative venture, co-development or co-promotion agreement or similar arrangement involving one or more of Raptor's product candidates or potential product candidates or the acquisition of assets, a business or a product line so long as such transactions, individually or in the aggregate, do not result in a change of control transaction (as defined in the merger agreement and as set forth above).

## **Other Agreements**

Each of TorreyPines and Raptor has agreed to use its commercially reasonable efforts to:

file or otherwise submit all notices and other documents required to be filed or made with respect to the merger;

take all actions necessary to complete the merger;

coordinate with the other in preparing and exchanging information and promptly provide the other with copies of all filings or submissions made in connection with the merger;

obtain all consents, approvals or waivers required in connection with the transactions contemplated by the merger agreement;

oppose or lift any injunction prohibiting the merger; and

consult and agree with each other about any public statement either will make concerning the merger, subject to certain exceptions. TorreyPines and Raptor also agreed that:

TorreyPines will file an initial listing application for the TorreyPines common stock to be issued in the merger on the NASDAQ Capital Market or, to the extent agreed by TorreyPines and Raptor, the NASDAQ Global Market, and use its commercially reasonable efforts to cause such initial listing application to be approved for listing (subject to issuance) prior to the effective time of the merger;

TorreyPines and Raptor shall use commercially reasonable efforts to cause the merger to qualify as a reorganization under Section 368(a) of the U.S. internal revenue code;

TorreyPines shall use commercially reasonable efforts to obtain and deliver the resignation of each officer and director of TorreyPines and its subsidiaries;

Raptor, TorreyPines and merger sub shall take all such commercially reasonable steps as may be required to cause the transactions contemplated by the merger agreement and any other dispositions of equity securities of Raptor (including derivative securities) or acquisitions of equity securities of TorreyPines in connection with the merger by each individual who (a) is a director or officer of Raptor, or (b) at the effective time of the merger will become a director or officer of TorreyPines, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

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TorreyPines shall, if requested to do so by Raptor, terminate all of TorreyPines defined contribution 401(k) plans;

TorreyPines shall have taken or caused to be taken all necessary corporate action such that immediately after the effective time of the merger the board of directors and the officers, respectively, of TorreyPines shall be composed of certain of the members of the board of directors and the officers, respectively, of Raptor.

TorreyPines shall cause to be filed with the Secretary of State of the State of Delaware an amendment to its certificate of incorporation effecting the reverse stock split and changing the name of TorreyPines to Raptor Pharmaceutical Corp.

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### **Termination**

The merger agreement may be terminated at any time before the completion of the merger, whether before or after the required TorreyPines and Raptor stockholder approvals to complete the merger have been obtained, as set forth below:

by mutual written consent of TorreyPines and Raptor duly authorized by the boards of directors of TorreyPines and Raptor;

by either TorreyPines or Raptor if the merger shall not have been consummated by November 30, 2009 (unless the failure to consummate the merger is attributable to a failure on the part of the party seeking to terminate the merger agreement to perform any material obligation required to be performed by such party at or prior to the effective time of the merger);

by either TorreyPines or Raptor if a court of competent jurisdiction or other governmental body shall have issued a final and nonappealable order, decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the merger;

by either TorreyPines or Raptor if the stockholders of TorreyPines have not approved the issuance of shares of TorreyPines common stock to be issued in the merger and the amendment to the certificate of incorporation of TorreyPines effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. at the TorreyPines annual stockholders meeting (including any adjournments and postponements thereof), but such party shall not be permitted to terminate the merger agreement pursuant to this provision if the failure to obtain such stockholder approval is attributable to a failure on the part of such party to perform any material obligation required to be performed by such party at or prior to the effective time of the merger;

by either TorreyPines or Raptor if the stockholders of Raptor have not approved and adopted the merger agreement at the Raptor annual stockholders meeting (including any adjournments and postponements thereof), but such party shall not be permitted to terminate the merger agreement pursuant to this provision if the failure to obtain such stockholder approval is attributable to a failure on the part of such party to perform any material obligation required to be performed by such party at or prior to the effective time of the merger;

by Raptor, at any time prior to the TorreyPines stockholders having voted their shares of TorreyPines common stock in favor of the issuance of the TorreyPines common stock to be issued in the merger, the amendment to the certificate of incorporation of TorreyPines effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. , if:

the board of directors of TorreyPines fails to recommend that TorreyPines stockholders vote to approve the issuance of the TorreyPines common stock to be issued in the merger, the amendment to the certificate of incorporation of TorreyPines effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. , or withdraws or modifies its recommendation in a manner adverse to Raptor;

TorreyPines shall have failed to include in this joint proxy statement/prospectus its board recommendation;

the board of directors of TorreyPines shall have failed to reaffirm, unanimously and without qualification, its recommendation, or shall have failed to publicly state, unanimously and without qualification, that it believes that the merger is in the best interests of TorreyPines stockholders, within five business days after Raptor requests in writing that such action be taken;

the board of directors of TorreyPines shall have approved, endorsed or recommended any acquisition proposal, as defined in the section titled, The Merger Agreement No Solicitation in this joint proxy statement/prospectus;

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TorreyPines or any of its subsidiaries (or representatives of any of them) shall have failed to comply with the non-solicitation provisions in the merger agreement, such provisions as discussed in the section titled, "The Merger Agreement - No Solicitation" in this joint proxy statement/prospectus;

a tender or exchange offer relating to securities of TorreyPines shall have been commenced and TorreyPines shall not have released to its stockholders, within 10 business days after the commencement of such tender or exchange offer, a statement disclosing that the board of directors recommends rejection of such tender or exchange offer; or

an acquisition proposal shall have been publicly announced, and TorreyPines shall have failed to issue a press release announcing its opposition to such acquisition proposal within 10 business days after such acquisition proposal is announced (each of the above clauses is referred to as a TorreyPines triggering event); or

by TorreyPines, at any time prior to the Raptor stockholders having voted their shares of Raptor common stock in favor of the adoption of the merger agreement, if:

the board of directors of Raptor fails to recommend that Raptor's stockholders vote to approve the merger and adopt the merger agreement, or withdraws or modifies its recommendation in a manner adverse to TorreyPines;

Raptor shall have failed to include in this joint proxy statement/prospectus its board recommendation;

the board of directors of Raptor shall have failed to reaffirm, unanimously and without qualification, its recommendation, or shall have failed to publicly state, unanimously and without qualification, that it believes that the merger is in the best interests of Raptor's stockholders, within five business days after TorreyPines requests in writing that such action be taken;

the board of directors of Raptor shall have approved, endorsed or recommended any acquisition proposal, as defined in the section titled, "The Merger Agreement - No Solicitation" in this joint proxy statement/prospectus;

Raptor or any of its subsidiaries (or representatives of any of them) shall have failed to comply with the non-solicitation provisions in the merger agreement, such provisions as discussed in the section titled, "The Merger Agreement - No Solicitation" in this joint proxy statement/prospectus;

a tender or exchange offer relating to securities of Raptor shall have been commenced and Raptor shall not have released to its stockholders, within 10 business days after the commencement of such tender or exchange offer, a statement disclosing that the board of directors recommends rejection of such tender or exchange offer;

an acquisition proposal shall have been publicly announced, and Raptor shall have failed to issue a press release announcing its opposition to such acquisition proposal within 10 business days after such acquisition proposal is announced (each of the above clauses is referred to as a Raptor triggering event); or

by TorreyPines or Raptor, upon a breach of any representation, warranty, covenant or agreement on the part of the other, non-affiliated party, or if any representation or warranty of the other, non-affiliated party shall have become inaccurate, in either case such that the conditions to the closing of the merger would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate, provided that if such inaccuracy or breach is curable, then the merger

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agreement will not terminate pursuant to this provision as a result of such particular breach or inaccuracy until the earlier of (i) the expiration of a thirty (30) day period commencing upon delivery of written notice from the non-breaching party to the other, non-affiliated party of such breach or inaccuracy and (ii) the other, non-affiliated, breaching party ceasing to exercise commercially reasonable efforts to cure such breach (if such breach has not been cured).

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### **Expenses and Reimbursements**

TorreyPines must reimburse Raptor's expenses in the merger, up to a maximum of \$250,000, if:

the merger agreement is terminated because TorreyPines' stockholders do not approve the issuance of the TorreyPines common stock to be issued in the merger and the amendment to the certificate of incorporation of TorreyPines effecting the reverse stock split and the name change from TorreyPines Therapeutics, Inc. to Raptor Pharmaceutical Corp. and a bid acquisition proposal, as defined above in the section titled, The Merger Agreement No Solicitation, with respect to TorreyPines was publicly announced, disclosed or otherwise communicated to the board of directors of TorreyPines prior to the TorreyPines stockholders' annual meeting and TorreyPines enters into an agreement for, or consummates, an acquisition transaction within 6 months of the termination; or

the merger agreement is terminated by Raptor because of a TorreyPines triggering event.  
Raptor must reimburse TorreyPines' expenses in the merger, up to a maximum of \$250,000, if:

the merger agreement is terminated because Raptor's stockholders do not adopt the merger agreement and an acquisition proposal, as defined above in the section titled, The Merger Agreement No Solicitation, with respect to Raptor was publicly announced, disclosed or otherwise communicated to the board of directors of Raptor prior to the Raptor stockholders' annual meeting and Raptor enters into an agreement for, or consummates, an acquisition transaction; or

the merger agreement is terminated by TorreyPines because of a Raptor triggering event.  
The provisions in the merger agreement that obligate Raptor and TorreyPines to incur or reimburse expenses, as applicable, including those set forth above, survive the termination of the merger agreement.

### **Representations and Warranties**

The merger agreement contains representations and warranties that TorreyPines and merger sub, on the one hand, and Raptor, on the other hand, have made to one another a