

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **February 20, 2004**

VERTEX PHARMACEUTICALS INCORPORATED

(Exact name of registrant as specified in its charter)

MASSACHUSETTS
(State or other jurisdiction
of incorporation)

000-19319
(Commission File Number)

04-3039129
(IRS Employer
Identification No.)

130 Waverly Street
Cambridge, Massachusetts 02139
(Address of principal executive offices) (Zip Code)

(617) 444-6100
Registrant's telephone number, including area code:

Item 5. Other Events and Regulation FD Disclosure.

On February 13, 2004, Vertex Pharmaceuticals Incorporated completed the exchange of approximately \$153 million in aggregate principal amount of its 5% Convertible Subordinated Notes due 2007 for approximately \$153 million in aggregate principal amount of newly issued 5.75% Convertible Senior Subordinated Notes due 2011 (the "Exchange").

In connection with the Exchange, copies of the Indenture, the Dealer Manager Agreement and the Resale Registration Rights Agreement are filed as exhibits to this Current Report on Form 8-K and are incorporated by reference herein.

Item 7. Financial Statements and Exhibits.

(c) The following exhibits are filed with this report:

<u>Exhibit Number</u>	<u>Description</u>
4.1	Indenture, dated as of February 13, 2004, between Vertex Pharmaceuticals Incorporated and US Bank National Association, as Trustee.
10.1	Dealer Manager Agreement, dated February 10, 2004, between the Company and the Dealer Manager.
10.2	Resale Registration Rights Agreement, dated as of February 13, 2004, among the Company and UBS Securities LLC.

SIGNATURES

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

VERTEX PHARMACEUTICALS
INCORPORATED
(Registrant)

EXHIBIT INDEX

The following exhibit is furnished as part of this current report on Form 8-K:

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10.1	Dealer Manager Agreement, dated February 10, 2004, between the Company and the Dealer Manager.
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INDENTURE
BETWEEN
VERTEX PHARMACEUTICALS INCORPORATED,
AS ISSUER
AND
U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE
5¾% CONVERTIBLE SENIOR SUBORDINATED NOTES DUE 2011
DATED AS OF FEBRUARY 13, 2004

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	5.11
(a)(2)	5.11
(a)(3)	n/a
(a)(4)	n/a
(a)(5)	5.11
(b)	5.3; 5.11
(c)	n/a
311(a)	5.12
(b)	5.12
(c)	n/a
312(a)	2.10
(b)	14.3
(c)	14.3
313(a)	5.7
(b)(1)	n/a
(b)(2)	5.7
(c)	5.7; 14.2
(d)	5.7
314(a)(1), (2), (3).	9.6; 14.6
(a)(4)	9.6; 9.7; 14.6
(b)	n/a
(c)(1)	14.5
(c)(2)	14.5
(c)(3)	n/a
(d)	n/a
(e)	14.6
(f)	n/a
315(a)	5.1(a)

Trust Indenture Act Section	Indenture Section
(b)	5.6; 14.2
(c)	5.1(b)
(d)	5.1(c)
(e)	4.14
316(a)(last sentence)	2.13
(a)(1)(A)	4.5
(a)(1)(B)	4.4
(a)(2)	n/a
(b)	4.7
(c)	7.4
317(a)(1).	4.8
(a)(2)	4.9
(b)	2.5

“n/a” means not applicable.

*This Cross-Reference Table shall not, for any purpose, be deemed to be a part of the Indenture.

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EXHIBITS
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INDENTURE, dated as of February 13, 2004, between VERTEX PHARMACEUTICALS INCORPORATED, a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, having its principal office at 130 Waverly Street, Cambridge, Massachusetts 02139 (the “Company”), and U.S. BANK NATIONAL ASSOCIATION, as trustee (the “Trustee”), having its principal corporate trust office at One Federal Street, Boston, Massachusetts 02110.

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 5¾% Convertible Senior Subordinated Notes due February 15, 2011 (herein called the “Securities”) of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Securities, when the Securities are executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 Definitions.

For all purposes of this Indenture and the Securities, the following terms are defined as follows:

“Act,” when used with respect to any Holder of a Security, has the meaning specified in Section 14.4(a) hereof.

“Adjusted Interest Rate” means, with respect to any Reset Transaction, the rate per annum that is the arithmetic average of the rates quoted by two Reference Dealers selected by the Company or its successor as the rate at which interest on the Securities should accrue so that the fair market value, expressed in dollars, of a Security immediately after the later of:

- (1) the public announcement of such Reset Transaction; or
- (2) the public announcement of a change in dividend policy in connection with such Reset Transaction,

will equal the average Trading Price of a Security for the 20 Trading Days preceding the date of public announcement of such Reset Transaction; provided, that, the Adjusted Interest Rate shall not be less than 5% per annum.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Bankruptcy Law” means Title 11 of the U.S. Code or any similar federal or state law for the relief of debtors.

“Board of Directors” means either the board of directors of the Company or any committee of that board empowered to act for it with respect to this Indenture.

“Board Resolution” means a resolution duly adopted by the Board of Directors, a copy of which, certified by the Secretary or an Assistant Secretary of the Company to be in full force and effect on the date of such certification, shall have been delivered to the Trustee.

“Business Day,” when used with respect to any Place of Payment or Place of Conversion, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment or Place of Conversion, as the case may be, are authorized or obligated by law to close.

“Change of Control” means the occurrence of any of the following after the original issuance of the Securities:

(1) the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of shares of capital stock of the Company entitling such person to exercise 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in elections of directors, other than any such acquisition by the Company, any subsidiary of the Company or any employee benefit plan of the Company;

(2) any consolidation or merger of the Company with or into any other person, any merger of another person into the Company, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of the properties and assets of the Company to another person, other than (a) any such transaction (x) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of capital stock of the Company and (y) pursuant to which holders of capital stock of the Company immediately prior to such transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of capital stock of the Company entitled to vote generally in the election of directors of the continuing or surviving person immediately after such transaction or (b) any merger which is effected

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solely to change the jurisdiction of incorporation of the Company and results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the surviving entity;

(3) during any consecutive two-year period, individuals who at the beginning of that two-year period constituted the Board of Directors (together with any new directors whose election to the Board of Directors, or whose nomination for election by the stockholders of the Company, was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose elections or nominations for election were previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office; or

(4) the Company is liquidated or dissolved or a resolution is passed by the Company’s stockholders approving a plan of liquidation or dissolution of the Company other than in a transaction which complies with the provisions described in Article 6 of the Indenture.

Beneficial ownership shall be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act. The term “person” shall include any syndicate or group which would be deemed to be a “person” under Section 13(d)(3) of the Exchange Act.

“Chief Executive Officer” means any chief executive officer of the Company.

“Closing Date” means February 13, 2004 or such later date on which the Securities may be delivered pursuant to the Dealer Manager Agreement.

“Closing Price” of any security on any date of determination means:

(1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security (regular way) on the New York Stock Exchange on such date;

(2) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. exchange on which such security is so listed;

(3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the Nasdaq National Market;

(4) if such security is not so reported, the last quoted bid price for such security in the over-the-counter market as reported by the National Quotation Bureau or similar organization; or

(5) if such bid price is not available, the average of the mid-point of the last bid and ask prices of such security on such date from at least three nationally recognized independent investment banking firms retained for this purpose by the Company.

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“Common Stock” means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. However, subject to the provisions of Section 12.11 hereof, shares issuable on conversion of Securities shall include only shares of the class designated as Common Stock, par value \$0.01 per share, of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company, provided that if at any time there shall be more than one

such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“Company” means the corporation named as the “Company” in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor corporation.

“Company Notice” has the meaning specified in Section 11.3 hereof.

“Company Order” means a written order signed in the name of the Company by both (1) the Chief Executive Officer, the President or a Vice President and (2) so long as not the same as the officer signing pursuant to clause (1), the Chief Financial Officer, the Treasurer or the Secretary of the Company, and delivered to the Trustee.

“Conversion Agent” means any Person authorized by the Company to convert Securities in accordance with Article 12 hereof.

“Conversion Price” has the meaning specified in Section 12.1 hereof.

“Corporate Trust Office” means for purposes of presentation or surrender of Securities for payment, registration, transfer, exchange or conversion or for service of notices or demands upon the Company, the office of the Trustee located in the City of New York (which at the date of this Indenture is located at 100 Wall Street, New York, NY 10005), and for all other purposes, the office of the Trustee located in Boston, Massachusetts (which at the date of this Indenture is located at One Federal Street, Boston, Massachusetts 02110).

“Corporation” means corporations, associations, limited liability companies, companies and business trusts.

“Current Market Price” has the meaning set forth in Section 12.4(g).

“Custodian” means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

“Dealer Manager” means UBS Securities LLC.

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“Dealer Manager Agreement” means the Dealer Manager Agreement, dated February 10, 2004, between the Company and the Dealer Manager.

“Default” means an event which is, or after notice or lapse of time or both would be, an Event of Default.

“Defaulted Interest” has the meaning specified in Section 2.17 hereof.

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Designated Senior Debt” means Senior Debt of the Company which, at the date of determination, has an aggregate amount outstanding of, or under which, at the date of determination, the holders thereof are committed to lend up to, at least \$20 million and is specifically designated in the instrument evidencing or governing that Senior Debt as “Designated Senior Debt” for purposes of this Indenture, provided, that, such instrument may place limitations and conditions on the right of such Senior Debt to exercise the rights of Designated Senior Debt.

“Dividend Yield” on any security for any period means the dividends paid or proposed to be paid pursuant to an announced dividend policy on such security for such period divided by, if with respect to dividends paid on such security, the average Closing Price of such security during such period and, if with respect to dividends proposed to be paid on such security, the Closing Price of such security on the effective date of the related Reset Transaction.

“Dollar,” “U.S. Dollar” or “U.S. \$” means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

“DTC Participants” has the meaning specified in Section 2.8 hereof.

“Event of Default” has the meaning specified in Section 4.1 hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Expiration Time” has the meaning specified in Section 12.4(f) hereof.

“Fair market value” has the meaning set forth in Section 12.4(g) hereof.

“Global Security” has the meaning specified in Section 2.2 hereof.

“Guarantee” means any obligation, contingent or otherwise, of any Person, directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods,

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securities or services, to take-or-pay, or maintain financial statement conditions or otherwise); or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

“Holder,” when used with respect to any Security, means the Person in whose name the Security is registered in the Register.

“Indebtedness,” when used with respect to any Person, and without duplication means:

(1) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of the Company in respect of overdrafts, foreign exchange contracts, currency exchange agreements, Interest Rate Protection Agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by bonds, debentures, notes or other instruments for the payment of money, or incurred in connection with the acquisition of any property, services or assets (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof), other than any account payable or other accrued current liability or obligation to trade creditors incurred in the ordinary course of business in connection with the obtaining of materials or services;

(2) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees, bankers’ acceptances, surety bonds, performance bonds or other guaranty of contractual performance;

(3) all obligations and liabilities (contingent or otherwise) in respect of (a) leases of such Person required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person and (b) any lease or related documents (including a purchase agreement) in connection with the lease of real property which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the landlord and the obligations of such Person under such lease or related document to purchase or to cause a third party to purchase the leased property;

(4) all obligations of such Person (contingent or otherwise) with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement;

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(5) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (1) through (4);

(6) any indebtedness or other obligations described in clauses (1) through (4) secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and

(7) any and all deferrals, renewals, extensions, refinancings, replacements, restatements and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (1) through (6).

“Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

“Interest Payment Date” means each February 15 and August 15.

“Interest Rate” means, (a) if a Reset Transaction has not occurred, 5¾% per annum, or (b) following the occurrence of a Reset Transaction, the Adjusted Interest Rate related to such Reset Transaction to, but not including the effective date of any succeeding Reset Transaction.

“Interest Rate Protection Agreement” means, with respect to any Person, any interest rate swap agreement, interest rate cap or collar agreement or other financial agreement or arrangement designed to protect such person against fluctuations in interest rates, as in effect from time to time.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Liquidated Damages” means all liquidated damages, if any, payable pursuant to Section 3 of the Registration Rights Agreement.

“Maturity” means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by acceleration, conversion, call for redemption, exercise of a Repurchase Right or otherwise.

“Nasdaq National Market” means the National Association of Securities Dealers Automated Quotation National Market or any successor national securities exchange or automated over-the-counter trading market in the United States.

“Non-Electing Share” has the meaning specified in Section 12.11 hereof.

“Notice Date” has the meaning specified in Section 10.1 hereof.

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“Officer” of the Company means the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, any Vice President or the Secretary of the Company.

“Officers’ Certificate” means a certificate signed by both (1) the Chief Executive Officer, the President or a Vice President and (2) so long as not the same as the officer signing pursuant to clause (1), the Chief Financial Officer, the Treasurer or the Secretary of the Company, and delivered to the Trustee.

“Old Securities” means the Company’s 5% Convertible Subordinated Notes due 2007 issued on September 19, 2000.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel to the Company (and may include directors or employees of the Company) and which opinion is acceptable to the Trustee which acceptance shall not be unreasonably withheld.

“Outstanding,” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except Securities:

(1) previously canceled by the Trustee or delivered to the Trustee for cancellation;

(2) for the payment or redemption of which money in the necessary amount has been previously deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities, provided that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture; and

(3) which have been paid, in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Company.

“Paying Agent” has the meaning specified in Section 2.5 hereof.

“Payment Blockage Notice” has the meaning specified in Section 13.1(d) hereof.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, estate, unincorporated organization or government or any agency or political subdivision thereof.

“Physical Securities” has the meaning specified in Section 2.2 hereof.

“Place of Conversion” means any city in which any Conversion Agent is located.

“Place of Payment” means any city in which any Paying Agent is located.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 2.12 hereof in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Record Date” means either a Regular Record Date or a Special Record Date, as the case may be, provided that, for purposes of Section 12.4 hereof, Record Date has the meaning specified in Section 12.4(g) hereof.

“Reference Dealer” means a dealer engaged in the trading of convertible securities.

“Reference Period” has the meaning set forth in Section 12.4(d) hereof.

“Register” has the meaning specified in Section 2.5 hereof.

“Registrar” has the meaning specified in Section 2.5 hereof.

“Registration Rights Agreement” means the Resale Registration Rights Agreement dated February 13, 2004, between the Company and the Dealer Manager.

“Regular Record Date” for the interest on the Securities (including Liquidated Damages, if any) payable means the February 1 (whether or not a Business Day) next preceding a February 15 Interest Payment Date and the August 1 (whether or not a Business Day) next preceding a August 15 Interest Payment Date.

“Repurchase Date” has the meaning specified in Section 11.1 hereof.

“Repurchase Price” has the meaning specified in Section 11.1 hereof.

“Repurchase Right” has the meaning specified in Section 11.1 hereof.

“Reset Transaction” means (A) a merger, consolidation or statutory share exchange to which the entity that is the issuer of the shares of common stock into which the Securities are then convertible into is a party; (B) a sale of all or substantially all the assets of that entity; (C) a recapitalization of those shares of common stock; or (D) a distribution described in Section 12.4(d) hereof; after the effective date of which transaction or distribution the Securities would be convertible into:

(1) shares of an entity the common stock of which had a Dividend Yield for the four fiscal quarters of such entity immediately preceding the public announcement of such transaction or distribution that was more than 2.5% higher than the Dividend Yield on the Common Stock (or other common stock then issuable upon conversion of the Securities) for the four fiscal quarters preceding the public announcement of such transaction or distribution; or

(2) shares of an entity that announces a dividend policy prior to the effective date of such transaction or distribution which policy, if implemented, would result in a Dividend Yield on such entity's common stock for the next four fiscal quarters that would result in such a 2.5% increase.

"Responsible Officer," when used with respect to the Trustee, means any officer of the Trustee, including any vice president, assistant vice president, secretary, assistant secretary, the treasurer, any assistant treasurer, the managing director or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Restricted Securities" means the Securities defined as such in Section 2.3(a) hereof.

"Restricted Securities Legend" has the meaning set forth in Section 2.3(a) hereof.

"Rule 144" means Rule 144 as promulgated under the Securities Act (including any successor rule thereof), as the same may be amended from time to time.

"Rule 144A" means Rule 144A as promulgated under the Securities Act (including any successor rule thereof), as the same may be amended from time to time.

"SEC" means the Securities and Exchange Commission.

"Securities" has the meaning ascribed to it in the first paragraph under the caption "Recitals of the Company."

"Securities Act" means the Securities Act of 1933, as amended.

"Senior Debt" means the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) and rent payable on or termination payment with respect to or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, Indebtedness of the Company, whether outstanding on the date of this Indenture or subsequently created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing), except for (a) any Indebtedness that by its terms expressly provides that such Indebtedness shall not be senior in right of payment to the Securities or expressly provides that such Indebtedness is equal with or junior to the Securities and (b) any Indebtedness between or among the Company and/or any of its Subsidiaries or Affiliates and (c) any Indebtedness represented by the Company's 5% Convertible Subordinated Notes due 2007 issued on September 19, 2000. The term "Senior Debt" shall include, without limitation, all Designated Senior Debt.

"Significant Subsidiary" means any Subsidiary which is a "significant subsidiary" within the meaning of Rule 405 under the Securities Act.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.17 hereof.

"Stated Maturity" means the date specified in any Security as the fixed date for the payment of principal on such Security or on which an installment of interest (including Liquidated Damages, if any) on such Security is due and payable.

"Subsidiary" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition only, "voting stock" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"TIA" means the Trust Indenture Act of 1939 (15 U.S. Code Section 77aaa-77bbb), as in effect on the date of this Indenture; provided, however, that in the event the TIA is amended after such date, "TIA" means, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended, or any successor statute.

"Trading Day" means:

(1) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national security exchange, a day on which the New York Stock Exchange or such other national security exchange is open for business;

(2) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made thereon; or

(3) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Trading Price" of a security on any date of determination means:

(1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security (regular way) on the New York Stock Exchange on such date;

(2) if such security is not listed for trading on the New York Stock Exchange on any such date, the closing sale price as reported in the composite transactions for the principal U.S. securities exchange on which such security is so listed;

(3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the Nasdaq National Market;

(4) if such security is not so reported, the last price quoted by Interactive Data Corporation for such security or, if Interactive Data Corporation is not quoting such price, a similar quotation service selected by the Company;

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(5) if such security is not so quoted, the average of the mid-point of the last bid and ask prices for such security from at least two dealers recognized as market-makers for such security; or

(6) if such security is not so quoted, the average of the last bid and ask prices for such security from a Reference Dealer.

“Transfer Agent” means any Person, which may be the Company, authorized by the Company to exchange or register the transfer of Securities.

“Trigger Event” has the meaning specified in Section 12.4(d) hereof.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean such successor Trustee.

“U.S. Government Obligations” means: (1) direct obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (2) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America and which in either case, are non-callable at the option of the issuer thereof.

“Vice President,” when used with respect to the Company, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

SECTION 1.2 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“indenture securities” means the Securities;

“indenture security holder” means a Holder;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and

“obligor” on the Securities means the Company and any other obligor on the indenture securities.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule have the meanings assigned to them by such definitions.

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SECTION 1.3 Rules of Construction.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with accounting principles generally accepted in the United States prevailing at the time of any relevant computation hereunder; and

(3) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

ARTICLE 2

THE SECURITIES

The Securities shall be known and designated as the “5¾% Convertible Senior Subordinated Notes due 2011” of the Company. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is limited to \$153,135,000, except for securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of other Securities pursuant to Section 2.7, 2.8, 2.9, 2.12, 7.5, 10.8, 11.1 or 12.2 hereof. The Securities shall be issuable in denominations of \$1,000 or integral multiples thereof.

The Securities shall mature on February 15, 2011.

Interest shall accrue from February 13, 2004 at the Interest Rate until the principal thereof is paid or made available for payment. Interest shall be payable semiannually in arrears on February 15 and August 15 in each year, commencing August 15, 2004.

Interest on the Securities shall be computed (i) for any full semiannual period for which a particular Interest Rate is applicable on the basis of a 360-day year of twelve 30-day months and (ii) for any period for which a particular Interest Rate is applicable shorter than a full semiannual period for which interest is calculated, on the basis of a 30-day month and, for such periods of less than a month, the actual number of days elapsed over a 30-day month. For purposes of determining the Interest Rate, the Trustee may assume that a Reset Transaction has not occurred unless the Trustee has received an Officers' Certificate stating that a Reset Transaction has occurred and specifying the Adjusted Interest Rate then in effect.

A Holder of any Security at the close of business on a Regular Record Date shall be entitled to receive interest (including Liquidated Damages, if any) on such Security on the corresponding Interest Payment Date.

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A Holder of any Security which is converted after the close of business on a Regular Record Date and prior to the corresponding Interest Payment Date shall be entitled to receive interest (including Liquidated Damages, if any) on the principal amount of such Security on such Interest Payment Date, notwithstanding the conversion of such Security prior to such Interest Payment Date. However, any such Holder which surrenders any such Security for conversion during such period shall be required to pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted, which is payable by the Company to such Holder on such Interest Payment Date, at the time such Holder surrenders such Security for conversion. Notwithstanding the foregoing, any such Holder which surrenders for conversion during such period any Security which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.5 hereof (whether the redemption date for such Security is on such Interest Payment Date or otherwise) shall be entitled to receive (and retain) such interest (including Liquidated Damages, if any) and need not pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

Principal of, and premium, if any, and interest on, Global Securities shall be payable to the Depository in immediately available funds.

Principal and premium, if any, on Physical Securities, if any, shall be payable at the office or agency of the Company maintained for such purpose, initially the Corporate Trust Office of the Trustee. Interest on Physical Securities will be payable by (i) U.S. Dollar check drawn on a bank located in the city where the Corporate Trust Office of the Trustee is located mailed to the address of the Person entitled thereto as such address shall appear in the Register, or (ii) upon application to the Registrar not later than the relevant Record Date by a Holder of an aggregate principal amount in excess of \$5,000,000, wire transfer in immediately available funds.

The Securities shall be redeemable at the option of the Company as provided in Article 10 hereof.

The Securities shall have a Repurchase Right exercisable at the option of Holders as provided in Article 11 hereof.

The Securities shall be convertible as provided in Article 12 hereof.

The Securities shall be unsecured obligations of the Company and will be (i) senior in right of payment to Old Securities and any future obligations that are designated by the Company as subordinate to the Securities; (ii) equal in right of payment with any existing or future obligations that are designated by the Company as, or otherwise are determined to be, on a parity with the Securities and (iii) subordinated in right of payment to the prior payment in full of all of the existing and future Senior Debt of the Company, each as provided in Article 13 hereof. The Securities will constitute “Designated Senior Debt” for purposes of the indenture for the Old Securities.

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The Securities and the Trustee's certificate of authentication to be borne by such Securities shall be substantially in the form annexed hereto as Exhibit A, which is incorporated in and made a part of this Indenture. The terms and provisions contained in the form of Security shall constitute, and are hereby expressly made, a part of this Indenture and to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Securities may have such letters, numbers or other marks of identification and such notations, legends and endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Securities may be listed or designated for issuance, or to conform to usage.

The Securities will be offered and sold only to QIBs and shall be issued initially only in the form of one or more permanent Global Securities (each, a “Global Security”) in fully registered form without interest coupons. The Global Securities shall be:

- (1) duly executed by the Company and authenticated by the Trustee as hereinafter provided;

- (2) registered in the name of the Depository (or its nominee) for credit to the respective accounts of the Holders at the Depository; and
- (3) deposited with the Trustee, as custodian for the Depository.

The Global Securities shall be substantially in the form of Security set forth in Exhibit A annexed hereto (including the text and schedule called for by footnotes 1 and 2 thereto). The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository (or its nominee), in accordance with the instructions given by the Holder thereof, as hereinafter provided.

Securities issued in exchange for interests in the Global Securities pursuant to Section 2.8(d) hereof shall be issued in the form of permanent definitive Securities (the “Physical Securities”) in registered form without interest coupons. The Physical Securities shall be substantially in the form set forth in Exhibit A annexed hereto.

The Securities shall be typed, printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the Officers executing such Securities, as evidenced by their execution of such Securities.

SECTION 2.3 Legends.

(a) Restricted Securities Legends.

Each Security issued hereunder shall, upon issuance, bear the legend set forth in Section 2.3(a)(i) or Section 2.3(a)(ii) (each, a “Restricted Securities Legend”), as the case may be, and such legend shall not be removed except as provided in Section 2.3(a)(iii). Each Security that bears or is required to bear the Restricted Securities Legend set forth in Section 2.3(a)(i) (together with any Common Stock issued upon conversion of the Securities and required to bear the Restricted Securities Legend set forth in Section 2.3(a)(ii), collectively, the “Restricted Securities”) shall be subject to the restrictions on transfer set forth in this Section 2.3(a) (including the Restricted Securities Legend set forth below), and the Holder of each such Restricted Security, by such Holder’s acceptance thereof, shall be deemed to have agreed to be bound by all such restrictions on transfer.

As used in Section 2.3(a), the term “transfer” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(i) *Restricted Securities Legend for Securities.*

Except as provided in Section 2.3(a)(iii), until two years after the original issuance date of any Security, any certificate evidencing such Security (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof which shall bear the legend set forth in Section 2.3(a)(ii), if applicable) shall bear a Restricted Securities Legend in substantially the following form:

THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT); (2) AGREES THAT IT WILL NOT WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY RESELL OR OTHERWISE TRANSFER THE NOTE EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH NOTE EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (D) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT (AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER); AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE NOTE EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(D) ABOVE) A NOTICE

SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THE NOTE EVIDENCED HEREBY WITHIN TWO YEARS AFTER THE ORIGINAL ISSUANCE OF SUCH NOTE (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(D) ABOVE), THE HOLDER MUST CHECK THE APPROPRIATE BOX SET FORTH ON THE REVERSE HEREOF RELATING TO THE MANNER OF SUCH TRANSFER AND SUBMIT THIS CERTIFICATE TO STATE STREET BANK AND TRUST COMPANY, AS TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 2(C) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO STATE STREET BANK AND TRUST COMPANY, AS TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS AND OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THIS NOTE EVIDENCED HEREBY PURSUANT TO CLAUSE 2(C) OR 2(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY.

(ii) *Restricted Securities Legend for Common Stock Issued Upon Conversion of the Securities.*

Until two years after the original issuance date of any Security, any stock certificate representing Common Stock issued upon conversion of such Security shall bear a Restricted Securities Legend in substantially the following form:

THE COMMON STOCK EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. THE HOLDER HEREOF AGREES THAT UNTIL THE EXPIRATION OF TWO YEARS AFTER THE ORIGINAL ISSUANCE OF THE NOTE UPON THE CONVERSION OF WHICH THE COMMON STOCK EVIDENCED HEREBY WAS ISSUED, (1) IT WILL NOT RESELL OR OTHERWISE TRANSFER THE COMMON STOCK EVIDENCED HEREBY EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN COMPLIANCE WITH RULE 144A, (C) IN ACCORDANCE WITH THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR (D) IN ACCORDANCE WITH A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND THAT CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; (2) PRIOR TO ANY SUCH TRANSFER (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(D) ABOVE), IT WILL FURNISH TO EQUISERVE LIMITED

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PARTNERSHIP, AS TRANSFER AGENT (OR ANY SUCCESSOR, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS AND OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (3) IT WILL DELIVER TO EACH PERSON TO WHOM THE COMMON STOCK EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 1(D) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE COMMON STOCK EVIDENCED HEREBY PURSUANT TO CLAUSE 1(C) OR 1(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE NOTE UPON THE CONVERSION OF WHICH THE COMMON STOCK EVIDENCED HEREBY WAS ISSUED.

(iii) Removal of the Restricted Securities Legends.

Each Security or share of Common Stock issued upon conversion of such Security shall bear the Restricted Securities Legend set forth in Section 2.3(a)(i) or 2.3(a)(ii), as the case may be, until the earlier of:

(A) two years after the original issuance date of such Security;

(B) such Security or Common Stock has been sold (x) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale) or (y) pursuant to the exemption from registration provided by Rule 144 under the Securities Act (subject to the satisfaction of any requirement to furnish any certification, legal opinion or other information in accordance with the Restricted Securities Legend and this Indenture); or

(C) such Common Stock has been issued upon conversion of Securities that have been sold (x) pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale) or (y) pursuant to the exemption from registration provided by Rule 144 under the Securities Act (subject to the satisfaction of any requirement to furnish any certification, legal opinion or other information in accordance with the Restricted Securities Legend and this Indenture).

The Holder must give notice thereof to the Trustee and any transfer agent for the Common Stock, as applicable.

Notwithstanding the foregoing, the Restricted Securities Legend may be removed if there is delivered to the Company such satisfactory evidence, which may include an opinion of independent counsel, as may be reasonably required by the Company that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such Security will not violate the registration requirements of the Securities Act. Upon provision of

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such satisfactory evidence, the Trustee, at the written direction of the Company, shall authenticate and deliver in exchange for such Securities another Security or Securities having an equal aggregate principal amount that does not bear such legend. If the Restricted Securities Legend has been removed from a Security as provided above, no other Security issued in exchange for all or any part of such Security shall bear such legend, unless the Company has reasonable cause to believe that such other Security is a "restricted security" within the meaning of Rule 144 and instructs the Trustee in writing to cause a Restricted Securities Legend to appear thereon.

Any Security (or security issued in exchange or substitution thereof) as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.3(a)(i) as set forth therein have been satisfied may, upon surrender of such Security for exchange to the Registrar in accordance with the provisions of Section 2.7 hereof, be exchanged for a new Security or Securities, of like tenor and aggregate principal amount, which shall not bear the Restricted Securities Legend required by Section 2.3(a)(i).

Any such Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.3(a)(ii) as set forth therein have been satisfied may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the Restricted Securities Legend required by Section 2.3(a)(ii).

(b) Global Security Legend.

Each Global Security shall also bear the following legend on the face thereof:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (“DTC”) TO VERTEX PHARMACEUTICALS INCORPORATED (OR ITS SUCCESSOR) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, CONVERSION OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

(c) Securities Legend

Each Security issued hereunder shall, upon issuance, bear the following legend:

THIS NOTE HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR U.S. FEDERAL INCOME TAX PURPOSES. FOR INFORMATION ABOUT THE

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ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY, PLEASE CONTACT VERTEX PHARMACEUTICALS INCORPORATED, 130 WAVERLY STREET, CAMBRIDGE, MASSACHUSETTS 02139, (617) 444-6100, ATTENTION: INVESTOR RELATIONS.

SECTION 2.4 Execution, Authentication, Delivery and Dating.

Two Officers shall execute the Securities on behalf of the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall be valid nevertheless.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and deliver such Securities as in this Indenture provided and not otherwise.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture, or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by or on behalf of the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee may appoint an authenticating agent or agents reasonably acceptable to the Company with respect to the Securities. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent.

SECTION 2.5 Registrar and Paying Agent.

The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the “Registrar”) and an office or agency where Securities may be presented for payment (the “Paying Agent”). The Registrar shall keep a register of the Securities (the “Register”) and of their transfer and exchange. The Company may appoint one or more co-Registrars and one or more additional Paying Agents for the Securities. The term “Paying Agent” includes any additional paying agent and the term “Registrar” includes any additional registrar. The Company may change any Paying Agent or Registrar without prior notice to any Holder.

The Company will cause each Paying Agent (other than the Trustee) to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of and premium, if any, or interest (including Liquidated Damages, if any) on Securities in trust for the

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benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as provided in this Indenture;

(2) give the Trustee notice of any Default by the Company in the making of any payment of principal and premium, if any, or interest (including Liquidated Damages, if any); and

(3) at any time during the continuance of any such Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company shall give prompt written notice to the Trustee of the name and address of any Agent who is not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent or Registrar; provided, however, that none of the Company, its subsidiaries or the Affiliates of the foregoing shall act:

(i) as Paying Agent in connection with redemptions, offers to purchase and discharges, as otherwise specified in this Indenture, and

(ii) as Paying Agent or Registrar if a Default or Event of Default has occurred and is continuing.

The Company hereby initially appoints the Trustee as Registrar and Paying Agent for the Securities.

SECTION 2.6 Paying Agent To Hold Assets in Trust.

Not later than 11:00 a.m. (New York City time) on each due date of the principal, premium, if any, and interest (including Liquidated Damages, if any) on any Securities, the Company shall deposit with one or more Paying Agents money in immediately available funds sufficient to pay such principal, premium, if any, and interest (including Liquidated Damages, if any) so becoming due. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company) shall have no further liability for the money so paid over to the Trustee.

If the Company shall act as a Paying Agent, it shall, prior to or on each due date of the principal of and premium, if any, or interest (including Liquidated Damages, if any) on any of the Securities, segregate and hold in trust for the benefit of the Holders a sum sufficient with monies held by all other Paying Agents, to pay the principal and premium, if any, or interest (including Liquidated Damages, if any) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as provided in this Indenture, and shall promptly notify the Trustee of its action or failure to act.

SECTION 2.7 General Provisions Relating To Transfer and Exchange.

The Securities are issuable only in registered form. A Holder may transfer a Security only by written application to the Registrar stating the name of the proposed transferee and

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otherwise complying with the terms of this Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Registrar in the Register. Furthermore, any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by the Holder of such Global Security (or its agent) and that ownership of a beneficial interest in the Security shall be required to be reflected in a book-entry. Notwithstanding the foregoing, in the case of a Restricted Security, a beneficial interest in a Global Security being transferred in reliance on an exemption from the registration requirements of the Securities Act other than in accordance with Rule 144 and Rule 144A may only be transferred for a Physical Security.

When Securities are presented to the Registrar with a request to register the transfer or to exchange them for an equal aggregate principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including that such Securities are duly endorsed or accompanied by a written instrument of transfer duly executed by the Holder thereof or by an attorney who is authorized in writing to act on behalf of the Holder). Subject to Section 2.4 hereof, to permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request. No service charge shall be made for any registration of transfer or exchange or redemption of the Securities, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or other similar governmental charge payable upon exchanges pursuant to Section 2.14, 7.5 or 10.8 hereof).

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Securities:

- (1) for a period of 15 Business Days prior to the day of any selection of Securities for redemption under Article 10 hereof;
 - (2) so selected for redemption or, if a portion of any Security is selected for redemption, such portion thereof selected for redemption;
- or
- (3) surrendered for conversion or, if a portion of any Security is surrendered for conversion, such portion thereof surrendered for conversion.

SECTION 2.8 Book-Entry Provisions for the Global Securities.

- (a) The Global Securities initially shall:
 - (i) be registered in the name of the Depositary (or a nominee thereof);
 - (ii) be delivered to the Trustee as custodian for such Depositary; and
 - (iii) bear the Restricted Securities Legend as set forth in Section 2.3(a)(i) hereof.

Except as provided herein, members of, or participants in, the Depositary ("DTC Participants") shall have no rights under this Indenture with respect to any Global Security held

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on their behalf by the Depositary, or the Trustee as its custodian, or under such Global Security, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing contained herein shall prevent the Company, the Trustee or any agent of the Company or Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and the DTC Participants, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(b) The registered Holder of a Global Security may grant proxies and otherwise authorize any Person, including DTC Participants and Persons that may hold interests through DTC Participants, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(c) A Global Security may not be transferred, in whole or in part, to any Person other than the Depository (or a successor or nominee thereof), and no such transfer to any such other Person may be registered. Beneficial interests in a Global Security may be transferred in accordance with the rules and procedures of the Depository and the provisions of Section 2.9 hereof.

(d) If at any time:

(i) the Depository notifies the Company in writing that it is no longer willing or able to continue to act as Depository for the Global Securities or the Depository ceases to be a "clearing agency" registered under the Exchange Act when the Depository is required to be so registered in order to act as Depository and in each case a successor depository for the Global Securities is not appointed by the Company within 90 days of such notice or cessation; or

(ii) the Company, at its option, notifies the Trustee in writing that it elects to cause the issuance of the Securities in definitive form under this Indenture in exchange for all or any part of the Securities represented by a Global Security or Global Securities; or

(iii) an Event of Default has occurred and is continuing and the Registrar has received a request from the Depository or the Holder of a Global Security or Global Securities for the issuance of Physical Securities in exchange for such Global Security or Global Securities, the Depository shall surrender such Global Security or Global Securities to the Trustee for cancellation and the Company shall execute, and the Trustee, upon receipt of an Officers' Certificate and Company Order for the authentication and delivery of Securities, shall authenticate and deliver in exchange for such Global Security or Global Securities, Physical Securities of like tenor as that of the Global Securities in an aggregate principal amount equal to the aggregate principal amount of such Global Security or Global Securities. Such Physical Securities shall be registered in such names as the Depository shall identify in writing as the beneficial owners of the Securities represented by such Global Security or Global Securities (or any nominees thereof).

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In the event that Physical Securities are not issued to each such beneficial owner promptly after the Registrar has received a request from the Depository or the Holder of a Global Security to issue such Physical Securities pursuant to the immediately preceding paragraph, the Company expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 4.6 or 4.7 hereof, the right of any beneficial holder of Securities to pursue such remedy with respect to the portion of the Global Securities that represents such beneficial holders' Securities as if such Physical Securities had been issued.

Notwithstanding the foregoing, in connection with any transfer of beneficial interests in a Global Security to beneficial owners pursuant to Section 2.8(d) hereof, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interest in such Global Security to be transferred.

SECTION 2.9 Special Transfer Provisions.

Unless a Security is transferred after the time period referred to in Rule 144(k) under the Securities Act or otherwise sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such sale), the following provisions shall apply.

With respect to the registration of any proposed transfer of Securities to a QIB:

(i) If the Securities to be transferred consist of an interest in the Global Securities, the transfer of such interest may be effected only through the book-entry system maintained by the Depository.

(ii) If the Securities to be transferred consist of Physical Securities, the Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Security stating, or has otherwise advised the Company and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the form of Security stating or has otherwise advised the Company and the Registrar in writing that:

(A) it is purchasing the Securities for its own account or an account with respect to which it exercises sole investment discretion, in each case for investment and not with a view to distribution;

(B) it and any such account is a QIB within the meaning of Rule 144A; and

(C) it is aware that the sale to it is being made in reliance on Rule 144A.

In addition, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Securities in an amount equal to the principal amount of the Physical Securities to be transferred, and the Trustee shall cancel the Physical Securities so transferred.

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By its acceptance of any Security bearing the Restricted Securities Legend, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and agrees that it will transfer such Security only as provided in this Indenture. The Registrar shall not register a transfer of any Security unless such transfer complies with the restrictions on transfer of such Security set forth in this Indenture. The Registrar shall be entitled to receive and rely on written instructions from the Company verifying that such transfer complies with such restrictions on transfer. In connection with any transfer of Securities, each Holder agrees by its acceptance of the Securities to furnish the Registrar or the Company such certifications, legal opinions or other information as either of them may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act; provided that the Registrar shall not be required to determine (but may rely on a determination made by the Company with respect to) the sufficiency of any such certifications, legal opinions or other information.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.8 hereof or this Section 2.9. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

SECTION 2.10 Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders and shall otherwise comply with Section 312(a) of the TIA. If the Trustee is not the Registrar, the Company shall furnish to the Trustee prior to or on each Interest Payment Date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders relating to such Interest Payment Date or request, as the case may be.

SECTION 2.11 Persons Deemed Owners.

Except as provided in Section 2.8, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and premium, if any, and interest (including Liquidated Damages, if any) on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and notwithstanding any notice of ownership or writing thereon, or any notice of previous loss or theft or other interest therein.

SECTION 2.12 Mutilated, Destroyed, Lost or Stolen Securities.

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there is delivered to the Company and the Trustee

- (1) evidence to their satisfaction of the destruction, loss or theft of any Security, and

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(2) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and, upon request, the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion, but subject to any conversion rights, may, instead of issuing a new Security, pay such Security, upon satisfaction of the condition set forth in the preceding paragraph.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and such new Security shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.13 Treasury Securities.

In determining whether the Holders of the requisite principal amount of Outstanding Securities are present at a meeting of Holders for quorum purposes or have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such determination as to the presence of a quorum or upon any such request, demand, authorization, direction, notice, consent or waiver, only such Securities of which the Trustee has received written notice and are so owned shall be so disregarded.

SECTION 2.14 Temporary Securities.

Pending the preparation of Securities in definitive form, the Company may execute and the Trustee shall, upon written request of the Company, authenticate and deliver temporary Securities (printed or lithographed). Temporary Securities shall be issuable in any authorized denomination, and substantially in the form of the Securities in definitive form but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Company. Every such temporary Security shall be executed by the Company and authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the Securities in definitive form. Without

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unreasonable delay, the Company will execute and deliver to the Trustee Securities in definitive form (other than in the case of Securities in global form) and thereupon any or all temporary Securities (other than any such Securities in global form) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 9.2 and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of Securities in definitive form. Such exchange shall be made by the Company at its own expense and without any charge

therefor. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Securities in definitive form authenticated and delivered hereunder.

SECTION 2.15 Cancellation.

All securities surrendered for payment, redemption, repurchase, conversion, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee. All Securities so delivered shall be canceled promptly by the Trustee, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. Upon written instructions of the Company, the Trustee shall destroy canceled Securities and, after such destruction, shall deliver a certificate of such destruction to the Company. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless the same are delivered to the Trustee for cancellation.

SECTION 2.16 CUSIP Numbers.

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and the Trustee shall use CUSIP numbers in notices of redemption or exchange as a convenience to Holders; provided that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any such notice and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in the CUSIP numbers.

SECTION 2.17 Defaulted Interest.

If the Company fails to make a payment of interest (including Liquidated Damages, if any) on any Security when due and payable ("Defaulted Interest"), it shall pay such Defaulted Interest plus (to the extent lawful) any interest payable on the Defaulted Interest, in any lawful manner. It may elect to pay such Defaulted Interest, plus any such interest payable on it, to the Persons who are Holders of such Securities on which the interest is due on a subsequent Special Record Date. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security. The Company shall fix any such Special Record Date and payment date for such payment. At least 15 days before any such Special Record Date, the Company shall mail to Holders affected thereby a notice that states the Special Record Date, the Interest Payment Date, and amount of such interest (and such Liquidated Damages, if any) to be paid.

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ARTICLE 3

SATISFACTION AND DISCHARGE

SECTION 3.1 Satisfaction and Discharge of Indenture.

When:

(1) The Company shall deliver to the Trustee for cancellation all securities previously authenticated (other than any securities which have been destroyed, lost or stolen and in lieu of, or in substitution for which, other securities shall have been authenticated and delivered) and not previously canceled, or

(2) (A) all the securities not previously canceled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable at their scheduled maturity within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption,

(B) the Company shall deposit with the Trustee, in trust, cash in U.S. dollars and/or U.S. Government Obligations which through the payment of interest and principal in respect thereof, in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay principal of, premium, if any, or interest (including Liquidated Damages, if any) on all of the Securities (other than any Securities which shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not previously canceled or delivered to the Trustee for cancellation, on the dates such payments of principal, premium, if any, or interest (including Liquidated Damages, if any) are due to such date of maturity or redemption, as the case may be, and

(C) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (y) since the date of execution of this Indenture, there has been a change in the applicable federal income tax law, in the case of either clause (x) or (y) to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and discharge and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit and discharge had not occurred, and

if, in the case of either clause (1) or (2), the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to:

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(i) remaining rights of registration of transfer, substitution and exchange and conversion of Securities,

(ii) rights hereunder of Holders to receive payments of principal of and premium, if any, and interest (including Liquidated Damages, if any) on, the Securities and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee, and

(iii) the rights, obligations and immunities of the Trustee hereunder),

and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; provided, however, the Company shall reimburse the Trustee for all amounts due the Trustee under Section 5.8 hereof and for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Securities.

SECTION 3.2 Deposited Monies To Be Held in Trust.

Subject to Section 3.3 hereof, all monies deposited with the Trustee pursuant to Section 3.1 hereof shall be held in trust and applied by it to the payment, notwithstanding the provisions of Article 13 hereof, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Securities for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest (including Liquidated Damages, if any). All monies deposited with the Trustee pursuant to Section 3.1 hereof (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon request of the Company.

SECTION 3.3 Return of Unclaimed Monies.

The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal or premium, if any, or interest (including Liquidated Damages, if any) that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

ARTICLE 4

DEFAULTS AND REMEDIES

SECTION 4.1 Events of Default.

An "Event of Default" with respect to the Securities occurs when any of the following occurs (whatever the reason for such Event of Default and whether it shall be occasioned by the

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provisions of Article 13 hereof or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the Company defaults in the payment of the principal of or premium, if any, on any of the Securities when it becomes due and payable at Maturity, upon redemption or exercise of a Repurchase Right or otherwise, whether or not such payment is prohibited by Article 13 hereof; or

(b) the Company defaults in the payment of an installment of interest (including Liquidated Damages, if any) on any of the Securities when it becomes due and payable and such default continues for a period of 30 days, whether or not such payment is prohibited by Article 13 hereof; or

(c) the Company fails to deliver shares of Common Stock, together with cash instead of fractional shares, when those shares of Common Stock or cash instead of fractional shares are required to be delivered following conversion of a Security in accordance with Article 12, and that failure continues for 10 days; or

(d) the Company fails to perform or observe any other term, covenant or agreement contained in the Securities or this Indenture and the failure continues for a period of 60 days after written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities; or

(e) (i) the Company fails to make any payment by the end of the applicable grace period, if any, after the maturity of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 or (ii) there is an acceleration of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 because of a default with respect to such Indebtedness without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of either (i) or (ii) above, for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of the Outstanding Securities; or

(f) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable U.S. federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(g) the commencement by the Company of a voluntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or of

any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by the Company to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against the Company, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable U.S. federal or state law, or the consent by the Company to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the admission by the Company in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company expressly in furtherance of any such action.

SECTION 4.2 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default with respect to Outstanding Securities (other than an Event of Default specified in Section 4.1(f) or 4.1(g) hereof) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the Outstanding Securities, by written notice to the Company, may declare due and payable 100% of the principal amount of all Outstanding Securities plus any accrued and unpaid interest (including Liquidated Damages, if any) to the date of payment. Upon a declaration of acceleration, such principal and accrued and unpaid interest to the date of payment shall be immediately due and payable.

If an Event of Default specified in Section 4.1(f) or 4.1(g) hereof occurs and is continuing, all unpaid principal and accrued and unpaid interest (including Liquidated Damages, if any) on the Outstanding Securities shall automatically become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holder.

The Holders of a majority in aggregate principal amount of the Outstanding Securities by written notice to the Trustee may rescind and annul an acceleration and its consequences if:

- (1) all existing Events of Default, other than the nonpayment of principal of or interest (including Liquidated Damages, if any) on the Securities which have become due solely because of the acceleration, have been remedied, cured or waived, and
- (2) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction;

provided, however, that in the event such declaration of acceleration has been made based on the existence of an Event of Default under Section 4.1(e) hereof and such Event of Default has been remedied, cured or waived in accordance with Section 4.1(e) hereof, then, without any further action by the Holders, such declaration of acceleration shall be rescinded automatically and the consequences of such declaration shall be annulled. No such rescission or annulment shall affect any subsequent Default or impair any right consequent thereon.

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SECTION 4.3 Other Remedies.

If an Event of Default with respect to Outstanding Securities occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities.

The Trustee may maintain a proceeding in which it may prosecute and enforce all rights of action and claims under this Indenture or the Securities, even if it does not possess any of the Securities or does not produce any of them in the proceeding.

SECTION 4.4 Waiver of Past Defaults.

The Holders, either (a) through the written consent of not less than a majority in aggregate principal amount of the Outstanding Securities or (b) by the adoption of a written resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, may, on behalf of the Holders of all of the Securities, waive an existing Default or Event of Default and its consequences, except a Default or Event of Default:

- (1) in the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on any Security (provided, however, that subject to Section 4.7 hereof, the Holders of a majority in aggregate principal amount of the Outstanding Securities may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration);
- (2) in respect of the right to convert any Security in accordance with Article 12; or
- (3) in respect of a covenant or provision hereof which, under Section 7.2 hereof, cannot be modified or amended without the consent of the Holders of each Outstanding Security affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; provided, however, that no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 4.5 Control by Majority.

The Holders, either (a) through the written consent of not less than a majority in aggregate principal amount of the Outstanding Securities, or (b) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of at least a majority in aggregate principal amount of the Outstanding Securities represented at such meeting, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that:

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- (1) conflicts with any law or with this Indenture;
- (2) the Trustee determines may be unduly prejudicial to the rights of the Holders not joining therein; or
- (3) may expose the Trustee to personal liability.

The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 4.6 Limitation on Suit.

No Holder of any Security shall have any right to pursue any remedy with respect to this indenture or the Securities (including, instituting any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a receiver or trustee) unless:

- (1) such Holder has previously given written notice to the Trustee of an Event of Default that is continuing;
- (2) the Holders of at least 25% in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to pursue the remedy;
- (3) the Trustee has failed to comply with the request for 60 days after its receipt of such notice, request and offer of indemnity; and
- (4) during such 60-day period, no direction inconsistent with such written request has been given to the Trustee by the Holders of a majority in aggregate principal amount of the Outstanding Securities (or such amount as shall have acted at a meeting pursuant to the provisions of this Indenture);

provided, however, that no one or more of such Holders may use this Indenture to prejudice the rights of another Holder or to obtain preference or priority over another Holder.

SECTION 4.7 Unconditional Rights of Holders To Receive Payment and To Convert.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and interest (including Liquidated Damages, if any) on such Security on the Stated Maturity expressed in such Security (or, in the case of redemption, on the redemption date, or in the case of the exercise of a Repurchase Right, on the Repurchase Date) and to convert such Security in accordance with Article 12, and to bring suit for the enforcement of any such payment on or after such respective dates and right to convert, and such rights shall not be impaired or affected without the consent of such Holder.

SECTION 4.8 Collection of Indebtedness and Suits for Enforcement by the Trustee.

The Company covenants that if:

- (1) a Default or Event of Default is made in the payment of any interest (including Liquidated Damages, if any) on any Security when such interest (including Liquidated Damages, if any) becomes due and payable and such Default or Event of Default continues for a period of 30 days, or
- (2) a Default or Event of Default is made in the payment of the principal of or premium, if any, on any Security at the Maturity thereof,

the Company shall, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable (as expressed therein or as a result of any acceleration effected pursuant to Section 4.2 hereof) on such Securities for principal and premium, if any, and interest (including Liquidated Damages, if any) and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium, if any, and on any overdue interest (including Liquidated Damages, if any), calculated using the Interest Rate, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company, wherever situated.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 4.9 Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or the property of the Company or its creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest (including Liquidated Damages, if any)) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim for the whole amount of principal and premium, if any, and interest (including Liquidated Damages, if any) owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the

reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders of Securities allowed in such judicial proceeding, and

(2) to collect and receive any moneys or other property payable or deliverable on any such claim and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceedings is hereby authorized by each Holder of Securities to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 5.8.

Nothing contained herein shall be deemed to authorize the Trustee to authorize or consent to or accept, or adopt on behalf of any Holder of a Security, any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding.

SECTION 4.10 Restoration of Rights and Remedies.

If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders of Securities shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 4.11 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 2.12, no right or remedy conferred in this Indenture upon or reserved to the Trustee or to the Holders of Securities is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 4.12 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or any acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Securities may be

exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities, as the case may be.

SECTION 4.13 Application of Money Collected.

Subject to Article 13, any money and property collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money and property on account of principal or premium, if any, or interest (including Liquidated Damages, if any), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee;

SECOND: To the payment of the amounts then due and unpaid for principal of and premium, if any, and interest (including Liquidated Damages, if any) on the Securities and coupons in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and premium, if any, and interest (including Liquidated Damages, if any), respectively; and

THIRD: Any remaining amounts shall be repaid to the Company.

SECTION 4.14 Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by such Holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder of any Security for the enforcement of the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on any Security on or after the Stated Maturity expressed in such Security (or, in the case of redemption or exercise of a Repurchase Right, on or after the redemption date) or for the enforcement of the right to convert any Security in accordance with Article 12.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim to take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and

covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 5

THE TRUSTEE

SECTION 5.1

Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default,

(1) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture or the TIA, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates or opinions to determine whether or not, on their face, they conform to the requirements to this Indenture (but need not investigate or confirm the accuracy of any facts stated therein).

(b) In case an Event of Default actually known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) This paragraph (c) shall not be construed to limit the effect of paragraph (a) of this Section 5.1;

(2) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with a direction received by it of the Holders of a majority in principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of this Indenture) relating to the time, method and place of conducting any proceeding for any remedy available to the

Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(d) Whether or not herein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 5.1.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability, cost or expense (including, without limitation, reasonable fees of counsel).

(f) The Trustee shall not be obligated to pay interest on any money or other assets received by it unless otherwise agreed in writing with the Company. Assets held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(h) The Trustee shall not be deemed to have notice or actual knowledge of any Event of Default or a Registration Default (as such term is defined in the Registration Rights Agreement) or the obligation of the Company to pay Liquidated Damages unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact a Default is received by the Trustee pursuant to Section 14.2 hereof, and such notice references the Securities and this Indenture.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee hereunder, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each Paying Agent, authenticating agent, Conversion Agent or Registrar acting hereunder.

SECTION 5.2 Certain Rights of Trustee.

Subject to the provisions of Section 5.1 hereof and subject to Sections 315(a) through (d) of the TIA:

(1) The Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

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(2) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate or Opinion of Counsel.

(3) The Trustee may act through attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(4) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith which it believed to be authorized or within the discretion or rights or powers conferred upon it by this Indenture, unless the Trustee's conduct constitutes negligence.

(5) The Trustee may consult with counsel of its selection and the advice of such counsel as to matters of law shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(6) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(7) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty unless so specified herein.

SECTION 5.3 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest (as such term is defined in Section 310(b) of the TIA), it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (to the extent permitted under Section 310(b) of the TIA) or resign. Any agent may do the same with like rights and duties. The Trustee is also subject to Sections 5.11 and 5.12 hereof.

SECTION 5.4 Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise expressly agreed with the Company.

SECTION 5.5 Trustee's Disclaimer.

The recitals contained herein and in the Securities (except for those in the certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity,

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sufficiency or priority of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 5.6 Notice of Defaults.

Within 90 days after the occurrence of any Default or Event of Default hereunder of which the Trustee has received written notice, the Trustee shall give notice to Holders pursuant to Section 14.2 hereof, unless such Default or Event of Default shall have been cured or waived; provided, however, that, except in the case of a Default or Event of Default in the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any), or in the payment of any redemption or repurchase obligation on any Security, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders.

SECTION 5.7 Reports by Trustee to Holders.

The Trustee shall transmit to holders as provided in Section 313 of the TIA such reports concerning the Trustee and its actions under this Indenture as may be required by Section 313 of the TIA at the times and in the manner provided by the TIA.

A copy of each report at the time of its mailing to Holders shall be filed with the SEC, if required by Section 313 of the TIA, and each stock exchange, if any, on which the Securities are listed. The Company shall promptly notify the Trustee when the Securities become listed on any stock exchange.

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and the Company covenants and agrees to pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its negligence or bad faith. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 4.1 hereof, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law. The Company also covenants to indemnify the Trustee and its officers, directors, employees and agents for, and to hold such Persons harmless against, any loss, liability or expense incurred by them, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of their duties hereunder, including the costs and expenses of defending themselves against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to the negligence or willful misconduct of such Persons. The obligations of the Company under this Section 5.8 to compensate and indemnify the Trustee and its officers, directors, employees and agents and to pay or reimburse such Persons for expenses,

disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee. Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Securities, and the Securities are hereby subordinated to such senior claim. "Trustee" for purposes of this Section 5.8 shall include any predecessor Trustee, but the negligence or willful misconduct of any Trustee shall not affect the indemnification of any other Trustee.

SECTION 5.9 Replacement of Trustee.

A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 5.9.

The Trustee may resign and be discharged from the trust hereby created by so notifying the Company in writing. The Holders of at least a majority in aggregate principal amount of Outstanding Securities may remove the Trustee by so notifying the Trustee and the Company in writing. The Company must remove the Trustee if:

- (i) the Trustee fails to comply with Section 5.11 hereof or Section 310 of the TIA;
- (ii) the Trustee becomes incapable of acting.
- (iii) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law; or
- (iv) a Custodian or public officer takes charge of the Trustee or its property.

If the Trustee resigns or is removed or if a vacancy exists in the office of the Trustee for any reason, the Company shall promptly appoint a successor Trustee. The Trustee shall be entitled to payment of its fees and reimbursement of its expenses while acting as Trustee. Within one year after the successor Trustee takes office, the Holders of at least a majority in aggregate principal amount of Outstanding Securities may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

Any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee if the Trustee fails to comply with Section 5.11 hereof.

If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation or removal, the resigning or removed Trustee, as the case may be, may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the

Trustee under this Indenture. The Company shall mail a notice of the successor Trustee's succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee. Notwithstanding replacement of the Trustee pursuant to this Section 5.9, the Company's obligations under Section 5.8 hereof shall continue for the benefit of the retiring Trustee with respect to expenses, losses and liabilities incurred by it prior to such replacement.

SECTION 5.10 Successor Trustee by Merger, Etc.

Subject to Section 5.11 hereof, if the Trustee consolidates with, merges or converts into, or transfers or sells all or substantially all of its corporate trust business to, another corporation or national banking association, the successor entity without any further act shall be the successor Trustee as to the Securities.

SECTION 5.11 Corporate Trustee Required; Eligibility.

The Trustee shall at all times satisfy the requirements of Sections 310(a)(1), (2) and (5) of the TIA. The Trustee shall at all times have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall at all times have), a combined capital and surplus of at least \$100 million as set forth in its (or its related bank holding company's) most recent published annual report of condition. The Trustee is subject to Section 310(b) of the TIA.

SECTION 5.12 Collection of Claims Against the Company.

The Trustee is subject to Section 311(a) of the TIA, excluding any creditor relationship listed in Section 311(b) of the TIA. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the TIA to the extent indicated therein.

ARTICLE 6

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 6.1 Company May Consolidate, Etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and the Company shall not permit any Person to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(1) in the event that the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation, limited liability company, partnership or trust organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and, if the entity surviving such transaction or transferee entity is not the Company, then such

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surviving or transferee entity shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and premium, if any and interest (including Liquidated Damages, if any), on all the Securities and the performance of every covenant and obligation of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in accordance with Section 12.11 hereof;

(2) at the time of consummation of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(3) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 6.2 Successor Substituted.

Upon any consolidation or merger by the Company with or into any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety to any Person, in accordance with Section 6.1 hereof, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease to another Person, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 7

AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 7.1 Without Consent of Holders of Securities.

Without the consent of any Holders of Securities, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may amend this Indenture and the Securities to:

- (a) add to the covenants of the Company for the benefit of the Holders of Securities;
- (b) surrender any right or power herein conferred upon the Company;
- (c) make provision with respect to the conversion rights of Holders of Securities pursuant to Section 12.11 hereof;

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(d) provide for the assumption of the Company's obligations to the Holders of Securities in the case of a merger, consolidation, conveyance, transfer or lease pursuant to Article 6 hereof;

(e) reduce the Conversion Price; provided, that such reduction in the Conversion Price shall not adversely affect the interest of the Holders of Securities (after taking into account tax and other consequences of such reduction) in any material respect;

(f) comply with the requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(g) make any changes or modifications to this Indenture necessary in connection with the registration of any Securities under the Securities Act as contemplated in the Registration Rights Agreement, provided that such action pursuant to this clause (g) does not adversely affect the interests of the Holders of Securities in any material respect;

(h) cure any ambiguity, correct or supplement any provision herein which may be inconsistent with any other provision herein or which is otherwise defective, or make any other provisions with respect to matters or questions arising under this Indenture which the Company and the Trustee may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture, provided that such action pursuant to this clause (h) does not, in the good faith opinion of the Board of Directors and the Trustee, adversely affect the interests of the Holders of Securities in any material respect;

(i) add or modify any other provisions with respect to matters or questions arising under this Indenture which the Company and the Trustee may deem necessary or desirable and which shall not be inconsistent with the provisions of this Indenture, provided that such action pursuant to this clause (i) does not adversely affect the interests of the Holders of Securities in any material respect; or

(j) make provision for the establishment of a book-entry system, in which Holders would have the option to participate, for the clearance and settlement of transactions in Securities originally issued in definitive form.

SECTION 7.2 With Consent of Holders of Securities.

Except as provided below in this Section 7.2, this Indenture or the Securities may be amended or supplemented, and noncompliance by the Company in any particular instance with any provision of this Indenture or the Securities may be waived, in each case (i) with the written consent of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities or (ii) by the adoption of a resolution, at a meeting of Holders of the Outstanding Securities at which a quorum is present, by the Holders of a majority in aggregate principal amount of the Outstanding Securities represented at such meeting.

Without the written consent or the affirmative vote of each Holder of Securities affected, an amendment or waiver under this Section 7.2 may not:

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(a) change the Stated Maturity of the principal of, or any installment of interest (including Liquidated Damages, if any) on, any Security;

(b) reduce the principal amount of, or premium, if any, on any Security;

(c) reduce the Interest Rate or interest (including Liquidated Damages, if any) on any Security;

(d) change the currency of payment of principal of, premium, if any, or interest (including Liquidated Damages, if any) on any Security;

(e) impair the right of any Holder to institute suit for the enforcement of any payment on or with respect to, or the conversion of, any Security;

(f) modify the obligation of the Company to maintain an office or agency in The City of New York pursuant to Section 9.2 hereof;

(g) except as permitted by Section 12.11 hereof, adversely affect the right to convert any Security as provided in Article 12 hereof;

(h) adversely affect the Repurchase Right;

(i) modify the subordination provisions of the Securities in a manner adverse to the Holders of Securities,

(j) modify any of the provisions of this Section, Section 4.4 or Section 14.11, except to increase any percentage contained herein or therein or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; or

(k) reduce the requirements of Section 8.4 hereof for quorum or voting, or reduce the percentage in aggregate principal amount of the Outstanding Securities the consent of whose Holders is required for any supplemental indenture or the consent of whose Holders is required for any waiver provided for in this Indenture.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposal supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 7.3 Compliance With Trust Indenture Act.

Every amendment to this Indenture or the Securities shall be set forth in a supplemental indenture that complies with the TIA as then in effect.

SECTION 7.4 Revocation of Consents and Effect of Consents or Votes.

Until an amendment, supplement or waiver becomes effective, a written consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or

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portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security; provided, however, that unless a record date shall have been established, any such Holder or subsequent Holder may revoke the consent as to its Security or portion of a

Security if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective.

An amendment, supplement or waiver becomes effective on receipt by the Trustee of written consents from or affirmative votes by, as the case may be, the Holders of the requisite percentage of aggregate principal amount of the Outstanding Securities, and thereafter shall bind every Holder of Securities; provided, however, if the amendment, supplement or waiver makes a change described in any of the clauses (a) through (k) of Section 7.2 hereof, the amendment, supplement or waiver shall bind only each Holder of a Security which has consented to it or voted for it, as the case may be, and every subsequent Holder of a Security or portion of a Security that evidences the same indebtedness as the Security of the consenting or affirmatively voting, as the case may be, Holder.

SECTION 7.5 Notation on or Exchange of Securities.

If an amendment, supplement or waiver changes the terms of a Security:

- (a) the Trustee may require the Holder of a Security to deliver such Securities to the Trustee, the Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder and the Trustee may place an appropriate notation on any Security thereafter authenticated; or
- (b) if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 7.6 Trustee To Sign Amendment, Etc.

The Trustee shall sign any amendment authorized pursuant to this Article 7 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If the amendment does adversely affect the rights, duties, liabilities or immunities of the Trustee, the Trustee may but need not sign it. In signing or refusing to sign such amendment, the Trustee shall be entitled to receive and shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment is authorized or permitted by this Indenture.

ARTICLE 8

MEETING OF HOLDERS OF SECURITIES

SECTION 8.1 Purposes for Which Meetings May Be Called.

A meeting of Holders of Securities may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities.

Notwithstanding anything contained in this Article 8, the Trustee may, during the pendency of a Default or an Event of Default, call a meeting of Holders of Securities in accordance with its standard practices.

SECTION 8.2 Call Notice and Place of Meetings.

(a) The Trustee may at any time call a meeting of Holders of Securities for any purpose specified in Section 8.1 hereof, to be held at such time and at such place in The City of New York or Boston, Massachusetts. Notice of every meeting of Holders of Securities, setting forth the time and the place of such meeting, in general terms the action proposed to be taken at such meeting and the percentage of the principal amount of the Outstanding Securities which shall constitute a quorum at such meeting, shall be given, in the manner provided in Section 14.2 hereof, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Securities shall have requested the Trustee to call a meeting of the Holders of Securities for any purpose specified in Section 8.1 hereof, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities in the amount specified, as the case may be, may determine the time and the place in The City of New York or Boston, Massachusetts for such meeting and may call such meeting for such purposes by giving notice thereof as provided in paragraph (a) of this Section.

SECTION 8.3 Persons Entitled To Vote at Meetings.

To be entitled to vote at any meeting of Holders of Securities, a Person shall be (a) a Holder of one or more Outstanding Securities or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 8.4 Quorum; Action.

The Persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities, be dissolved. In any other case, the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10

days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 8.2(a) hereof, except that such notice need be given only once and not less than five days prior to the date on which the meeting is scheduled to be reconvened.

At a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid, any resolution and all matters (except as limited by the second paragraph of Section 7.2 hereof) shall be effectively passed and decided if passed or decided by the Persons entitled to vote not less than a majority in aggregate principal amount of Outstanding Securities represented and voting at such meeting.

Any resolution passed or decisions taken at any meeting of Holders of Securities duly held in accordance with this Section shall be binding on all the Holders of Securities, whether or not present or represented at the meeting.

SECTION 8.5 Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman (which may be the Trustee) of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 8.2(b) hereof, in which case the Company or the Holders of Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting.

(c) At any meeting, each Holder of a Security or proxy shall be entitled to one vote for each \$1,000 principal amount of Securities held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security or proxy.

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(d) Any meeting of Holders of Securities duly called pursuant to Section 8.2 hereof at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 8.6 Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 8.2 hereof and, if applicable, Section 8.4 hereof. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE 9

COVENANTS

SECTION 9.1 Payment of Principal, Premium and Interest.

The Company will duly and punctually pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) in respect of the Securities in accordance with the terms of the Securities and this Indenture. The Company will deposit or cause to be deposited with the Trustee as directed by the Trustee, no later than 11:00 a.m. on the day of the Stated Maturity of any Security or installment of interest (including Liquidated Damages, if any), all payments so due.

SECTION 9.2 Maintenance of Offices or Agencies.

The Company hereby appoints the Trustee's Corporate Trust Office as its office in The City of New York, where Securities may be:

- (i) presented or surrendered for payment;
- (ii) surrendered for registration of transfer or exchange;
- (iii) surrendered for conversion;

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and where notices and demands to or upon the Company in respect of the Securities and this Indenture maybe served.

The Company may at any time and from time to time vary or terminate the appointment of any such office or appoint any additional offices for any or all of such purposes; provided, however, that until all of the Securities have been delivered to the Trustee for cancellation, or moneys sufficient to pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) on the Securities have been made available for payment and either paid or returned to the Company pursuant to the provisions of Section 9.3 hereof, the Company will maintain in The City of New York, an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee, and notice to the Holders in accordance with Section 14.2 hereof, of the appointment or termination of any such agents and of the location and any change in the location of any such office or agency.

If at any time the Company shall fail to maintain any such required office or agency in The City of New York, or shall fail to furnish the Trustee with the address thereof, presentations and surrenders may be made at, and notices and demands may be served on, the Corporate Trust Office of the Trustee.

SECTION 9.3 Corporate Existence.

Subject to Article 6 hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 9.4 Maintenance of Properties.

The Company will maintain and keep its properties and every part thereof in such repair, working order and condition, and make or cause to be made all such needful and proper repairs, renewals and replacements thereto, as in the judgment of the Company are necessary in the interests of the Company; provided, however, that nothing contained in this Section shall prevent the Company from selling, abandoning or otherwise disposing of any of its properties or discontinuing a part of its business from time to time if, in the judgment of the Company, such sale, abandonment, disposition or discontinuance is advisable and does not materially adversely affect the interests or business of the Company.

SECTION 9.5 Payment of Taxes and Other Claims.

The Company will, and will cause any Significant Subsidiary to, promptly pay and discharge or cause to be paid and discharged all material taxes, assessments and governmental charges or levies lawfully imposed upon it or upon its income or profits or upon any of its property, real or personal, or upon any part thereof, as well as all material claims for labor,

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materials and supplies which, if unpaid, might by law become a lien or charge upon its property; provided, however, that neither the Company nor any Significant Subsidiary shall be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge, levy, or claim if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and if the Company or such Significant Subsidiary, as the case may be, shall have set aside on its books reserves deemed by it adequate with respect thereto.

SECTION 9.6 Reports.

(a) The Company shall deliver to the Trustee within 15 days after it files them with the SEC copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act; provided, however, the Company shall not be required to deliver to the Trustee any materials for which the Company has sought and received confidential treatment by the SEC. The Company also shall comply with the other provisions of Section 314(a) of the TIA.

(b) If at any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder of a Security, the Company will promptly furnish or cause to be furnished to such Holder or to a prospective purchaser of such Security designated by such Holder, as the case may be, the information, if any, required to be delivered by it pursuant to Rule 144A(d)(4) under the Securities Act to permit compliance with Rule 144A in connection with the resale of such Security; [provided, however, that the Company shall not be required to furnish such information in connection with any request made on or after the date which is two years from the later of the date such security was last acquired from the Company or an Affiliate of the Company].

SECTION 9.7 Compliance Certificate.

The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year of the Company, an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company, they would normally have knowledge of any failure by the Company to comply with all conditions, or Default by the Company with respect to any covenants, under this Indenture, and further stating whether or not they have knowledge of any such failure or Default and, if so, specifying each such failure or Default and the nature thereof. Within five Business Days of an Officer of the Company coming to have actual knowledge of a Default, regardless of the date, the Company shall deliver an Officers' Certificate to the Trustee specifying such Default and the nature and status thereof.

SECTION 9.8 Resale of Certain Securities.

During the period of two years after the last date of original issuance of any Securities, the Company shall not, and shall not permit any of its Affiliates to, resell any Securities, or shares of Common Stock issuable upon conversion of the Securities, which constitute "restricted securities" under Rule 144, that are acquired by any of them within the United States or to "U.S. persons" (as defined in Regulation S) except pursuant to an effective registration statement under

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the Securities Act or an applicable exemption therefrom. The Trustee shall have no responsibility or liability in respect of the Company's performance of its agreement in the preceding sentence.

ARTICLE 10

REDEMPTION OF SECURITIES

SECTION 10.1 Optional Redemption.

Prior to February 15, 2007, the Company cannot redeem the Securities. The Company may, on or after February 15, 2007, at its option, redeem the Securities in whole or in part on any date from time to time, upon notice as set forth in Section 10.5, at a redemption price, payable in cash, equal to 100% of the principal amount of the Securities redeemed plus accrued and unpaid interest (including any Liquidated Damages), if any, to but excluding the date of redemption.

If the Paying Agent hold money sufficient to pay the redemption price due on a Security on the date of redemption in accordance with the terms hereof, then, on and after such date of redemption, the Security will cease to be outstanding, and interest on such Security will cease to accrue, whether or not the Security is delivered to the Paying Agent. Thereafter, all other rights of the Holder terminate, other than the right to receive the redemption price upon delivery of the Security.

SECTION 10.2 [Reserved].

SECTION 10.3 Notice to Trustee.

If the Company elects to redeem Securities pursuant to the redemption provisions of Section 10.1 hereof, it shall notify the Trustee at least 20 days prior to the redemption date of such intended redemption date, the principal amount of Securities to be redeemed and the CUSIP numbers of the Securities to be redeemed.

SECTION 10.4 Selection of Securities To Be Redeemed.

If fewer than all the Securities are to be redeemed, the Trustee shall select the particular Securities to be redeemed from the Outstanding Securities on a pro rata basis or by lot or in accordance with any other method the Trustee considers fair and appropriate. Securities and portions thereof that the Trustee selects shall be in amounts equal to the minimum authorized denominations for Securities to be redeemed or any integral multiple thereof.

If any Securities are to be redeemed in part only, a new Security or Securities in principal amount equal to the unredeemed principal portion thereof will be issued.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption (provided, however, that the Holder of such Security so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have

otherwise been entitled to receive upon conversion of such Security). Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and the Registrar in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

SECTION 10.5 Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 14.2 hereof to the Holders of Securities to be redeemed. Such notice shall be given not less than 30 nor more than 60 days prior to the redemption date.

All notices of redemption shall state:

- (1) the redemption date;
- (2) the redemption price and interest (including Liquidated Damages, if any) and accrued and unpaid to the redemption date, if any;
- (3) if fewer than all the Outstanding Securities are to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities which will be outstanding after such partial redemption;
- (4) that on the redemption date the redemption price and interest (including Liquidated Damages, if any) accrued and unpaid to the redemption date, if any, will become due and payable upon each such Security to be redeemed, and that interest thereon shall cease to accrue on and after such date;
- (5) the Conversion Price, the date on which the right to convert the principal of the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion;

(6) the place or places where such Securities are to be surrendered for payment of the redemption price and accrued and unpaid interest, if any; and

(7) the CUSIP number of the Securities.

The notice given shall specify the last date on which exchanges or transfers of Securities may be made pursuant to Section 2.7 hereof, and shall specify the serial numbers of Securities and the portions thereof called for redemption.

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Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company.

SECTION 10.6 Effect of Notice of Redemption.

Notice of redemption having been given as provided in Section 10.5 hereof, the Securities so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified and from and after such date (unless the Company shall default in the payment of the redemption price and accrued and unpaid interest (including Liquidated Damages, if any)) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with such notice, such Security shall be paid by the Company at the redemption price plus accrued and unpaid interest (including any Liquidated Damages), if any; provided, however, that the installments of interest on Securities whose Stated Maturity is prior to or on the redemption date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.1 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and premium, if any, shall, until paid, bear interest from the redemption date at the Interest Rate.

SECTION 10.7 Deposit of Redemption Price.

Prior to or on any redemption date, the Company shall deposit with the Trustee or with a Paying Agent an amount of money sufficient to pay the redemption price of all the Securities to be redeemed on that redemption date, other than any Securities called for redemption on that date which have been converted prior to the date of such deposit, and accrued and unpaid interest (including any Liquidated Damages), if any, on such Securities.

If any Security called for redemption is converted, any money deposited with the Trustee or with a Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in Section 2.1 hereof) be paid to the Company on Company Request or, if then held by the Company, shall be discharged from such trust.

SECTION 10.8 Securities Redeemed in Part.

Any Security which is to be redeemed only in part shall be surrendered at an office or agency of the Company designated for that purpose pursuant to Section 9.2 hereof (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or the Holder's attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

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ARTICLE 11

REPURCHASE AT THE OPTION OF A HOLDER UPON A CHANGE OF CONTROL

SECTION 11.1 Repurchase Right.

In the event that a Change of Control shall occur, each Holder shall have the right (the "Repurchase Right"), at the Holder's option, but subject to the provisions of Section 11.2 hereof, to require the Company to repurchase, and upon the exercise of such right the Company shall repurchase, all of such Holder's Securities not theretofore called for redemption, or any portion of the principal amount thereof that is equal to \$1,000 or any integral multiple thereof (provided that no single Security may be repurchased in part unless the portion of the principal amount of such Security to be Outstanding after such repurchase is equal to \$1,000 or integral multiples thereof), on the date (the "Repurchase Date") that is 45 days after the date of the Company Notice at a purchase price equal to 100% of the principal amount of the Securities to be repurchased (the "Repurchase Price"), plus interest (including Liquidated Damages, if any) accrued and unpaid to, but excluding, the Repurchase Date; provided, however, that installments of interest on Securities whose Stated Maturity is prior to or on the Repurchase Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such on the relevant Record Date according to their terms and the provisions of Section 2.1 hereof.

Subject to the fulfillment by the Company of the conditions set forth in Section 11.2 hereof, the Company may elect to pay the Repurchase Price by delivering the number of shares of Common Stock equal to (i) the Repurchase Price divided by (ii) 95% of the average of the Closing Prices per share of Common Stock for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date.

Whenever in this Indenture (including Sections 2.2, 4.1(a) and 4.7 hereof) or Exhibit A annexed hereto there is a reference, in any context, to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect to such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Indenture shall not be construed as excluding the Repurchase Price in those provisions of this Indenture when such express mention is not made; provided, however, that, for the purposes of Article 13 hereof, such reference shall be deemed to include reference to the Repurchase Price only to the extent the Repurchase Price is payable in cash.

(a) The shares of Common Stock to be issued upon repurchase of Securities hereunder:

(i) shall not require registration under any federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities

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Act upon repurchase or, if such registration is required, such registration shall be completed and shall become effective prior to the Repurchase Date; and

(ii) shall not require registration with, or approval of, any governmental authority under any state law or any other federal law before shares may be validly issued or delivered upon repurchase or if such registration is required or such approval must be obtained, such registration shall be completed or such approval shall be obtained prior to the Repurchase Date.

(b) The shares of Common Stock to be issued upon repurchase of Securities hereunder are, or shall have been, approved for listing on the Nasdaq National Market or the New York Stock Exchange or listed on another national securities exchange, in any case, prior to the Repurchase Date.

(c) All shares of Common Stock which may be issued upon repurchase of Securities will be issued out of the Company's authorized but unissued Common Stock and will, upon issue, be duly and validly issued and fully paid and nonassessable and free of any preemptive or similar rights.

(d) If any of the conditions set forth in clauses (a) through (c) of this Section 11.2 are not satisfied in accordance with the terms thereof, the Repurchase Price shall be paid by the Company only in cash.

SECTION 11.3

Notices; Method of Exercising Repurchase Right, Etc.

(a) Unless the Company shall have theretofore called for redemption all of the Outstanding Securities, prior to or on the 30th day after the occurrence of a Change of Control, the Company, or, at the written request and expense of the Company prior to or on the 30th day after such occurrence, the Trustee, shall give to all Holders of Securities notice, in the manner provided in Section 14.2 hereof, of the occurrence of the Change of Control and of the Repurchase Right set forth herein arising as a result thereof (the "Company Notice"). The Company shall also deliver a copy of such notice of a Repurchase Right to the Trustee. Each notice of a Repurchase Right shall state:

(1) the Repurchase Date;

(2) the date by which the Repurchase Right must exercised;

(3) the Repurchase Price and accrued and unpaid interest (including any Liquidated Damages), if any, and whether the Repurchase Price shall be paid by the Company in cash or by delivery of shares of Common Stock;

(4) a description of the procedure which a Holder must follow to exercise a Repurchase Right, and the place or places where such Securities are to be surrendered for payment of the Repurchase Price and accrued and unpaid interest (including any Liquidated Damages), if any;

(5) that on the Repurchase Date the Repurchase Price and accrued and unpaid interest (including any Liquidated Damages), if any, will become due and payable upon

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each such Security designated by the Holder to be repurchased, and that interest thereon shall cease to accrue on and after said date;

(6) the Conversion Rate then in effect, the date on which the right to convert the principal amount of the Securities to be repurchased will terminate and the place where such Securities may be surrendered for conversion, and

(7) the place or places where such Securities, together with the Option to Elect Repayment Upon a Change of Control certificate included in Exhibit A annexed hereto are to be delivered for payment of the Repurchase Price and accrued and unpaid interest (including any Liquidated Damages), if any.

No failure of the Company to give the foregoing notices or defect therein shall limit any Holder's right to exercise a Repurchase Right or affect the validity of the proceedings for the repurchase of Securities.

If any of the foregoing provisions or other provisions of this Article 11 are inconsistent with applicable law, such law shall govern.

(b) To exercise a Repurchase Right, a Holder shall deliver to the Trustee prior to or on the 30th day after the date of the Company Notice:

(1) written notice of the Holder's exercise of such right, which notice shall set forth the name of the Holder, the principal amount of the Securities to be repurchased (and, if any Security is to be repurchased in part, the serial number thereof, the portion of the principal amount thereof to be repurchased) and a statement that an election to exercise the Repurchase Right is being made thereby, and, in the event that the Repurchase Price shall be paid in shares of Common Stock, the name or names (with addresses) in which the certificate or certificates for shares of Common Stock shall be issued, and

(2) the Securities with respect to which the Repurchase Right is being exercised.

Such written notice shall be irrevocable, except that the right of the Holder to convert the Securities with respect to which the Repurchase Right is being exercised shall continue until the close of business on the Business Day immediately preceding the Repurchase Date.

(c) In the event a Repurchase Right shall be exercised in accordance with the terms hereof, the Company shall pay or cause to be paid to the Trustee the Repurchase Price in cash for payment to the Holder on the Repurchase Date or, if shares of Common Stock are to be paid, shares of Common Stock, as provided above, as promptly after the Repurchase Date as practicable, together with accrued and unpaid interest (including any Liquidated Damages, if any) to the Repurchase Date payable in cash with respect to the Securities as to which the Repurchase Right has been exercised; provided, however, that installments of interest that mature prior to or on the Repurchase Date shall be payable in cash to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Regular Record Date.

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(d) If any Security (or portion thereof) surrendered for repurchase shall not be so paid on the Repurchase Date, the principal amount of such Security (or portion thereof, as the case may be) shall, until paid, bear interest to the extent permitted by applicable law from the Repurchase Date at the Interest Rate, and each Security shall remain convertible into Common Stock until the principal of such Security (or portion thereof, as the case may be) shall have been paid or duly provided for.

(e) Any Security which is to be repurchased only in part shall be surrendered to the Trustee (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, containing identical terms and conditions, each in an authorized denomination in aggregate principal amount equal to and in exchange for the unrepurchased portion of the principal of the Security so surrendered.

(f) Any issuance of shares of Common Stock in respect of the Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the Repurchase Date and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such repurchase shall be deemed to have become on the Repurchase Date the holder or holders of record of the shares represented thereby; provided, however, that any surrender for repurchase on a date when the stock transfer books of the Company shall be closed shall constitute the Person or Persons in whose name or names the certificate or certificates for such shares are to be issued as the record holder or holders thereof for all purposes at the opening of business on the next succeeding day on which such stock transfer books are open. No payment or adjustment shall be made for dividends or distributions on any Common Stock issued upon repurchase of any Security declared prior to the Repurchase Date.

(g) No fractions of shares of Common Stock shall be issued upon repurchase of any Security or Securities. If more than one Security shall be repurchased from the same Holder and the Repurchase Price shall be payable in shares of Common Stock, the number of full shares which shall be issued upon such repurchase shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) to be so repurchased. Instead of any fractional share of Common Stock which would otherwise be issued on the repurchase of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the Closing Price of the Common Stock as of the Trading Day preceding the Repurchase Date.

(h) Any issuance and delivery of certificates for shares of Common Stock on repurchase of Securities shall be made without charge to the Holder of Securities being repurchased for such certificates or for any tax or duty in respect of the issuance or delivery of such certificates or the Securities represented thereby; provided, however, that the Company shall not be required to pay any tax or duty which may be payable in respect of (i) income of the Holder or (ii) any transfer involved in the issuance or delivery of certificates for shares of Common Stock in a name other than that of the Holder of the Securities being repurchased, and

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no such issuance or delivery shall be made unless the Persons requesting such issuance or delivery has paid to the Company the amount of any such tax or duty or has established, to the satisfaction of the Company, that such tax or duty has been paid.

(i) All Securities delivered for repurchase shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 2.15 hereof.

ARTICLE 12

CONVERSION OF SECURITIES

SECTION 12.1 Conversion Right and Conversion Price.

Subject to and upon compliance with the provisions of this Article, at the option of the Holder thereof, any Security or any portion of the principal amount thereof which is \$1,000 or an integral multiple of \$1,000 may be converted at the principal amount thereof, or of such portion thereof, into the number of duly authorized, fully paid and nonassessable shares of Common Stock obtained by dividing the aggregate principal amount of such Security (or portion thereof) surrendered for conversion by the Conversion Price, determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall expire at the close of business on February 14, 2011.

In case a Security or portion thereof is called for redemption, such conversion right in respect of the Security or the portion so called, shall expire at the close of business on the Business Day immediately preceding the redemption date, unless the Company defaults in making the payment due upon redemption. In the case of a Change of Control for which the Holder exercises its Repurchase Right in respect of a Security or portion thereof, such conversion right in respect of the Security or portion thereof shall expire at the close of business on the Business Day immediately preceding the Repurchase Date.

The price at which shares of Common Stock shall be delivered upon conversion (the "Conversion Price") shall be initially equal to \$14.94 per share of Common Stock. The Conversion Price shall be adjusted in certain instances as provided in paragraphs (a), (b), (c), (d), (e), (f), (h) and (l) of Section 12.4

hereof.

SECTION 12.2 Exercise of Conversion Right.

To exercise the conversion right, the Holder of any Security to be converted shall surrender such Security duly endorsed or assigned to the Company or in blank, at the office of any Conversion Agent, accompanied by a duly signed conversion notice substantially in the form attached to the Security to the Company stating that the Holder elects to convert such Security or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted.

Any Security surrendered for conversion during the period between the close of business on any Regular Record Date and prior to the corresponding Interest Payment Date shall be accompanied by payment in New York Clearing House funds or other funds acceptable to the

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Company of an amount equal to the interest (including Liquidated Damages, if any) to be received by the Holder on such Interest Payment Date on the principal amount of the Security being surrendered for conversion. Notwithstanding the foregoing, any Holder which during such period surrenders for conversion any Security which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.5 hereof (whether the redemption date for such Security is on such Interest Payment Date or otherwise) need not pay the Company an amount equal to the interest (including Liquidated Damages, if any) on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

Securities shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Securities for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Securities as Holders shall cease, and the Person or Persons entitled to receive the Common Stock issuable upon conversion shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the conversion date, the Company shall cause to be issued and delivered to such Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, together with payment in lieu of any fraction of a share as provided in Section 12.3 hereof.

In the case of any Security which is converted in part only, upon such conversion the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities of authorized denominations in aggregate principal amount equal to the unconverted portion of the principal amount of such Securities.

If shares of Common Stock to be issued upon conversion of a Restricted Security, or Securities to be issued upon conversion of a Restricted Security in part only, are to be registered in a name other than that of the Holder of such Restricted Security, such Holder must deliver to the Conversion Agent a certificate in substantially the form set forth in the form of Security set forth in Exhibit A annexed hereto, dated the date of surrender of such Restricted Security and signed by such Holder, as to compliance with the restrictions on transfer applicable to such Restricted Security. Neither the Trustee nor any Conversion Agent, Registrar or Transfer Agent shall be required to register in a name other than that of the Holder shares of Common Stock or Securities issued upon conversion of any such Restricted Security (i) not so accompanied by a properly completed certificate or (ii) the Holder does not comply with the applicable restrictions on transfer set forth in Sections 2.7, 2.8 and 2.9 of this Indenture.

The Company hereby initially appoints the Trustee as the Conversion Agent.

Except as provided in Section 2.1 and this Article 12, no payment or other adjustment shall be made for interest accrued on any Security converted or for dividends on any shares of Common Stock issued upon conversion of such Security. Accrued and unpaid interest on any Security at the time of conversion will be treated as paid in stock.

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SECTION 12.3 Fractions of Shares.

No fractional shares of Common Stock shall be issued upon conversion of any Security or Securities. If more than one Security shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof) so surrendered. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of any Security or Securities (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the Closing Price of the Common Stock as of the Trading Day preceding the date of conversion.

SECTION 12.4 Adjustment of Conversion Price.

The Conversion Price shall be subject to adjustments, calculated by the Company, from time to time as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction:

(i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date (as defined in Section 12.4(g)) fixed for such determination, and

(ii) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution.

Such reduction shall become effective immediately after the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this Section 12.4(a) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(b) In case the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(c) In case the Company shall issue rights or warrants (other than any rights or warrants referred to in Section 12.4(d)) to all holders of its outstanding shares of Common Stock

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entitling them to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share (or having a conversion price per share) less than the Current Market Price (as defined in Section 12.4(g)) on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction:

(i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered) would purchase at such Current Market Price, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding on the close of business on the Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible).

Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock (or securities convertible into Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of the delivery of only the number of shares of Common Stock (or securities convertible into Common Stock) actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration if other than cash, to be determined by the Board of Directors.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which Section 12.4(a) applies) or evidences of its indebtedness, cash or other assets, including securities, but excluding (1) any rights or warrants referred to in Section 12.4(c), (2) any stock, securities, dividends or other property or assets or distributions (including cash) distributed in connection with a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 12.11 hereof applies and (3) dividends and distributions paid exclusively in cash (the securities described in foregoing clauses (1), (2) and (3) hereinafter in this Section 12.4(d) called the "securities"), then, in each such case, subject to the second succeeding paragraph of this Section 12.4(d), the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion

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Price in effect immediately prior to the close of business on the Record Date (as defined in Section 12.4(g)) with respect to such distribution by a fraction:

(i) the numerator of which shall be the Current Market Price (determined as provided in Section 12.4(g)) on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) on such date of the portion of the shares of capital stock, evidences of indebtedness, cash or other assets, including securities, so distributed applicable to one share of Common Stock (determined on the basis of the number of shares of the Common Stock outstanding on the Record Date), and

(ii) the denominator of which shall be such Current Market Price on such date.

Such reduction shall become effective immediately prior to the opening of business on the day following the Record Date. However, in the event that the then fair market value (as so determined) of the portion of the securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion of a Security (or any portion thereof) the amount of shares of capital stock, evidences of indebtedness, cash or other assets, including securities, such Holder would have received had such Holder converted such Security (or portion thereof) immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

If the Board of Directors determines the fair market value of any distribution for purposes of this Section 12.4(d) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period (the "Reference Period") used in computing the Current Market Price pursuant to Section 12.4(g) to the extent possible, unless the Board of Directors in a Board Resolution determines in good faith that determining the fair market value during the Reference Period would not be in the best interest of the Holder.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"):

- (i) are deemed to be transferred with such shares of Common Stock;
- (ii) are not exercisable; and
- (iii) are also issued in respect of future issuances of Common Stock,

shall be deemed not to have been distributed for purposes of this Section 12.4(d) (and no adjustment to the Conversion Price under this Section 12.4(d) will be required) until the occurrence of the earliest Trigger Event. If such right or warrant is subject to subsequent events, upon the occurrence of which such right or warrant shall become exercisable to purchase different securities, evidences of indebtedness or other assets or entitle the holder to purchase a

different number or amount of the foregoing or to purchase any of the foregoing at a different purchase price, then the occurrence of each such event shall be deemed to be the date of issuance and record date with respect to a new right or warrant (and a termination or expiration of the existing right or warrant without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto, that resulted in an adjustment to the Conversion Price under this Section 12.4(d):

(1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights or warrant (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and

(2) in the case of such rights or warrants all of which shall have expired or been terminated without exercise, the Conversion Price shall be readjusted as if such rights and warrants had never been issued.

For purposes of this Section 12.4(d) and Sections 12.4(a), 12.4(b) and 12.4(c), any dividend or distribution to which this Section 12.4(d) is applicable that also includes shares of Common Stock, a subdivision or combination of Common Stock to which Section 12.4(b) applies, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 12.4(c) applies (or any combination thereof), shall be deemed instead to be:

(1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock, such subdivision or combination or such rights or warrants to which Sections 12.4(a), 12.4(b) and 12.4(c) apply, respectively (and any Conversion Price reduction required by this Section 12.4(d) with respect to such dividend or distribution shall then be made), immediately followed by

(2) a dividend or distribution of such shares of Common Stock, such subdivision or combination or such rights or warrants (and any further Conversion Price reduction required by Sections 12.4(a), 12.4(b) and 12.4(c) with respect to such dividend or distribution shall then be made), except:

(A) the Record Date of such dividend or distribution shall be substituted as (x) "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution," "Record Date fixed for such determination" and "Record Date" within the meaning of Section 12.4(a), (y) "the day upon which such subdivision becomes effective" and "the day upon which such combination becomes effective" within the meaning of Section 12.4(b), and (z) as "the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants," such "Record

Date," "the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants" and "such dated fixed for the determination of stockholders entitled to receive such rights or warrants" within the meaning of Section 12.4(c), and

(B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the Record Date fixed for such determination" within the meaning of Section 12.4(a) and any reduction or increase in the number of shares of Common Stock resulting from such subdivision or combination shall be disregarded in connection with such dividend or distribution.

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance to which Section 12.11 hereof applies or as part of a distribution referred to in Section 12.4(d) hereof), in an aggregate amount that, combined together with:

(1) the aggregate amount of any other such distributions to all holders of Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 12.4(e) has been made, and

(2) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the expiration of the tender or exchange offer referred to below, of consideration payable in respect of any tender or exchange offer by the Company or any of its subsidiaries for all or any portion of the Common Stock concluded within the 12 months preceding the date of such distribution, and in respect of which no adjustment pursuant to Section 12.4(f) hereof has been made,

exceeds 10% of the product of the Current Market Price (determined as provided in Section 12.4(g)) on the Record Date with respect to such distribution times the number of shares of Common Stock outstanding on such date, then and in each such case, immediately after the close of business on such date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction:

- (i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the excess of such combined amount over such 10% and (y) the number of shares of Common Stock outstanding on the Record Date, and
- (ii) the denominator of which shall be equal to the Current Market Price on such date.

In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender or exchange offer made by the Company or any of its subsidiaries for all or any portion of the Common Stock shall expire and such tender or exchange offer (as

amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) that combined together with:

(1) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the expiration of the other tender or exchange offer referred to below, of consideration payable in respect of any other tender or exchange offers by the Company or any of its subsidiaries for all or any portion of the Common Stock expiring within the preceding 12 months and in respect of which no adjustment pursuant to this Section 12.4(f) has been made, and

(2) the aggregate amount of any distributions to all holders of the Company's Common Stock made exclusively in cash within the preceding 12 months and in respect of which no adjustment pursuant to Section 12.4(e) has been made, exceeds 10% of the product of the Current Market Price (determined as provided in Section 12.4(g)) as of the last time (the "Expiration Time") tenders could have been made pursuant to such tender or exchange offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered or exchanged shares) on the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction:

(i) the numerator of which shall be (x) the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time minus (y) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares"), and

(ii) the denominator shall be the product of the number of shares of Common Stock outstanding (including any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time.

Such reduction (if any) shall become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender or exchange offer had not been made. If the application of this Section 12.4(f)

to any tender or exchange offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender or exchange offer under this Section 12.4(f).

(g) For purposes of this Section 12.4, the following terms shall have the meanings indicated:

(1) "Current Market Price" shall mean the average of the daily Closing Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to the date in question; provided, however, that if:

(i) the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs during such ten consecutive Trading Days, the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event;

(ii) the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event; and

(iii) the “ex” date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (i) or (ii) of this proviso, the Closing Price for each Trading Day on or after such “ex” date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 12.4(d) or (f), whose determination shall be conclusive and set forth in a Board Resolution) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such “ex” date.

For purposes of any computation under Section 12.4(f), the Current Market Price of the Common Stock on any date shall be deemed to be the average of the daily Closing Prices per share of Common Stock for such day and the next two succeeding Trading Days; provided, however, that if the “ex” date for any event (other than the tender offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 12.4(a), (b), (c), (d), (e) or (f) occurs on or after the Expiration Time for the tender or exchange offer requiring such computation and prior to the day in question, the Closing Price for each Trading Day on and after the “ex” date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event. For purposes of this paragraph, the term “ex” date, when used:

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(A) with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution;

(B) with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and

(C) with respect to any tender or exchange offer, means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer.

Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to this Section 12.4, such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 12.4 and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

(1) (2) “fair market value” shall mean the amount which a willing buyer would pay a willing seller in an arm’s length transaction.

(3) “Record Date” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(h) The Company may make such reductions in the Conversion Price, in addition to those required by Section 12.4(a), (b), (c), (d), (e) or (f), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days and the reduction is irrevocable during the period and the Board of Directors determines in good faith that such reduction would be in the best interests of the Company, which determination shall be conclusive and set forth in a Board Resolution. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Company shall mail to the Trustee and each Holder at the address of such Holder as it appears in the Register a notice of the reduction at least 15 days prior to the date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period during which it will be in effect.

(i) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any

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adjustments which by reason of this Section 12.4(i) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 12 shall be made by the Company and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(j) In any case in which this Section 12.4 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Security converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 12.3 hereof.

(k) For purposes of this Section 12.4, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

(l) If the distribution date for the rights provided in the Company’s rights agreement, if any, occurs prior to the date a Security is converted, the Holder of the Security who converts such Security after the distribution date is not entitled to receive the rights that would otherwise be attached (but for the date of conversion) to the shares of Common Stock received upon such conversion; provided, however, that an adjustment shall be made to the Conversion Price pursuant to clause 12.4(b) as if the rights were being distributed to the common stockholders of the Company immediately prior to such conversion. If

such an adjustment is made and the rights are later redeemed, invalidated or terminated, then a corresponding reversing adjustment shall be made to the Conversion Price, on an equitable basis, to take account of such event.

SECTION 12.5 Notice of Adjustments of Conversion Price.

Whenever the Conversion Price is adjusted as herein provided (other than in the case of an adjustment pursuant to the second paragraph of Section 12.4(h) for which the notice required by such paragraph has been provided), the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based. Promptly after delivery of such Officers' Certificate, the Company shall prepare a notice stating that the Conversion Price has been adjusted and setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective, and shall mail such notice to each Holder at the address of such Holder as it appears in the Register within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not effect the legality or validity of any such adjustment.

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SECTION 12.6 Notice Prior to Certain Actions.

In case at any time after the date hereof:

- (1) the Company shall declare a dividend (or any other distribution) on its Common Stock payable otherwise than in cash out of its capital surplus or its consolidated retained earnings;
- (2) the Company shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class (or of securities convertible into shares of capital stock of any class) or of any other rights;
- (3) there shall occur any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, a change in par value, a change from par value to no par value or a change from no par value to par value), or any merger, consolidation, statutory share exchange or combination to which the Company is a party and for which approval of any shareholders of the Company is required, or the sale, transfer or conveyance of all or substantially all of the assets of the Company; or
- (4) there shall occur the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of securities pursuant to Section 9.2 hereof, and shall cause to be provided to the Trustee and all Holders in accordance with Section 14.2 hereof, at least 20 days (or 10 days in any case specified in clause (1) or (2) above) prior to the applicable record or effective date hereinafter specified, a notice stating:

- (A) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or
- (B) the date on which such reclassification, merger, consolidation, statutory share exchange, combination, sale, transfer, conveyance, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, merger, consolidation, statutory share exchange, sale, transfer, dissolution, liquidation or winding up.

Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings or actions described in clauses (1) through (4) of this Section 12.6.

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SECTION 12.7 Company To Reserve Common Stock.

The Company shall at all times use its best efforts to reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Stock, for the purpose of effecting the conversion of Securities, the full number of shares of fully paid and nonassessable Common Stock then issuable upon the conversion of all Outstanding Securities.

SECTION 12.8 Taxes on Conversions.

Except as provided in the next sentence, the Company will pay any and all taxes (other than taxes on income) and duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Securities pursuant hereto. A Holder delivering a Security for conversion shall be liable for and will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that of the Holder of the Security or Securities to be converted, and no such issue or delivery shall be made unless the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

SECTION 12.9 Covenant as to Common Stock.

The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities will upon issue be fully paid and nonassessable and, except as provided in Section 12.8, the Company will pay all taxes, liens and charges with respect to the issue thereof.

SECTION 12.10 Cancellation of Converted Securities.

All Securities delivered for conversion shall be delivered to the Trustee to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.9.

SECTION 12.11 Effect of Recapitalization, Reclassification, Consolidation, Merger or Sale.

If any of following events occur, namely:

- (i) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination),
- (ii) any merger, consolidation, statutory share exchange or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash or any combination thereof) with respect to or in exchange for such Common Stock, or
- (iii) any sale, conveyance or lease of the properties and assets of the Company as, or substantially as, an entirety to any other corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash or any combination thereof) with respect to or in exchange for such Common Stock,

the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that each Security shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash or any combination thereof) which such Holder would have been entitled to receive upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance had such Securities been converted into Common Stock immediately prior to such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise its rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance (provided that, if the kind or amount of securities, cash or other property receivable upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("Non-Electing Share"), then for the purposes of this Section 12.11 the kind and amount of securities, cash or other property receivable upon such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 12. If, in the case of any such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such recapitalization, reclassification, change, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the Repurchase Rights set forth in Article 11 hereof.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the Register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive recapitalizations, reclassifications, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances.

If this Section 12.11 applies to any event or occurrence, Section 12.4 hereof shall not apply.

SECTION 12.12 Responsibility of Trustee for Conversion Provisions.

The Trustee, subject to the provisions of Section 5.1 hereof, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or intent of any such adjustments when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee, subject to the provisions of Section 5.1 hereof, nor any Conversion Agent shall be accountable with respect to the validity or value (of the kind or amount) of any Common Stock, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Security; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 5.1 hereof, nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of stock or share certificates or other securities or property upon the surrender of any Security for the purpose of conversion; and the Trustee, subject to the provisions of Section 5.1 hereof, and any Conversion Agent shall not be responsible or liable for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

ARTICLE 13

SUBORDINATION

SECTION 13.1 Securities Subordinated to Senior Debt.

The Company covenants and agrees, and each Holder of Securities, by such Holder's acceptance thereof, likewise covenants and agrees, that the Indebtedness represented by the Securities and the payment of the principal of and premium, if any, and interest (including Liquidated Damages, if any) on each and all of the Securities is hereby expressly (i) senior in right of payment to the Old Securities and any future obligations that are designated by the Company as subordinate to the Securities; (ii) equal in right of payment with any existing or future obligations that are designated by the Company as, or are otherwise determined to be, on a parity with the Securities and (iii) subordinated and junior, to the extent and in the manner set forth and as set forth in this Section 13.1, in right of payment to the prior payment in full of all Senior Debt. The Securities will constitute "Designated Senior Debt" for purposes of the indenture for the Old Securities.

(a) In the event of any payment or distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, the holders of all Senior Debt shall first be entitled to receive payment of the full amount due thereon in respect of all such Senior Debt and all other amounts due or provision shall be made for such amount in cash, or other payments satisfactory to the holders of Senior Debt, before the Holders of any of the Securities are entitled to receive any payment or distribution of any character, whether in cash, securities or other property, on account of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on the Securities.

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(b) In the event of any acceleration of Maturity of the Securities because of an Event of Default, unless the full amount due in respect of all Senior Debt is paid in cash or other form of payment satisfactory to the holders of Senior Debt, no payment shall be made by the Company with respect to the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Securities or to acquire any of the Securities (including any redemption, conversion or cash repurchase pursuant to the exercise of the Repurchase Right), and the Company shall give prompt written notice of such acceleration to such holders of Senior Debt.

(c) In the event of and during the continuance of any default in payment of the principal of or premium, if any, or interest on, rent or other payment obligation in respect of, any Senior Debt, unless all such payments due in respect of such Senior Debt have been paid in full in cash or other payments satisfactory to the holders of Senior Debt, no payment shall be made by the Company with respect to the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Securities or to acquire any of the Securities (including any redemption, conversion or cash repurchase pursuant to the exercise of the Repurchase Right). The Company shall give prompt written notice to the Trustee of any default under any Senior Debt or under any agreement pursuant to which Senior Debt may have been issued.

(d) During the continuance of any event of default with respect to any Designated Senior Debt, as such event of default is defined under any such Designated Senior Debt or in any agreement pursuant to which any Designated Senior Debt has been issued (other than a default in payment of the principal of or premium, if any, or interest on, rent or other payment obligation in respect of any Designated Senior Debt), permitting the holder or holders of such Designated Senior Debt to accelerate the maturity thereof (or in the case of any lease, permitting the landlord either to terminate the lease or to require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder), no payment shall be made by the Company, directly or indirectly, with respect to principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Securities for 179 days following notice in writing (a "Payment Blockage Notice") to the Company, from any holder or holders of such Designated Senior Debt or their representative or representatives or the trustee or trustees under any indenture or under which any instrument evidencing any such Designated Senior Debt may have been issued, that such an event of default has occurred and is continuing, unless such event of default has been cured or waived or such Designated Senior Debt has been paid in full in cash or other payment satisfactory to the holders of such Designated Senior Debt; provided, however, if the maturity of such Designated Senior Debt is accelerated (or in the case of any lease, as a result of such event of default, the landlord under the lease has given the Company notice of its intention to terminate the lease or to require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder), no payment may be made on the Securities until such Designated Senior Debt has been paid in full in cash or other payment satisfactory to the holders of such Designated Senior Debt or such acceleration (or termination, in the case of a lease) has been cured or waived.

For purposes of this Section 13.1(d), such Payment Blockage Notice shall be deemed to include notice of all other events of default under such indenture or instrument which are continuing at the time of the event of default specified in such Payment Blockage Notice. The provisions of this Section 13.1(d) shall apply only to one such Payment Blockage Notice given in any period of 365 days with respect to any issue of Designated Senior Debt, and no such

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continuing event of default that existed or was continuing on the date of delivery of any Payment Blockage Notice shall be, or shall be made, the basis for a subsequent Payment Blockage Notice.

(e) In the event that, notwithstanding the foregoing provisions of Sections 13.1(a), 13.1(b), 13.1(c) and 13.1(d), any payment on account of principal, premium, if any, or interest (including Liquidated Damages, if any) on the Securities shall have been made by or on behalf of the Company and received by the Trustee, by any Holder or by any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment shall be segregated and held in trust):

(i) after the occurrence of an event specified in Section 13.1(a) or 13.1(b), then, unless all Senior Debt is paid in full in cash, or provision shall be made therefor,

(ii) after the happening of an event of default of the type specified in Section 13.1(c) above, then, unless the amount of such Senior Debt then due shall have been paid in full, or provision made therefor or such event of default shall have been cured or waived, or

(iii) after the happening of an event of default of the type specified in Section 13.1(d) above and delivery of a Payment Blockage Notice, then, unless such event of default shall have been cured or waived or the 179-day period specified in Section 13.1(d) shall have expired,

such payment (subject, in each case, to the provisions of Section 13.7 hereof) shall be held in trust for the benefit of, and shall be immediately paid over to, the holders of Designated Senior Debt (unless an event described in Section 13.1(a), (b) or (c) has occurred, in which case the payment shall be held in trust

for the benefit of, and shall be immediately paid over to all holders of Senior Debt) or their representative or representatives or the trustee or trustees under any indenture under which any instruments evidencing any of the Designated Senior Debt or Senior Debt, as the case may be, may have been issued, as their interests may appear.

SECTION 13.2 Subrogation.

Subject to the payment in full of all Senior Debt to which the Indebtedness evidenced by the Securities is in the circumstances subordinated as provided in Section 13.1 hereof, the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Debt until all amounts owing on the Securities shall be paid in full, and, as between the Company, its creditors other than holders of such Senior Debt, and the Holders of the Securities, no such payment or distribution made to the holders of Senior Debt by virtue of this Article which otherwise would have been made to the holders of the Securities shall be deemed to be a payment by the Company on account of such Senior Debt, provided that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of Senior Debt, on the other hand.

SECTION 13.3 Obligation of the Company Is Absolute and Unconditional.

Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Company, which is absolute

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and unconditional, to pay to the Holders of the Securities the principal of and premium, if any, and interest (including Liquidated Damages, if any) on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of Senior Debt, nor shall anything contained herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Debt in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

SECTION 13.4 Maturity of or Default on Senior Debt.

Upon the maturity of any Senior Debt by lapse of time, acceleration or otherwise, all principal of or premium, if any, or interest on, rent or other payment obligations in respect of all such matured Senior Debt shall first be paid in full, or such payment shall have been duly provided for, before any payment on account of principal, or premium, if any, or interest (including Liquidated Damages, if any) is made upon the Securities.

SECTION 13.5 Payments on Securities Permitted.

Except as expressly provided in this Article, nothing contained in this Article shall affect the obligation of the Company to make, or prevent the Company from making, payments of the principal of, or premium, if any, or interest (including Liquidated Damages, if any) on the Securities in accordance with the provisions hereof and thereof, or shall prevent the Trustee or any Paying Agent from applying any moneys deposited with it hereunder to the payment of the principal of, or premium, if any, or interest (including Liquidated Damages, if any) on the Securities.

SECTION 13.6 Effectuation of Subordination by Trustee.

Each Holder of Securities, by such Holder's acceptance thereof, authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other Person making any payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, and as to other facts pertinent to the right of such Persons under this Article, and if such evidence is not furnished, the Trustee may defer any payment to such Persons pending judicial determination as to the right of such Persons to receive such payment.

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SECTION 13.7 Knowledge of Trustee.

Notwithstanding the provision of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any Senior Debt, of any default in payment of principal of, premium, if any, or interest on, rent or other payment obligation in respect of any Senior Debt, or of any facts which would prohibit the making of any payment of moneys to or by the Trustee, or the taking of any other action by the Trustee, unless a Responsible Officer of the Trustee having responsibility for the administration of the trust established by this Indenture shall have received written notice thereof from the Company, any Holder of Securities, any Paying or Conversion Agent of the Company or the holder or representative of any class of Senior Debt, and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such default or facts exist; provided, however, that unless on the third Business Day prior to the date upon which by the terms hereof any such moneys may become payable for any purpose the Trustee shall have received the notice provided for in this Section 13.7, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys and apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date.

SECTION 13.8 Trustee's Relation to Senior Debt.

The Trustee shall be entitled to all the rights set forth in this Article with respect to any Senior Debt at the time held by it, to the same extent as any other holder of Senior Debt and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing contained in this Article shall apply to claims of or payments to the Trustee under or pursuant to Section 5.8 hereof.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and the Trustee shall not be liable to any holder of Senior Debt if it shall pay over or deliver to Holders, the Company or any other Person moneys or assets to which any holder of Senior Debt shall be entitled by virtue of this Article or otherwise.

SECTION 13.9 Rights of Holders of Senior Debt Not Impaired.

No right of any present or future holder of any Senior Debt to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

SECTION 13.10 Modification of Terms of Senior Debt.

Any renewal or extension of the time of payment of any Senior Debt or the exercise by the holders of Senior Debt of any of their rights under any instrument creating or evidencing

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Senior Debt, including without limitation the waiver of default thereunder, may be made or done all without notice to or assent from the Holders of the Securities or the Trustee.

No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of, or of any of the terms, covenants or conditions of any indenture or other instrument under which any Senior Debt is outstanding or of such Senior Debt, whether or not such release is in accordance with the provisions or any applicable document, shall in any way alter or affect any of the provisions of this Article or of the Securities relating to the subordination thereof.

SECTION 13.11 Certain Conversions Not Deemed Payment.

For the purposes of this Article 13 only:

- (1) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article 12 hereof shall not be deemed to constitute a payment or distribution on account of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on Securities or on account of the purchase or other acquisition of Securities, and
- (2) the payment, issuance or delivery of cash (except in satisfaction of fractional shares pursuant to Section 12.3 hereof), property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on such Security.

For the purposes of this Section 13.11, the term "junior securities" means:

- (a) shares of any common stock of the Company or
- (b) other securities of the Company that are subordinated in right of payment to all Senior Debt that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article.

Nothing contained in this Article 13 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors (other than holders of Senior Debt) and the Holders of Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 12 hereof.

ARTICLE 14

OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 14.1 Trust Indenture Act Controls.

This Indenture is subject to the provisions of the TIA which are required to be part of this Indenture, and shall, to the extent applicable, be governed by such provisions.

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SECTION 14.2 Notices.

Any notice or communication to the Company or the Trustee is duly given if in writing and delivered in person or mailed by first-class mail to the address set forth below:

- (a) if to the Company:

Vertex Pharmaceuticals Incorporated
130 Waverly Street
Cambridge, MA 02139
Attention: [Investor Relations]

with a copy to:

Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attention: Michael L. Fantozzi, Esq.

(b) if to the Trustee:

U.S. Bank National Association
Corporate Trust Department
One Federal Street, Boston, MA 02110
Attention: John Brennan

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication to a Holder shall be mailed by first-class mail to his address shown on the Register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in such notice or communication shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it is duly given as of the date it is mailed, whether or not the addressee receives it, except that notice to the Trustee shall only be effective upon receipt thereof by the Trustee.

If the Company mails a notice or communication to Holders, it shall mail a copy to the Trustee at the same time.

SECTION 14.3 Communication by Holders With Other Holders.

Holders may communicate pursuant to Section 312(b) of the TIA with other Holders with respect to their rights under the Securities or this Indenture. The Company, the Trustee, the Registrar and anyone else shall have the protection of Section 312(c) of the TIA.

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SECTION 14.4 Acts of Holders of Securities.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities may be embodied in and evidenced by:

- (1) one or more instruments of substantially similar tenor signed by such Holders in person or by agent or proxy duly appointed in writing;
- (2) the record of Holders of Securities voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities duly called and held in accordance with the provisions of Article 8; or
- (3) a combination of such instruments and any such record.

Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders of Securities signing such instrument or instruments and so voting at such meeting. Proof of execution of any such instrument or of a writing appointing any such agent or proxy, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 5.1 hereof) conclusive in favor of the Trustee and the Company if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 8.6 hereof.

(b) The fact and date of the execution by any Person of any such instrument or writing may be provided in any manner which the Trustee reasonably deems sufficient.

(c) The principal amount and serial numbers of Securities held by any Person, and the date of such Person holding the same, shall be proved by the Register.

(d) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of the Holders of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

SECTION 14.5 Certificate and Opinion as to Conditions Precedent.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person

may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such officer knows, or in the exercise of reasonable care should know, that the Opinion of Counsel with respect to the matters upon which such certificate or opinion is based is erroneous. Any such Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

SECTION 14.6 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that each individual signing such certificate or opinion on behalf of the Company has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 14.7 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 14.8 Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 14.9 Separability Clause.

In case any provision in this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 14.10 Benefits of Indenture.

Nothing contained in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Debt and the Holders of Securities, any benefit or legal or equitable right, remedy or claim under this Indenture.

SECTION 14.11 Governing Law.

THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 14.12 Counterparts.

This instrument may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original but all such counterparts shall together constitute but one and the same instrument.

SECTION 14.13 Legal Holidays.

In any case where any Interest Payment Date, redemption date or Stated Maturity of any Security or the last day on which a Holder of a Security has a right to convert such Security shall not be a Business Day at any Place of Payment or Place of Conversion, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest (including Liquidated Damages, if any) or principal or premium, if any, or conversion of the Securities, need not be made at such Place of Payment or Place of Conversion on such day, but may be made on the next succeeding Business Day at such Place of Payment or Place of Conversion with the same force and effect as if made on the Interest Payment Date or redemption date or at the Stated Maturity or on

CERTIFICATE TO STATE STREET BANK AND TRUST COMPANY, AS TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE). IF THE PROPOSED TRANSFER IS PURSUANT TO CLAUSE 2(C) ABOVE, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO STATE STREET BANK AND TRUST COMPANY, AS TRUSTEE (OR ANY SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS AND OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. THIS LEGEND WILL BE REMOVED UPON THE EARLIER OF THE TRANSFER OF THE NOTE EVIDENCED HEREBY PURSUANT TO CLAUSE 2(C) OR 2(D) ABOVE OR THE EXPIRATION OF TWO YEARS FROM THE ORIGINAL ISSUANCE OF THE NOTE EVIDENCED HEREBY.

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VERTEX PHARMACEUTICALS INCORPORATED

5¾ % Convertible Subordinated Note due 2011

CUSIP NO. 92532F AE 0

No.

\$

VERTEX PHARMACEUTICALS INCORPORATED, a Massachusetts corporation (the "Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or its registered assigns, the principal sum of U.S. Dollars (\$) on February 15, 2011.

Interest Payment Dates: February 15 and August 15, commencing August 15, 2004.

Regular Record Dates: February 1 and August 1.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

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IN WITNESS WHEREOF, the Company has caused this Security to be duly executed manually or by facsimile by its duly authorized officers.

Dated: _____

**VERTEX PHARMACEUTICALS
INCORPORATED**

By: _____
Name:
Title:

By: _____
Name:
Title:

Trustee's Certificate of Authentication

This is one of the 5¾% Convertible Subordinated Notes due 2011 described in the within-named Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Dated:

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[REVERSE OF SECURITY]

VERTEX PHARMACEUTICALS INCORPORATED

Capitalized terms used herein but not defined shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Principal and Interest.

Vertex Pharmaceuticals Incorporated, a Massachusetts corporation, promises to pay interest on the principal amount of this Security at the Interest Rate from the date of issuance until repayment at Maturity, redemption or repurchase. The Company will pay interest on this Security semiannually in arrears on February 15 and August 15 of each year (each an "Interest Payment Date"), commencing August 15, 2004.

Interest on the Securities shall be computed (i) for any full semiannual period for which a particular Interest Rate is applicable on the basis of a 360-day year of twelve 30-day months and (ii) for any period for which a particular Interest Rate is applicable shorter than a full semiannual period for which interest is calculated, on the basis of a 30-day month and, for such periods of less than a month, the actual number of days elapsed over a 30-day month.

A Holder of any Security at the close of business on a Regular Record Date shall be entitled to receive interest on such Security on the corresponding Interest Payment Date. A Holder of any Security which is converted after the close of business on a Regular Record Date and prior to the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be entitled to receive interest on the principal amount of such Security, notwithstanding the conversion of such Security prior to such Interest Payment Date. However, any such Holder which surrenders any such Security for conversion during such period shall be required to pay the Company an amount equal to the interest on the principal amount of such Security so converted, which is payable by the Company to such Holder on such Interest Payment Date, at the time such Holder surrenders such Security for conversion. Notwithstanding the foregoing, any such Holder which surrenders for conversion during such period any Security which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.5 of the Indenture (whether the redemption date for such Security is on such Interest Payment Date or otherwise) shall be entitled to receive (and retain) such interest and need not pay the Company an amount equal to the interest on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion. Except as provided in Section 2.1 and Article 12 of the Indenture, no payment or other adjustment shall be made for interest accrued on any Security converted or for dividends on any shares of Common Stock issued upon conversion of such Security.

In accordance with the terms of the Registration Rights Agreement, during the first 90 days following a Registration Default (as defined in the Registration Rights Agreement), the Interest Rate borne by the Securities shall be increased by 0.25% on:

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(A) June 13, 2004, if the shelf registration statement (the "Shelf Registration Statement") is not filed with the SEC prior to or on June 12, 2004;

(B) September 11, 2004, if the Shelf Registration Statement is not declared effective by the SEC prior to or on September 10, 2004;

(C) the day after the fifth Business Day after the Shelf Registration Statement, previously declared effective, ceases to be effective or fails to be usable, if a post-effective amendment (or report filed pursuant to the Exchange Act) that cures the Shelf Registration Statement is not filed with the SEC during such five Business Day period; or

(D) the day after the 45th or 60th day, as specified in the Registration Rights Agreement, of any period that the prospectus contained in the Shelf Registration Statement has been suspended, if such suspension has not been terminated.

From and after the 91st day following such Registration Default, the Interest Rate borne by the Securities shall be increased by 0.50%. In no event shall the Interest Rate borne by the Securities be increased by more than 0.50%.

Any amount of additional interest will be payable in cash semiannually, in arrears, on each Interest Payment Date and will cease to accrue on the date the Registration Default is cured. The Holder of this Security is entitled to the benefits of the Registration Rights Agreement.

2. Method of Payment.

Interest (including Liquidated Damages, if any) on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Principal of, and premium, if any, and interest (including Liquidated Damages, if any) on, Global Securities will be payable to the Depository in immediately available funds.

Principal and premium, if any, on Physical Securities, if any, will be payable at the office or agency of the Company maintained for such purpose, initially the Corporate Trust Office of the Trustee. Interest on Physical Securities will be payable by (i) U.S. Dollar check drawn on a bank located in the city where the Corporate Trust Office of the Trustee is located, mailed to the address of the Person entitled thereto as such address shall appear in the Register, or (ii) upon application to the Registrar not later than the relevant Record Date by a Holder of an aggregate principal amount in excess of \$5,000,000, wire transfer in immediately available funds.

3. Paying Agent and Registrar.

Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without notice to any Holder.

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4. Indenture.

The Company issued this Security under an Indenture, dated as of February 13, 2004, as it may from time to time be supplemented or amended by one or more indentures supplemental thereto entered into pursuant to the applicable provisions thereof (the "Indenture"), between the Company and US Bank National Association, as Trustee. The terms of the Security include those stated in the Indenture and those made part of the Indenture by reference to the TIA. This Security is subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of all such terms. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Security and the terms of the Indenture, the terms of the Indenture shall control.

5. [Reserved]

6. Optional Redemption.

Prior to February 15, 2007, the Company cannot redeem the Securities. The Company may, on or after February 15, 2007, at its option, redeem the Securities in whole or in part on any date from time to time, upon notice to the Holders as provided in the Indenture, at a redemption price, payable in cash, equal to 100% of the principal amount of the Securities redeemed plus accrued and unpaid interest (including any Liquidated Damages), if any, to but excluding the date of redemption.

If fewer than all the Securities are to be redeemed, the Trustee shall select the particular Securities to be redeemed from the Outstanding Securities by the methods as provided in the Indenture. If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed to be the portion selected for redemption (provided, however, that the Holder of such Security so converted and deemed redeemed shall not be entitled to any additional interest payment as a result of such deemed redemption than such Holder would have otherwise been entitled to receive upon conversion of such Security). Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as Outstanding for the purpose of such selection.

On and after the redemption date, interest ceases to accrue on Securities or portions of Securities called for redemption, unless the Company defaults in the payment of the redemption price and accrued and unpaid interest.

7. Repurchase Right Upon a Change of Control.

If a Change of Control occurs, the Holder of Securities, at the Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to repurchase the Securities (or any portion of the principal amount hereof that is at least \$1,000 or an integral multiple thereof, provided that the portion of the principal amount of this Security to be Outstanding after such repurchase is at least equal to \$1,000) at the Repurchase Price, plus any interest accrued and unpaid to the Repurchase Date.

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Subject to the conditions provided in Section 11.2 of the Indenture, the Company may elect to pay the Repurchase Price by delivering a number of shares of Common Stock equal to (i) the Repurchase Price divided by (ii) 95% of the average of the Closing Prices per share for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date.

No fractional shares of Common Stock will be issued upon repurchase of any Securities. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of such Securities, the Company shall pay a cash adjustment as provided in the Indenture.

A Company Notice will be given by the Company to the Holders as provided in the Indenture. To exercise a Repurchase Right, a Holder must deliver to the Trustee a written notice as provided in the Indenture.

8. Conversion Rights.

Subject to and upon compliance with the provisions of the Indenture, the Holder of Securities is entitled, at such Holder's option, at any time before the close of business on February 14, 2011 to convert the Holder's Securities (or any portion of the principal amount hereof which is \$1,000 or an integral multiple thereof), at the principal amount thereof or of such portion, into duly authorized, fully paid and nonassessable shares of Common Stock of the Company at the Conversion Price in effect at the time of conversion.

In the case of a Security (or a portion thereof) called for redemption, such conversion right in respect of the Security (or such portion thereof) so called shall expire at the close of business on the Business Day immediately preceding the redemption date, unless the Company defaults in making the payment due upon redemption. In the case of a Change of Control for which the Holder exercises its Repurchase Right in respect of a Security (or a portion thereof), such conversion right in respect of the Security (or portion thereof) shall expire at the close of business on the Business Day immediately preceding the Repurchase Date.

The Conversion Price shall be initially equal to \$14.94 per share of Common Stock. The Conversion Price shall be adjusted under certain circumstances as provided in the Indenture.

To exercise the conversion right, the Holder must surrender the Security (or portion thereof) duly endorsed or assigned to the Company or in blank, at the office of the Conversion Agent, accompanied by a duly signed conversion notice to the Company. Any Security surrendered for conversion during the period between the close of business on any Regular Record Date and prior to the corresponding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date) shall be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date by the Company on the principal amount of the Security being surrendered for conversion. Notwithstanding the foregoing, any Holder which during such period surrenders for conversion any Security which has been called for redemption by the Company in a notice of redemption given by the Company pursuant to Section 10.5 of the Indenture (whether the redemption date for such Security is on such Interest Payment Date or

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otherwise) need not pay the Company an amount equal to the interest on the principal amount of such Security so converted at the time such Holder surrenders such Security for conversion.

No fractional shares of Common Stock will be issued upon conversion of any Securities. Instead of any fractional share of Common Stock which would otherwise be issued upon conversion of such Securities, the Company shall pay a cash adjustment as provided in the Indenture.

9. Subordination.

The Indebtedness evidenced by this Security is, to the extent and in the manner provided in the Indenture, (i) senior in right of payment to the Old Securities and any future obligations that are designated by the Company as subordinate to the Securities; (ii) equal in right of payment with any existing or future obligations that are designated by the Company as, or are otherwise determined to be, on a parity with the Securities and (iii) subordinated and subject in right of payment to the prior payment in full of all amounts then due on all Senior Debt of the Company, and this Security is issued subject to such provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee such Holder's attorney-in-fact for any and all such purposes. The Securities will constitute "Designated Senior Debt" for purposes of the indenture for the Old Securities.

10. Denominations; Transfer; Exchange.

The Securities are issuable in registered form, without coupons, in denominations of \$1,000 and integral multiples of \$1,000 in excess thereof. A Holder may register the transfer or exchange of Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture.

In the event of a redemption in part, the Company will not be required (a) to register the transfer of, or exchange, Securities for a period of 15 days immediately preceding the date notice is given identifying the serial numbers of the Securities called for such redemption, or (b) to register the transfer of, or exchange, any such Securities, or portion thereof, called for redemption.

In the event of redemption, conversion or repurchase of the Securities in part only, a new Security or Securities for the unredeemed, unconverted or unredeemed portion thereof will be issued in the name of the Holder hereof.

11. Persons Deemed Owners.

Except as provided in the Indenture, the registered Holder of this Security shall be treated as its owner for all purposes.

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12. Unclaimed Money.

The Trustee and the Paying Agent shall pay to the Company any money held by them for the payment of principal, premium, if any, or interest that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another Person, and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

13. Discharge Prior to Redemption or Maturity.

Subject to certain conditions contained in the Indenture, the Company may discharge its obligations under the Securities and the Indenture if (1) (a) all of the Outstanding Securities shall become due and payable at their scheduled Maturity within one year or (b) all of the Outstanding Securities are scheduled for redemption within one year, and (2) the Company shall have deposited with the Trustee money and/or U.S. Government Obligations sufficient to pay the principal of, and premium, if any, and interest on, all of the Outstanding Securities on the date of Maturity or redemption, as the case may be.

14. Amendment; Supplement; Waiver.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in aggregate principal amount of the Outstanding Securities (or such lesser amount as shall have acted at a meeting pursuant to the provisions of the Indenture). The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security or such other Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest (including Liquidated Damages, if any) on this Security at the times, places and rate, and in the coin or currency, herein prescribed or to convert this Security (or pay cash in lieu of conversion) as provided in the Indenture.

15. Defaults and Remedies.

The Indenture provides that an Event of Default with respect to the Securities occurs when any of the following occurs:

- (a) the Company defaults in the payment of the principal of or premium, if any, on any of the Securities when it becomes due and payable at

Maturity, upon redemption or exercise of a Repurchase Right or otherwise, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture;

(b) the Company defaults in the payment of an installment of interest (including Liquidated Damages, if any) on any of the Securities when it becomes due and payable and such default continues for a period of 30 days, whether or not such payment is prohibited by the subordination provisions of Article 13 of the Indenture;

(c) the Company fails to deliver shares of Common Stock, together with cash instead of fractional shares, when those shares of Common Stock or cash instead of fractional shares are required to be delivered following conversion of a Security in accordance with the provisions of Article 12 of the Indenture, and that failure continues for 10 days;

(d) the Company fails to perform or observe any other term, covenant or agreement contained in the Securities or the Indenture and such default continues for a period of 60 days after written notice of such failure is given as specified in the Indenture;

(e) (i) the Company fails to make any payment by the end of the applicable grace period, if any, after the maturity of any Indebtedness for borrowed money in an amount in excess of \$5,000,000, or (ii) there is an acceleration of any Indebtedness for borrowed money in an amount in excess of \$5,000,000 because of a default with respect to such Indebtedness without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in the case of either clause (i) or (ii) above, for a period of 30 days after written notice is given to the Company as specified in the Indenture; and

(f) there are certain events of bankruptcy, insolvency or reorganization of the Company.

If an Event of Default shall occur and be continuing, the principal of all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

16. Authentication.

This Security shall not be valid until the Trustee (or authenticating agent) executes the certificate of authentication on the other side of this Security.

17. Abbreviations.

Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian) and U/G/M/A (= Uniform Gifts to Minors Act).

18. Additional Rights of Holders of Transfer Restricted Securities.

In addition to the rights provided to Holders under the Indenture, Holders of Transfer Restricted Securities shall have all the rights set forth in the Registration Rights Agreement.

19. CUSIP Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on this Security and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on this Security or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

20. Governing Law.

THE INDENTURE AND THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

21. Successor Corporation.

In the event a successor corporation assumes all the obligations of the Company under this Security, pursuant to the terms hereof and of the Indenture, the Company will be released from all such obligations.

ASSIGNMENT FORM

To assign this Security, fill in the form below and have your signature guaranteed: (I) or (we) assign and transfer this Security to:

(Insert assignee's soc. sec. or tax I.D. no.)

and irrevocably appoint another to act for him.

to transfer this Security on the books of the Company. The agent may substitute

Dated:

Your Name: _____
(Print your name exactly as it appears on the face of this Security)

Your Signature: _____
(Sign exactly as your name appears on the face of this Security)

Signature Guarantee*: _____

*** PARTICIPANT IN A RECOGNIZED SIGNATURE GUARANTEE MEDALLION PROGRAM (OR OTHER SIGNATURE GUARANTOR ACCEPTABLE TO THE TRUSTEE).**

In connection with any transfer of this Security occurring prior to the end of the period referred to in Rule 144(k) under the Securities Act, the undersigned confirms that without utilizing any general solicitation or general advertising that:

[Check One]

(a) this Security is being transferred in compliance with the exemption from registration under the Securities Act of 1933, as amended, provided by Rule 144A thereunder.

or

(b) this Security is being transferred other than in accordance with (a) above and documents are being furnished which comply with the conditions of transfer set forth in this Security and the Indenture.

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If none of the foregoing boxes is checked, the Trustee or other Registrar shall not be obligated to register this Security in the name of any Person other than the Holder hereof unless the conditions to any such transfer of registration set forth herein and in Sections 2.7, 2.8 and 2.9 of the Indenture shall have been satisfied.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

Signature Guarantee:

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee.

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TO BE COMPLETED BY PURCHASER IF (a) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion, in each case for investment and not with a view to distribution, and that it and any such account is a "Qualified Institutional Buyer" within the meaning of Rule 144A under the Securities Act of 1933 and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

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CONVERSION NOTICE

TO: VERTEX PHARMACEUTICALS INCORPORATED
130 Waverly Street
Cambridge, Massachusetts 02139

The undersigned registered owner of this Security hereby irrevocably exercises the option to convert this Security, or the portion hereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, into shares of Common Stock in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If shares or any portion of this Security not converted are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest (including Liquidated Damages, if any) accompanies this Security.

Dated:

Your Name: _____
(Print your name exactly as it appears on
the face of this Security)

Your Signature: _____
(Sign exactly as your name appears on
the face of this Security)

Signature Guarantee*: _____

Social Security or other Taxpayer
Identification Number: _____

Principal amount to be converted (if less than all): \$

*** PARTICIPANT IN A RECOGNIZED SIGNATURE GUARANTEE MEDALLION PROGRAM (OR OTHER SIGNATURE GUARANTOR ACCEPTABLE TO THE TRUSTEE).**

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Fill in for registration of shares (if to be issued) and Securities (if to be delivered) other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

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NOTICE OF EXERCISE OF REPURCHASE RIGHT

TO: VERTEX PHARMACEUTICALS INCORPORATED
130 Waverly Street
Cambridge, Massachusetts 02139

The undersigned registered owner of this Security hereby irrevocably acknowledges receipt of a notice from Vertex Pharmaceuticals Incorporated (the "Company") as to the occurrence of a Change of Control with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Security, or the portion thereof (which is \$1,000 principal amount or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Security, together with interest (including Liquidated Damages, if any) accrued and unpaid to, but excluding, such date, to the registered holder hereof, in cash.

Dated:

Your Name: _____
(Print your name exactly as it appears on
the face of this Security)

Your Signature: _____
(Sign exactly as your name appears on
the face of this Security)

Signature Guarantee*: _____

Social Security or other Taxpayer
Identification Number: _____

Principal amount to be repaid (if less than all): \$

*** PARTICIPANT IN A RECOGNIZED SIGNATURE GUARANTEE MEDALLION PROGRAM (OR OTHER SIGNATURE GUARANTOR ACCEPTABLE TO THE TRUSTEE).**

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SCHEDULE OF EXCHANGES FOR PHYSICAL SECURITIES(2)

The following exchanges of a part of this Global Security for Physical Securities have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Security</u>	<u>Amount of increase in Principal Amount of this Global Security</u>	<u>Principal Amount of this Global Security following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee</u>
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(2) This schedule should be included only if the Security is issued in global form.

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Dated February 10, 2004

VERTEX PHARMACEUTICALS INCORPORATED
and
UBS SECURITIES LLC

DEALER MANAGER AGREEMENT

UBS Securities LLC
677 Washington Boulevard
Stamford, CT 06901

Ladies and Gentlemen:

1 Exempted Exchanges

Vertex Pharmaceuticals Incorporated, a corporation organized under the laws of Massachusetts (the “**Company**”), proposes to exchange with certain holders of its 5% Convertible Subordinated Notes due September 19, 2007 (the “**Existing Notes**”) its 5¾% Convertible Senior Subordinated Notes due 2011 (the “**New Notes**”), to be issued pursuant to the terms of an indenture to be entered into between the Company and US Bank National Association (the “**Trustee**”), as trustee (the “**New Notes Indenture**”) (such exchanges, including all related incidental acts and transactions, are herein referred to collectively as “**Exempted Exchanges**”). The New Notes will be issued in book-entry form and will be issued to Cede & Co. as nominee of The Depository Trust Company (“**DTC**”). The New Notes will be convertible into shares of common stock, par value \$0.01 per share (the “**Common Stock**”), of the Company at the conversion price set forth in the New Notes Indenture. The Exempted Exchanges will be made on the terms and subject to the conditions set forth in the Company’s Offering Memorandum (including all documents incorporated therein by reference, the “**Offering Memorandum**”) and the related letter of transmittal (the “**Letter of Transmittal**”) attached hereto as Exhibit A-1 and Exhibit A-2, respectively.

The Exempted Exchanges are expected to be commenced by the Company on or about February 3, 2004 (the “**Commencement Date**”). In connection with the Exempted exchanges, no more than six (6) holders of Existing Notes will be approached and no more than \$154.35 million principal amount of Existing Notes will be exchanged for New Notes. Holders of the New Notes will be entitled to the benefits of a Registration Rights Agreement (the “**Registration Rights Agreement**”), to be dated as of the Closing Date, pursuant to which the Company will agree to register the resale of the New Notes under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”) subject to the terms and conditions therein specified.

The Exempted Exchanges will be made without registration of the New Notes or the Common Stock issuable upon conversion thereof under the Securities Act in reliance upon exemptions from the registration requirements of the Securities Act.

2 Appointment as Dealer Manager

The Company hereby engages and appoints UBS Securities LLC as sole and exclusive dealer manager in connection with the Exempted Exchanges (the “**Dealer Manager**”) and authorizes the Dealer Manager to act as such, and you hereby agree to act as Dealer Manager, in each case on the terms and conditions set forth herein. On the basis of the representations, warranties, agreements and covenants of the Company in, and subject to the terms and conditions of, this Dealer Manager Agreement (this “**Agreement**”), you agree, as Dealer Manager, to use your commercially reasonable efforts to effect the Exempted Exchanges and perform other services in connection with the Exempted

Exchanges as are customarily performed by investment banks of international standing acting in such roles in connection with exchange transactions of like nature, including, but not limited to, assisting the Company with respect to the timing, pricing and structure of the Exempted Exchanges, assisting the Company in the preparation of the Offering Memorandum, identifying and contacting certain holders of the Existing Notes with respect to the Exempted Exchanges and participating in negotiations with such holders of the Existing Notes and communicating generally regarding the Exempted Exchanges with brokers, dealers, commercial banks and trust companies and other nominees or holders of the Existing Notes, both of record and beneficial. The duties or responsibilities of the Dealer Manager will not include: (i) providing tax, legal, regulatory, accountancy or other specialist or technical advice or services, (ii) providing general financial and strategic advice, or (iii) assuming any responsibility for the verification of the information in the Offering Memorandum or any ancillary documents other than the UBS Information (as defined in Section 8.21). In effecting Exempted Exchanges and generally in connection with the Exempted Exchanges, you, as Dealer Manager, are acting as an independent contractor and shall not be deemed to be acting as the agent of the Company, and the Company shall not be deemed to act as your agent.

3 No Liability for Acts of Dealers, Banks and Trust Companies

Neither you nor any of your affiliates, directors, agents, employees or controlling persons shall have any liability (in tort, contract or otherwise) to the Company or to any other person for any losses, claims, damages, liabilities or expenses arising out of any act or omission on the part of any broker, dealer (other than yourself to the extent set forth below), depository, commercial bank or trust company or any other person, and neither you nor any of your affiliates, directors, agents, employees or controlling persons shall have any liability (in tort, contract or otherwise) to the Company or any other person asserting claims on behalf of or in right of the Company for any losses, claims, damages, liabilities or expenses arising from your own acts or omissions in performing your obligations hereunder or otherwise in connection with the proposed Exempted Exchanges, except for any

such losses, claims, damages, liabilities or expenses which are determined, in a final judgment by a court of competent jurisdiction, to have resulted from (i) your gross negligence or willful misconduct in performing the services that are the subject of this Agreement or (ii) a breach by the Dealer Manager of Section 9.20(ii).

4 The Offering Memorandum; Early Termination

4.1. The Company agrees to furnish you with as many copies as you may reasonably request of the Offering Memorandum, any amendments and supplements thereto and the related Letter of Transmittal (collectively, as amended or supplemented from time to time, and in each and every case including any and all information or documents incorporated therein by reference, the "Exchange Materials") to be used by the Company in connection with the Exempted Exchanges. You are authorized to use copies of the Exchange Materials in accordance with the terms and conditions of this Agreement. You and your representatives may not forward written materials other than the Exchange Materials or any publicly filed documents to the holders of the Existing Notes in connection with the Exempted

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Exchange without the Company's consent. The Company agrees that, at a reasonable time prior to using or filing with any federal or other governmental agency or instrumentality any Exchange Materials, it will first submit copies of such materials to you and will not use any such Exchange Materials without your prior approval, which shall not be unreasonably withheld. During the period from the commencement of the Exempted Exchanges and the Closing Date, the Company will inform you promptly after it receives notice or becomes aware of the happening of any event, or the discovery of any fact, which it believes would require the making of any material change in any Exchange Materials then being used or would affect the truth, accuracy or completeness of any representation or warranty contained in this Agreement as if such representation or warranty were being made immediately after the happening of such event or the discovery of such fact.

4.2. In the event that (i) the Company uses or permits the use of any document in connection with the Exempted Exchanges which you shall not have approved or (ii) the Company shall have breached, in any material respect, any of its representations, warranties, agreements or covenants herein, then you shall be entitled to withdraw as Dealer Manager in connection with the Exempted Exchanges without any liability or penalty to you or any other party who may be indemnified pursuant to the terms of Section 10 hereof (it being agreed that such withdrawal shall not affect the indemnity provisions contained in Section 10 hereof, which shall remain in full force and effect) and without loss of any right to the payment of all expenses payable hereunder which have been incurred to the date of such withdrawal. Notwithstanding anything to the contrary contained herein, it is hereby agreed that, in the event of any withdrawal by you pursuant to this Section 4.2, the expenses, if any, payable hereunder which are reasonably incurred through the date of such withdrawal shall be paid or reimbursed to you reasonably promptly after the date of such withdrawal.

5 Consideration

As consideration for your services as dealer manager hereunder, the Company shall pay to you in cash, by wire transfer of immediately available funds to an account designated therefor by you, a fee equal 1.50% of the principal amount of the Existing Notes exchanged by the Company (the Dealer Manager's fee shall be referred to in this Agreement as the "Fee").

The Fee shall be payable in full on the date of the successful completion of the Exempted Exchanges. The date of the successful completion of the Exempted Exchanges is hereby referred to as the "Closing Date".

6 Expenses of Dealer Manager and Others

The Company shall pay all fees and expenses relating to the preparation, printing, mailing and publishing of the Exchange Materials. The Company will also reimburse you for all reasonable fees and expenses (including the reasonable fees and expenses of

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your counsel) incurred by you in connection with the performance of your services as Dealer Manager under this Agreement. The Company shall perform its obligations set forth in this Section 6 and Section 10 hereof whether or not the Exempted Exchanges are commenced, except in the event that the Exempted Exchanges are withdrawn, terminated or cancelled, in which case the Company's obligations to pay such expenses shall extend only to expenses accrued as of the date of such withdrawal, termination or cancellation. All payments to be made by the Company pursuant to this Section 6 shall be made reasonably promptly after the expiration, completion, termination, withdrawal or cancellation of the Exempted Exchanges.

7 Noteholder Lists

The Company shall, to the extent available to the Company after having made commercially reasonable efforts to obtain, provide you with lists or other records in such form as you may reasonably request in reasonable quantities or copies thereof showing the names and addresses of, and principal amounts of Existing Notes held by, the holders of Existing Notes, and will use its commercially reasonable efforts to advise you or cause the Trustee and DTC to advise you from day to day during the period between the Commencement Date and the Closing Date as to any transfers of record of Existing Notes. You agree to use such information only in connection with the Exempted Exchanges and, unless such information becomes publicly available (other than by breach by the Dealer Manager of the following undertaking), not to furnish such information to any other person except in connection with the Exempted Exchanges or as required by law or upon request of any governmental or regulatory agency or any securities exchange having jurisdiction with respect to the Dealer Manager or the Exempted Exchanges.

8 Representations and Warranties of the Company

The Company represents and warrants to you, and agrees with you, where applicable, that:

8.1. the Company has been duly organized, is validly existing as a corporation under the laws of Massachusetts and has the corporate power and authority to own its property and to conduct its business as described in the Exchange Materials and is duly qualified in or licensed by, and is in good standing (or other similar concept that may exist in the applicable jurisdiction) in, each jurisdiction in which the nature of its business requires such qualification, except where the failure, individually or in the aggregate, to be so licensed or qualified could not reasonably be expected to have a material adverse effect on the business, operations, prospects, properties or condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole (a “**Material Adverse Effect**”); each of the subsidiaries of the Company has been duly organized or formed, is validly existing as a corporation, limited liability company or limited partnership, as the case may be, in good standing, if applicable, under the laws of the jurisdiction in which it is chartered or organized, and is duly qualified in or licensed by, and is in good standing (or, if applicable, other similar concept that may exist in the applicable jurisdiction) in, each

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jurisdiction in which the nature of its business requires such qualification, except where the failure, individually or in the aggregate, to be so licensed or qualified could reasonably be expected to have a Material Adverse Effect;

- 8.2. none of the Company, its affiliates, or any person acting on its or their behalf (other than the Dealer Manager or persons acting on its behalf, as to whom the Company makes no representation) has, directly or indirectly, made offers or sales of any security, or solicited offers to buy, any security under circumstances that would require the registration of the New Notes or the Common Stock issuable upon conversion thereof under the Securities Act;
- 8.3. none of the Company, its affiliates, or any person acting on its or their behalf (other than the Dealer Manager or persons acting on its behalf, as to whom the Company makes no representation) has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the Exempted Exchanges with respect to the New Notes or the Common Stock issuable upon conversion thereof;
- 8.4. the New Notes satisfy the eligibility requirements of Rule 144A(d)(3) under the Securities Act;
- 8.5. the Company has been advised by the NASD’s PORTAL Market that the New Notes have been designated PORTAL-eligible securities in accordance with the rules and regulations of the NASD;
- 8.6. subject to compliance by the Dealer Manager with the representations and warranties sets forth in Section 9.20 hereof, no registration under the Securities Act of the New Notes is required in connection with the Exempted Exchanges in the manner contemplated herein and in the Offering Memorandum;
- 8.7. [Intentionally omitted].
- 8.8. the Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase or sell any securities of the Company (except as contemplated in this Agreement);
- 8.9. the Company has not taken, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result, under the U.S. Securities Exchange Act of 1934, as amended (the “**1934 Act**”) or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the Exempted Exchanges;
- 8.10. all the outstanding shares of capital stock or other applicable ownership interests of each subsidiary have been duly authorized and validly issued and are fully paid and nonassessable and, except as otherwise set forth in the Offering Memorandum, all outstanding shares of capital stock or other applicable ownership interests of the subsidiaries are owned by the Company either directly or through wholly owned subsidiaries free and clear of any security interest, claim, lien or encumbrance;

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- 8.11. the Company’s authorized equity capitalization is as set forth in the Exchange Materials; the capital stock of the Company conforms in all material respects to the description thereof contained in the Offering Memorandum; the outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid and nonassessable; the shares of Common Stock initially issuable upon conversion of the New Notes have been duly authorized and, when issued upon conversion of the New Notes against payment of the conversion price, will be validly issued, fully paid and nonassessable; the Board of Directors of the Company has duly and validly adopted resolutions reserving such shares of Common Stock for issuance upon conversion of the New Notes; the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the New Notes or the shares of Common Stock issuable upon conversion thereof; and, except as set forth in or contemplated by the Offering Memorandum, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding;
- 8.12. the statements in the Offering Memorandum under the headings “Certain U.S. Federal Income Tax Consequences”, “The Exempted Exchanges”, “Description of the New Notes” and “Description of Common Stock” fairly summarize the matters therein described;
- 8.13. all necessary action (corporate and other) has been duly taken by the Company to authorize the execution, delivery and performance of this Agreement, the Company has all requisite power and authority to consummate the transactions contemplated hereby, and this Agreement has been duly executed and delivered by the Company and is a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except, in each case, as rights to indemnification and contribution hereunder may be limited by public policy considerations and except as enforcement thereof may be limited by or subject to (x) any bankruptcy, insolvency, reorganization, fraudulent conveyance, fraudulent transfer, moratorium or other similar laws affecting the enforcement of creditors’ rights generally, and (y) general equitable principles or the availability of equitable remedies;

8.14. all necessary action (corporate and other) has been duly taken by the Company to authorize the Exempted Exchanges, the execution, delivery and performance of the New Notes Indenture and the execution, delivery and performance of the Registration Rights Agreement, the Company has all requisite power and authority to consummate the transactions contemplated thereby, and each of the New Notes Indenture and Registration Rights Agreement, when executed and delivered by the Company (and, in the case of the New Notes Indenture, on the date that the Existing Notes are exchanged for the New Notes), will be a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except, in the case of the Registration Rights Agreement, as rights to indemnification and contribution thereunder may be

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limited by public policy considerations and except, in each case, as enforcement thereof may be limited by or subject to (x) any bankruptcy, insolvency, reorganization, fraudulent conveyance, fraudulent transfer, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (y) general equitable principles or the availability of equitable remedies;

- 8.15. the New Notes have been duly authorized and, when executed and authenticated and delivered in accordance with the provisions of the New Notes Indenture, will be entitled to the benefits of the New Notes Indenture, and will be valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by or subject to (x) any bankruptcy, insolvency, reorganization, fraudulent conveyance, fraudulent transfer, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and (y) general equitable principles or the availability of equitable remedies;
- 8.16. no consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the Exempted Exchanges and the transactions contemplated herein, in the New Notes Indenture or in the Registration Rights Agreement, except such as may be required under the blue sky laws of any jurisdiction in which the Exempted Exchanges occurs and, in the case of the Registration Rights Agreement, such as will be obtained under the Securities Act, the U.S. Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**") and pursuant to the rules of the Nasdaq National Market;
- 8.17. the Exempted Exchanges and all other actions of the Company contemplated in the Exchange Materials and the execution, delivery and performance of this Agreement, the New Notes Indenture and the Registration Rights Agreement will comply in all material respects with (i) all applicable requirements of law, including, without limitation, applicable regulations of the U. S. Securities and Exchange Commission (the "**Commission**") and (ii) all other governmental, regulatory, administrative, stock exchange or similar authority having jurisdiction over the Company and its subsidiaries or its respective businesses, operations or assets;
- 8.18. except as disclosed in the Offering Memorandum (exclusive of any amendment or supplement thereto), there are no actions, suits, stop orders, restraining orders, claims, investigations or proceedings pending or, to the best knowledge of the Company, threatened, before any court or governmental agency or other regulatory or administrative authority or any arbitrator, to which the Company or any of its subsidiaries is a party or to which the Company, any of its subsidiaries or any of their licenses, concessions or other properties and assets is subject, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and no actions, suits, claims, investigations or proceedings pending or, to the knowledge of the Company, threatened, before any court or governmental agency or other regulatory or administrative authority challenging or could otherwise be reasonably expected to have a material adverse effect on the

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making of the Exempted Exchanges or any other transactions contemplated herein;

- 8.19. neither the Company, nor any of its subsidiaries, is in breach of, or in default under (nor has any event occurred which with notice, lapse of time or both would constitute a breach of, or default by the Company or any of its subsidiaries under), (A) any provision of the charter or bylaws (or similar organizational documents) of the Company or any of its subsidiaries or (B) except as could not reasonably be expected to individually or in the aggregate have a Material Adverse Effect, the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any of its subsidiaries is a party or bound or to which its or their property is subject, or under any federal, state, local or foreign law, regulation or rule or any decree, judgment or order applicable to the Company or any of its subsidiaries or any of its or their property; the Exempted Exchanges, all other actions of the Company contemplated in the Exchange Materials, the execution, delivery and performance of this Agreement, the New Notes Indenture and the Registration Rights Agreement will not conflict with, or result in any breach of or constitute a default under (nor constitute any event which with notice, lapse of time or both would constitute a breach of, or default by the Company or any of its subsidiaries under), (X) any provision of the charter or bylaws of the Company or any of its subsidiaries, (Y) any provision of the Existing Notes Indenture pursuant to which the Existing Notes were issued (in each case, as supplemented or amended from time to time) and any agreements entered into by the Company for the benefit of the holders of the Existing Notes, or (Z) without prejudice to the foregoing, and except as could not reasonably be expected to individually or in the aggregate have a Material Adverse Effect, the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any of its subsidiaries is a party or bound or to which its or their property is subject;
- 8.20. the terms of the New Notes, the New Notes Indenture and the Registration Rights Agreement will conform in all material respects to the descriptions thereof contained in the Offering Memorandum;
- 8.21. the Exchange Materials do not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they are made, not misleading; *provided, however*, that no representation is made with respect to any statements contained in, or any matter omitted from, the Exchange Materials in reliance upon and in conformity with information relating to UBS Securities LLC furnished by you in writing to the Company expressly for use therein, which information consists solely of the name of the entity listed as the Dealer Manager on the cover of the Offering Memorandum and the third sentence of the first

paragraph under the heading “The exempted exchanges-New notes are a new issue of securities” in the Offering Memorandum (the “**UBS Information**”);

- 8.22. as of the date hereof and at all times subsequent hereto up to the Closing Date, the Company is subject to the reporting requirements of Section 13 or Section 15(d) of the 1934 Act and has complied and will continue to comply, in all material respects, with the 1934 Act, and the rules and regulations thereunder, the Trust Indenture Act, and the rules and regulations thereunder, and the various state securities or “blue sky” laws and the applicable laws, rules and regulations of each jurisdiction in which any of the Existing Notes are listed and any authority therein, in connection with the Exempted Exchanges;
- 8.23. since the respective dates as of which information is given in the Exchange Materials, there has not been any material change in the business, operations, prospects, properties or condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole, whether or not arising in the ordinary course of business;
- 8.24. all documents incorporated by reference into the Exchange Materials or from which information is so incorporated by reference, when they were filed with or submitted to the Commission, complied in all material respects with the requirements of the 1934 Act and the rules and regulations promulgated thereunder; and any documents so filed or submitted and incorporated by reference subsequent to the date of this Agreement and prior to or on the Closing Date, when they are filed with or submitted to the Commission, shall conform in all material respects with the requirements of the 1934 Act and the rules and regulations thereunder;
- 8.25. the financial statements and related schedules and notes thereto of the Company set forth or incorporated by reference in the Exchange Materials present fairly in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of operations and cash flows of the Company and its consolidated subsidiaries for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles in the United States; all other financial data set forth in the Exchange Materials are fairly presented in all material respects and prepared on a basis consistent with the financial statements contained in the Exchange Materials or incorporated by reference and the books and records of the Company and its subsidiaries; and the assumptions used in preparing the pro forma financial information included in the Exchange Materials provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts;
- 8.26. each of PricewaterhouseCoopers LLP and Ernst & Young LLP, which has certified the financial statements of the Company and its subsidiaries, are

independent accountants, within the meaning of the Securities Act and the rules and regulations thereunder;

- 8.27. there are no stamp or other issuance or transfer taxes or duties or other similar fees or charges required to be paid in connection with the execution and delivery of this Agreement or the consummation of the Exempted Exchanges or upon the issuance of Common Stock upon the conversion of the New Notes;
- 8.28. the Company has filed all non-U.S., U.S. federal, state and local tax returns that are required to be filed or has requested extensions thereof (except in any case in which the failure so to file could not reasonably be expected to have a Material Adverse Effect and except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto)) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such tax, assessment, fine or penalty that is currently being contested in good faith or as could not reasonably be expected to have a Material Adverse Effect and except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto);
- 8.29. no labor problem or dispute with the employees of the Company or any of its subsidiaries exists or, to the Company’s knowledge, is threatened, imminent or pending, except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto);
- 8.30. the Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; all policies of insurance and fidelity or surety bonds insuring the Company or any of its subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and its subsidiaries are in compliance with the terms of such policies and instruments; except with respect to the pending securities class actions, there are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that could not reasonably be expected to have a Material Adverse Effect except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto);
- 8.31. No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary’s capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary’s property or assets to the Company or any other subsidiary of the

Company, except as described in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto);

- 8.32.** the Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by the appropriate U.S. federal, state or non-U.S. regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such licenses, certificates, permits and authorizations, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could reasonably be expected to have a Material Adverse Effect, except as set forth in or contemplated in the Offering Memorandum (exclusive of any amendment or supplement thereto);
- 8.33.** except for matters governed by Environmental Laws which are addressed in Sections 8.41 and 8.42, and except as disclosed in the Offering Memorandum (exclusive of any amendment or supplement thereto), the Company and each of its subsidiaries is in compliance with all applicable laws, statutes, ordinances, rules and regulations of the Federal Food and Drug Administration (the “**FDA**”) and OSHA, and has filed all applications and has obtained all licenses, permits and approvals or other regulatory authorizations of the FDA and OSHA (including, without limitation, all FDA approvals necessary for marketing the products the Company and each of its subsidiaries currently markets), the enforcement of which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;
- 8.34.** except for matters governed by Environmental Laws which are addressed in Sections 8.41 and 8.42, and except as disclosed in the Offering Memorandum (exclusive of any amendment or supplement thereto), the FDA has not commenced, or, to the best of the Company’s knowledge, threatened to initiate, any action to withdraw its approval of any product of the Company or its subsidiaries or commenced or, to the best of the Company’s knowledge, threatened to initiate any action to withdraw its approval of any facility of the Company or its subsidiaries;
- 8.35.** the Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

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- 8.36.** the Company has not taken any action or omitted to take any action (such as issuing any press release relating to any New Notes without an appropriate legend) which may result in the loss by the Dealer Manager of the ability to rely on any stabilization safe harbor provided by the Financial Services Authority under the Financial Services and Markets Act 2000 (the “**FSMA**”). The Company has been informed of the guidance relating to stabilization provided by the Financial Services Authority, in particular in Section MAR 2 Annex 2G of the Financial Services Handbook;
- 8.37.** none of the Company, its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such Persons of Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its subsidiaries and, to the knowledge of the Company, its Affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith;
- 8.38.** subsequent to the respective dates as of which information is given in the Offering Memorandum (exclusive of any amendment or supplement thereto), neither the Company nor any of its subsidiaries has sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, in each case, that has had, or could reasonably be expected to have, a Material Adverse Effect;
- 8.39.** each of the Company and its subsidiaries, owns or possesses, or can acquire on reasonable terms, adequate patents, patent licenses, trademarks, service marks, trade names, know-how and other intellectual property necessary to carry on its businesses as presently conducted, and except as described in the Exchange Materials, neither the Company nor any of its subsidiaries has received any notice of infringement of or conflict with asserted rights of others with respect to any patents, patent licenses, trademarks, service marks, trade names, know-how or other intellectual property that in the aggregate could reasonably be expected to have a Material Adverse Effect; the patent applications filed by or on behalf of the Company described in the Exchange Materials have been properly prepared and filed on behalf of the Company; each such patent applications and patents described in the Exchange Materials is, except as set forth or contemplated in the Exchange Materials, assigned or licensed to the Company, and, except as set forth in the Exchange Materials, to the Company’s knowledge, no other entity or

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individual has any right or claim in any such patent, patent application or ay patent to be issued therefrom; and to the knowledge of the Company, each such patent application discloses potentially patentable subject matter;

- 8.40.** to the best of the Company’s knowledge, the human clinical trials conducted by the Company, on behalf of the Company or in which the Company has participated that are described in the Exchange Materials, or the results of which are referred to in the Exchange Materials,

were and, if still pending, are being, conducted in accordance with applicable regulatory requirements; to the best of the Company's knowledge, the descriptions of the results of such studies, tests and trials contained in the Exchange Materials are accurate in all material respects; the Company has no knowledge of any other studies or tests conducted by the Company, on behalf of the Company or in which the Company has participated, the results of which discredit the results described in the Exchange Materials; the Company has not received any notice or correspondence from the FDA or any other governmental agency requiring the termination or suspension of any clinical trials conducted by, or on behalf of, the Company or in which the Company has participated that are described in the Exchange Materials or the results of which are referred to in the Exchange Materials;

- 8.41. the Company and its subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("**Environmental Laws**"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals could not, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect;
- 8.42. there are no pending or, to the best of the Company's knowledge, threatened, administrative, regulatory or judicial actions, suits, demand letters, claims, liens, written notices of noncompliance or violation, investigations or proceedings pursuant to any Environmental Laws against the Company or any of its subsidiaries which would, singly or in the aggregate, reasonably be expected to have a Material Adverse Effect; and, to the best of the Company's knowledge, there are no events or circumstances at the Company's owned or leased properties that could reasonably be expected to form the basis of a governmental order for clean-up or remediation of hazardous or toxic substances, wastes, pollutants or contaminants regulated under Environmental Laws, or an action, suit or proceeding by any private party or governmental body or agency, against the Company or any of its subsidiaries pursuant to Environmental Laws; and
- 8.43. the Company is not, and after giving effect to the Exempted Exchanges and the other transactions contemplated hereby, will not be, an "investment company" as such term is defined in the U.S. Investment Company Act of 1940, as amended.

9 Covenants

- 9.1. Prior to and during the period up to the Closing Date, the Company shall advise you promptly of (i) the occurrence of any event or the discovery of any fact which is likely to cause or which causes the Company to fail to commence, withdraw, rescind or terminate the Exempted Exchanges or would reasonably be expected to permit the Company to exercise any right not to accept the Existing Notes to be exchanged thereunder, (ii) any proposal or requirement to modify, amend or supplement any of the Exchange Materials, (iii) the commencement or threat in writing of any lawsuit or government proceeding in connection with the Exempted Exchanges and (iv) any other information relating to the Exempted Exchanges which you may from time to time reasonably request.
- 9.2. The Company and you each agree to keep the other reasonably informed as to the progress of the Exempted Exchange during the period between the Commencement Date and the Closing Date, including providing information as to the number and amount of Existing Notes that have agreed to be exchanged.
- 9.3. The Company covenants that the Exempted Exchanges and all other actions of the Company contemplated in the Exchange Materials and this Agreement will comply in all material respects with all applicable requirements of law, including, without limitation, the 1934 Act and the rules and regulations thereunder (other than broker-dealer regulations), and the various state securities or "blue sky" laws and the applicable listing laws, rules and regulations of each jurisdiction in which any of the Existing Notes are listed.
- 9.4. At all times subsequent to the date hereof up to the Closing Date, the Exchange Materials, including any information and documents incorporated by reference therein, will comply in all material respects with all applicable requirements of law, including, without limitation, the 1934 Act, and the Exchange Materials (as amended or supplemented from time to time), including any information and documents incorporated by reference therein, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; *provided* that this covenant shall not extend to any statements contained in, or any matter omitted from, the Exchange Offer Materials in reliance upon and conformity with the UBS Information; *provided, further*, that notwithstanding the foregoing, if at any time during the period beginning the date hereof and the Closing Date, any event shall occur or condition shall exist as a result of which the Exchange Materials, including any information and documents incorporated by reference therein, will not comply in all material respects with all applicable requirements of law, or such Exchange Materials (as amended or supplemented from time to time), including any information and documents incorporated by reference therein, will contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, then

the Company shall either (i) promptly prepare such amendment or supplement to the Exchange Materials, or any filing with or submission to the Commission with respect to any such information or document incorporated by reference therein, as may be necessary in order to correct such false or misleading statement or omission, and take such action to make the Exchange Materials, including any information or document incorporated by reference therein, comply with the requirements of law, and distribute such amendment or supplement to holders of Existing Notes involved in the Exempted Exchanges if it shall be necessary or desirable to so distribute such amendment or supplement to comply with the requirements of law, and provide such number of copies of such amendment or supplement as the Dealer Manager shall request, or (ii) withdraw from, cancel, rescind or otherwise terminate the Exempted Exchanges.

- 9.5. The Company agrees that a reasonable time prior to using or permitting the use of the Exchange Materials in connection with the Exempted Exchanges and to filing or submitting any document with the Commission incorporated by reference therein, it shall submit copies of such documents to the Dealer Manager and shall give reasonable consideration to the Dealer Manager's comments and those of the Dealer Manager's counsel with respect thereto.
- 9.6. The Company agrees that, except as required by applicable law, any reference to the Dealer Manager in any Exchange Materials or any other document or communication prepared, approved or authorized by the Company in connection with the Exempted Exchanges is subject to the prior approval of the Dealer Manager, provided that if such reference to the Dealer Manager is required by applicable law, the Company agrees to notify the Dealer Manager within a reasonable time prior to such use.
- 9.7. The Company will pay the Fee to the Dealer Manager for soliciting, on the Company's behalf, holders to enter into the Exempted Exchanges and will provide each such holder with copies of the Offering Memorandum, the Letter of Transmittal and any other Exchange Materials.
- 9.8. Neither the Company, nor any subsidiary or affiliate thereof shall publicly disclose or refer to any advice rendered by the Dealer Manager to the Company without the Dealer Manager's prior written consent, except as may be required by law, regulation, legal process or regulatory authority and in any action, suit or proceeding to which the Company is a party involving the Exempted Exchanges; provided, that, the Company shall provide the Dealer Manager with prompt written notice, at the Dealer Manager's address for notice set forth in Section 16 hereto, of any such requirement so that the Dealer Manager may seek a protection order or any other appropriate remedy.
- 9.9. As soon as practicable before the Commencement Date, the Company will make appropriate arrangements, to the extent applicable, with DTC to allow for the book-entry movement of the exchanged Existing Notes between DTC participants and the Dealer Manager, and will use its reasonable best efforts to permit the New Notes to be eligible for clearance and settlement through DTC.

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- 9.10. The Company will not, and will not permit any of its affiliates to, resell any New Notes or Shares of Common Stock issued upon conversion thereof that have been acquired by any of them.
- 9.11. None of the Company, its affiliates, or any person acting on its or their behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the New Notes or Common Stock issuable upon conversion thereof under the Securities Act.
- 9.12. So long as any of the New Notes or the Common Stock issuable upon the conversion thereof are "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, the Company, or any successor thereto, will, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the 1934 Act, provide to each holder of such restricted securities and to each prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Securities Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.
- 9.13. Any information provided by the Company to publishers of publicly available databases about the terms of the New Notes shall include a statement that the New Notes have not been registered under the Securities Act and are subject to restrictions under Rule 144A under the Securities Act.
- 9.14. [Intentionally omitted].
- 9.15. The Company will reserve and keep available at all times, free of pre-emptive rights, the full number of shares of Common Stock issuable upon conversion of the New Notes.
- 9.16. None of the Company, its affiliates, or any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the Exempted Exchanges.
- 9.17. Between the date hereof and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion price of the Existing Notes or New Notes.
- 9.18. The Company will not take, directly or indirectly, any action designed to or which has constituted or which might reasonably be expected to cause or result, under the 1934 Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the New Notes.
- 9.19. The Dealer Manager acknowledges that the New Notes and the Common Stock issuable upon conversion thereof have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except pursuant to an exemption from,

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or in a transaction not subject to, the registration requirements of the Securities Act.

- 9.20. The Dealer Manager represents and warrants to and agrees with the Company that:
- (i) it has not solicited or made any Exempted Exchanges within the United States or to, or for the account or benefit of, U.S. persons (x) as part of their distribution at any time or (y) otherwise until one year after the later of the commencement of the offering and

the date of closing of the offering except to those it reasonably believes to be “qualified institutional buyers” (as defined in Rule 144A under the Securities Act);

- (ii) it and any person acting on its behalf will not solicit more than six (6) holders of Existing Notes in connection with the Exempted Exchanges and will not exchange more than \$154.35 million principal amount of Existing Notes;
- (iii) neither it nor any person acting on its behalf has solicited or will solicit any Exempted Exchanges in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D) in the United States;
- (iv) in connection with any solicitation of Exempted Exchanges, it has taken or will take reasonable steps to ensure that the acquirer of such New Notes is aware that such sale is being made in transactions exempt from the registration requirements of the Securities Act;
- (v) it has not offered or sold and will not offer or sell any New Notes to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995.

10 Indemnification

Notwithstanding any other provision of this Agreement, in the event that the Dealer Manager becomes involved in any capacity other than as a noteholder in any action, claim, suit, proceeding, investigation or inquiry (including without limitation any shareholder, noteholder or derivative action or arbitration proceeding) (collectively a “**Proceeding**”) in connection with any matter in any way relating to, or referred to in this Agreement or arising out of, or alleged to arise out of, the matters contemplated by this Agreement, including, without limitation, matters which arise out of, or are alleged to arise out of, or are based upon (i) a breach of any of the representations, warranties and agreements made by the Company herein or a failure by the Company to comply with the

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covenants contained herein; (ii) any untrue statement or alleged untrue statement of a material fact contained in any Exchange Materials (other than UBS Information) or any other document used by the Company in connection with the Exempted Exchanges; (iii) any omission or alleged omission to state any material fact required to be stated in any Exchange Materials or any other document used by the Company in connection with the Exempted Exchanges or necessary to make the statements therein not misleading (other than UBS Information); (iv) any action or failure to act by the Company, or any of its officers, directors or affiliates in connection with the Exempted Exchanges; or (v) any services rendered by the Dealer Manager pursuant to this Agreement, the Company will indemnify and reimburse the Dealer Manager promptly upon request for its reasonable legal and other expenses (including the reasonable cost of any investigation and preparation) as they are reasonably incurred by the Dealer Manager in connection therewith; provided, however, that with respect to any untrue statement, or alleged untrue statement or omission of material fact or alleged omission of material fact made in the Exchange Materials, the indemnity agreement contained in this Section shall not inure to the benefit of the Dealer Manager to the extent that any such legal and other expenses occur under the circumstances where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (w) the Company had previously furnished to the Dealer Manager a reasonable amount of Exchange Materials and in a sufficient quantity, (x) the untrue statement or alleged untrue statement or omission of material fact or alleged omission of material fact was corrected in such Exchange Materials and (z) there was not sent or given to the party initiating the Proceeding the corrected Exchange Materials. Notwithstanding anything herein to the contrary, the Company shall not, however, as to any person seeking indemnification or contribution hereunder, be responsible for any losses, claims, damages, liabilities or expenses pursuant to this Section 10 which have been finally judicially determined to result from (i) willful misconduct or gross negligence on the part of any such person, or (ii) a breach by the Dealer Manager of Section 9.20(ii). The foregoing indemnity shall be in addition to any liability the Company might otherwise have to the Dealer Manager at common law or otherwise. The Company agrees to notify the Dealer Manager promptly of the assertion of any such Proceeding against the Company, or any of its officers, directors, employees or agents or any person who controls any of the foregoing within the meaning of Section 20(a) of the 1934 Act. In the event that it is judicially determined that the Dealer Manager was not entitled to receive payments for such expenses or losses hereunder, the Dealer Manager shall promptly return to the Company all sums that have been advanced pursuant hereto.

If such indemnification is unavailable or insufficient (other than as a result of the failure to give notice required by the next paragraph), to contribute to any such losses, claims, damages and liabilities involved in such proportion that is appropriate to reflect the relative benefits of the Company and its affiliates on the one hand, and the Dealer Manager on the other, in the matters contemplated by this Agreement or (B) if the allocation provided by clause (A) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (A) above but also the relative fault of the Company, on the one hand and of the Dealer Manager on the other hand in connection with the action, inaction, statements or omissions which

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resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. For purposes of clauses (A) and (B) in the immediately foregoing sentence, the relative benefits received by the Company, on the one hand, and the Dealer Manager, on the other hand, in connection with the Exempted Exchanges shall be deemed to be in the same proportion as the aggregate principal amount of Notes exchanged pursuant to the Exempted Exchanges bears to the fees actually received by the Dealer Manager hereunder, and the relative fault of the Company, on the one hand, and the Dealer Manager, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company, on the one hand, or by the Dealer Manager, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Dealer Manager agree that it would not be just and equitable if contribution pursuant to this Section 10 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above.

If any litigation or proceeding is brought against the Dealer Manager in respect of which indemnification may be sought against the Company pursuant to this Section 10, the Dealer Manager shall promptly notify the Company in writing of the commencement of such litigation or proceeding. Failure to so notify the Company shall not, however, relieve the Company from any liability which it may have on account of this indemnity or otherwise, unless such failure materially prejudices the ability of the Company to exercise substantial rights and defenses. In case any such litigation or proceeding shall be brought against the Dealer Manager, the Company shall be entitled to participate in such litigation or proceeding and, to the extent the Company may wish, after written notice from the Company to the Dealer Manager, to assume the defense of such litigation or proceeding with counsel of its choice at its expense; *provided, however*, that such counsel shall be satisfactory to the Dealer Manager in the exercise of its reasonable judgment. Notwithstanding the election of the Company to assume the defense of such litigation or proceeding, the Dealer Manager shall have the right to employ separate counsel and to participate in the defense of such litigation or proceeding, and the Company shall bear the reasonable fees, costs and expenses of such separate counsel and shall pay such fees, costs and expenses (*provided* that, with respect to any single litigation or proceeding or with respect to several litigations or proceedings involving substantially similar legal claims, the Company shall not be required to bear the fees, costs and expenses of more than one such counsel other than one local counsel) if (i) the Dealer Manager shall have been advised by its counsel in writing (with a copy to the counsel appointed by the Company, so long as such delivery could not reasonably be expected to result in the loss of any privilege) that there may be legal defenses available to it that are different from or additional to those available to the Company, such that it would render representation by counsel to the Company inappropriate or inadvisable for the Dealer Manager, (ii) the Company shall not have employed counsel satisfactory to the Dealer Manager in the exercise of the Dealer Manager's reasonable judgment to represent the Dealer Manager within a reasonable time after notice of the institution of such litigation or proceeding or (iii) the Company shall authorize in writing the Dealer Manager to employ separate

counsel at the expense of the Company. After notice from the Company to the Dealer Manager of the Company's election so to assume the defense thereof and approval by the Dealer Manager of the Company's counsel appointed to defend such action, the Company will not be liable to the Dealer Manager under this Section 10 for (A) any legal or other expenses, unless the Dealer Manager shall have employed separate counsel in accordance with the immediately preceding sentence, and/or (B) the costs and expenses of any settlement, compromise or consent to the entry of any judgment in respect of any pending or threatened claim, action, suit or proceeding effected by the Dealer Manager without the consent of the Company, which consent shall not be unreasonably withheld or delayed. In any action or proceeding the defense of which the Company so assumes, the Dealer Manager shall have the right to participate in such litigation and retain its own counsel at the Dealer Manager's own expense. Without the prior written consent of the Dealer Manager, which shall not be unreasonably withheld or delayed, the Company will not settle, compromise or consent to the entry of any judgment in respect of any pending or threatened claim, action, suit or proceeding in respect of which indemnification would reasonably likely be sought hereunder (whether or not the Dealer Manager is a party to such claim, action, suit or proceeding), unless such settlement, compromise or consent (x) includes an unconditional release of the Dealer Manager from all liability arising out of such claim, action, suit or proceeding and (y) does not impose any actual or potential liability upon the Dealer Manager and does not contain any factual or legal admission by or with respect to the Dealer Manager or any adverse statement with respect to the character, professionalism, due care, loyalty, expertise or reputation of the Dealer Manager or any action or inaction by the Dealer Manager. Pursuant to the terms of this Section 10, the Company and the Dealer Manager agree to notify each other promptly of the assertion of any claim against it, any of their respective officers or directors or any entity or person who controls either the Company or the Dealer Manager within the meaning of Section 20(a) of the 1934 Act in connection with the Exempted Exchanges. For purposes of this Section 10, the term Dealer Manager shall include UBS Securities LLC, its affiliates, officers, directors, employees and agents, and any person controlling the Dealer Manager or any of such affiliates (within the meaning of Section 20(a) of the 1934 Act). The foregoing agreement shall be in addition to any rights that any indemnified party may have at common law or otherwise.

11 Indemnification and Reimbursement; Representations and Warranties to Remain Operative

The indemnity, reimbursement and contribution agreements contained in Section 10 hereof and the representations and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect regardless of (a) any failure to commence, or the withdrawal, rescission, termination or consummation of, the Exempted Exchanges or the termination or assignment of this Agreement, (b) any investigation made by or on behalf of any party entitled to indemnification pursuant to the terms of Section 10 hereof and (c) any withdrawal by you pursuant to Section 4.2 hereof.

12 Conditions to Obligations of Dealer Manager

Your obligations hereunder shall at all times be subject, in your reasonable discretion, to the satisfaction of the following conditions:

- 12.1.** all representations, warranties and other statements of the Company contained herein at all times during the period beginning and including the date hereof and ending on, and including, the Closing Date, will be true and correct;
- 12.2.** the Company, at all times during the period between the date hereof and the Closing Date, shall have performed all of its obligations hereunder and under the New Notes Indenture and the Registration Rights Agreement to be performed;
- 12.3.** no stop order, restraining order or denial of an application for approval shall have been issued and no litigation shall have been commenced or threatened in writing before any regulatory authority or other public body or court of any jurisdiction with respect to the Exempted Exchanges which you, in good faith, believe makes it inadvisable for you to continue to act hereunder;
- 12.4.** the Company shall have delivered to you opinions addressed to you dated as of the Closing Date, of the Company's counsel and internal intellectual property counsel, substantially in the form of Exhibits B-1 and B-2, and a letter from the Vice President of Regulatory Affairs of the Company in the form of Exhibit B-3; and (B) Cleary, Gottlieb, Steen & Hamilton shall have delivered to you opinions addressed to you dated as of the Closing Date in form and substance satisfactory to you;
- 12.5.** the Company shall have delivered to you as of the Closing Date, a certificate, dated the date of its delivery, signed by either its Chief Executive Officer or its Chief Financial Officer, to the effect that (i) the signatory of such certificate has carefully examined the Exchange

Materials and no event has occurred as a result of which it is necessary to amend or supplement the Exchange Materials in order to make the statements therein not untrue or misleading in any material respect and there has been no document required to be filed or submitted under the 1934 Act and the rules and regulations thereunder that upon such filing or submission would be deemed to be incorporated by reference into the Exchange Materials that has not been so filed; (ii) each of the representations and warranties of the Company (as applicable with respect to the relevant certificate) contained in this Agreement are, at the time such certificate is delivered, true and correct on the Closing Date, with the same effect as if made on the Closing Date, provided, however, that if any such representation or warranty is already qualified as to materiality, such representation or warranty, as so qualified, is true and correct in all respects on the Closing Date; and (iii) each of the covenants required herein to be performed by the Company (as applicable with respect to the relevant certificate) on or prior to the delivery of such certificate has been duly, timely and fully performed and each condition herein required to be complied with by the

Company (as applicable with respect to the relevant certificate) on or prior to the date of such certificate has been duly, timely and fully complied with;

- 12.6.** on the date hereof and the Closing Date, the Company shall have furnished to you a “comfort letter” of each of PricewaterhouseCoopers LLP and Ernst & Young LLP, dated as of the date hereof or the Closing Date, as the case may be, addressed to you, in form and substance satisfactory to you and your counsel, containing statements and information of the type ordinarily included in accountants’ “comfort letters” with respect to financial statements and certain financial information contained in the Offering Memorandum; provided that the letter delivered on the Closing Date shall use a “cut-off” date not earlier than two days before the Closing Date;
- 12.7.** The New Notes shall have been designated as PORTAL-eligible securities in accordance with the rules and regulations of the NASD and the New Notes shall be eligible for clearance and settlement through DTC;
- 12.8.** The Company shall have caused the shares of Common Stock initially issuable upon conversion of the New Notes to be approved for quotation, subject to issuance, on the Nasdaq Stock Market.
- 12.9.** The Company shall have duly authorized, executed and delivered the Registration Rights Agreement.
- 12.10.** subsequent to the Commencement Date and prior to the Closing Date,
- (i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company’s securities by any “nationally recognized statistical rating organization,” as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and
 - (ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, prospects, business or operations, of the Company and its subsidiaries, taken as a whole, from that set forth in the Exchange Materials (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement), that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to proceed with the Exchange Transaction in the manner contemplated in the Exchange Materials; and
- 12.11.** the Company shall have furnished to you such certificates or other documents, in addition to those specifically mentioned herein, as you or your counsel may have reasonably requested.
- 12.12.** In the event that at any time during the period between the date hereof and the Closing Date any representation, warranty or other statement ceases to be true and

correct, the Company shall promptly use its best efforts to seek to cause such representation, warranty or other statement to be true and correct.

- 12.13.** You shall have a reasonable period of time after discovering or being informed of a breach in any of the foregoing conditions up to and including the Closing Date to elect whether to continue to act as Dealer Manager. Your resignation as Dealer Manager as a result of a breach of the foregoing conditions shall be without prejudice to your entitlement to expenses under Section 4.2 hereof.

13 Publications

The Company agrees that the Dealer Manager has the right to place advertisements in financial and other newspapers and journals at its own expense describing its services to the Company hereunder, provided such advertisements are provided to and approved in writing by the Company prior to their use.

14 Confidentiality

Any advice or opinions provided by you in connection with or related to this Agreement will not be disclosed or referred to publicly or to any third party (other than attorneys and accountants of the Company who agree to keep such advice or opinions confidential) by the Company or any of its affiliates except in accordance with your prior written consent, which shall not be unreasonably withheld or delayed or as may be required by applicable laws or except as may be required by law, regulation, legal process or regulatory authority or in any action, suit or proceeding to which the Company is a party involving the Exempted Exchanges; provided that the Company shall provide the Dealer Manager with prompt written notice of any such requirement so that the Dealer Manager may seek a protection order or other appropriate remedy.

15 Termination

This Agreement shall terminate upon the expiration, termination or withdrawal of the Exempted Exchanges or upon the withdrawal by you as Dealer Manager pursuant to Section 4.2 hereof. In addition, your services as Dealer Manager may be terminated by you or by the Company upon 10 days prior written notice to the other party without liability or continuing obligation of the Company or the Dealer Manager. In the event your services as Dealer Manager are terminated by the Company, the Dealer Manager shall be entitled to any Fee payable pursuant to Section 5 hereof in accordance with the terms thereof (but the Dealer Manager shall not be entitled to any Fee hereunder if (a) the Company shall have terminated such services with cause, including a breach by the Dealer Manager of Section 9.20(ii) or (b) the Dealer Manager shall otherwise have acted in bad faith or in a grossly negligent manner or (c) there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the reasonable judgment of the Dealer Manager, impracticable to enforce contracts for the sale of the New Notes, or (d) if trading in any securities of the Company

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has been suspended or materially limited by the Commission or the Nasdaq National Market, or if trading generally on the American Stock Exchange or the New York Stock Exchange or in the Nasdaq National Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the NASD or any other governmental authority, in each case the effect of which is such as to make it, in the reasonable judgment of the Dealer Manager, impracticable or inadvisable to proceed with the Exempted Exchanges or (e) if a banking moratorium has been declared by either Federal or New York authorities, the effect of which is such as to make it, in the reasonable judgment of the Dealer Manager, impracticable or inadvisable to proceed with the Exempted Exchanges), and further, all reasonable expenses incurred by the Dealer Manager as a result of services rendered prior to the date of the termination shall become immediately payable in full. In the event you terminate your services as Dealer Manager hereunder, the Dealer Manager shall be entitled to all reasonable expenses incurred by the Dealer Manager as a result of services rendered prior to the date of termination, which shall become immediately due and payable in full, but shall not be entitled to any Fee hereunder unless the Dealer Manager shall have terminated such services with cause or the Company shall otherwise have acted in bad faith, in which case the Dealer Manager shall be entitled to any Fee payable pursuant to Section 5 hereof in accordance with the terms thereof. The provisions of Sections 3, 5, 6, 8, 9, 10, 11, 14, 15, 17, 18, 19, 20 and 22 hereof shall survive the termination of this Agreement for any reason whatsoever. Unless this Agreement has been terminated pursuant to clause (a) or (b) of this paragraph, the Dealer Manager shall be entitled to payment in full of the Fee payable under Section 5 if at any time prior to the expiration of 6 months after the termination of this Agreement, the Company consummates, or enters into a definitive agreement that subsequently results in the consummation of, the Exempted Exchanges or any similar transaction. For the avoidance of doubt, in the event that the Exempted Exchanges do not proceed, the Dealer Manager shall be entitled only to all expenses as contemplated in Section 6 hereof.

16 Notices

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally to the parties hereto as follows:

If to you:

UBS Securities LLC
677 Washington Boulevard
Stamford, CT 06901
Attention: Liability Management Group
Facsimile: 1(203) 719-1620

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

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UBS Securities LLC
677 Washington Boulevard
Stamford, CT 06901
Attention: Legal and Compliance Department
Facsimile: 1 (203) 719-0680

If to the Company:

Vertex Pharmaceuticals Incorporated
130 Waverly Street
Cambridge, Massachusetts 02139-4242
Attention: Kenneth S. Boger
Facsimile: (617) 444-7117

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

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Attention: Michael L. Fantozzi
Facsimile: (617) 542-2241

17 Successors and Assigns

This Agreement, including any right to indemnity or contribution hereunder, shall inure to the benefit of and be binding upon the Company and you and such other parties entitled to indemnification pursuant to the terms of Section 10 hereof, and the respective successors and assigns of such parties. Except as provided in Section 9.12, nothing in this Agreement is intended, or shall be construed, to give to any other person or entity any right hereunder or by virtue hereof.

18 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles thereof relating to conflict of laws.

19 Waiver of Jury Trial

EACH OF THE COMPANY AND THE DEALER MANAGER HEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDINGS OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) WITH RESPECT TO ANY CLAIM, COUNTER-CLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (INCLUDING, WITHOUT LIMITATION, THE EXCHANGE OFFER AND THE CONSENT SOLICITATION).

20 Entire Agreement

This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior agreements, understandings and arrangements, oral or written, among the parties hereto with respect to the subject matter hereof and thereof.

21 Counterparts; Severability

This Agreement may be executed in two or more separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

22 Amendment

This Agreement may not be amended except in writing signed by each party to be bound thereby.

Please indicate your willingness to act as Dealer Manager on the terms set forth herein and your acceptance of the foregoing provisions by signing in the space provided below for that purpose and returning to us a copy of this letter so signed, whereupon this letter and your acceptance shall constitute a binding agreement among us.

Very truly yours,

VERTEX PHARMACEUTICALS INCORPORATED

By: /s/ Ian Smith
Name:
Title:

Accepted as of the date
first set forth above:

UBS SECURITIES LLC

By: /s/ Chris Hite
Name: Chris Hite
Title: Managing Director

By: /s/ Aradhana Sarin
Name:
Title:

Exhibit A-1
Offering Memorandum

Exhibit A-2
Letter of Transmittal

THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION. *If you are in any doubt as to the action to be taken, you should immediately consult your broker, bank manager, lawyer, accountant, investment advisor or other professional.*

LETTER OF TRANSMITTAL
relating to
the exempted exchanges described in
the Offering Memorandum
dated February 10, 2004
(the "Offering Memorandum")

Each holder of the 5% Convertible Subordinated Notes due 2007 (the "Old Notes") of Vertex Pharmaceuticals Incorporated ("Vertex") participating in the exempted exchanges (as described in the Offering Memorandum) should complete, sign and submit this Letter of Transmittal by fax to the trustee, US Bank National Association (the "Trustee"), as soon as possible at fax no. (651) 495-8158, Attention: Specialized Finance. Delivery of this Letter of Transmittal to the Trustee confirms your participation in the exempted exchanges on the terms described in the Offering Memorandum.

Questions regarding the exempted exchanges or the completion of this Letter of Transmittal should be directed to the Trustee at the following telephone number: (651) 495-3513.

DELIVERY OF OLD NOTES

To effect a valid delivery of Old Notes through the completion, execution and delivery of a Letter of Transmittal, the undersigned must complete the tables below entitled "Description of Old Notes Delivered" and sign the Letter of Transmittal where indicated.

DESCRIPTION OF OLD NOTES DELIVERED

NOTE: SIGNATURES MUST BE PROVIDED BELOW.
PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

Name of DTC Participant and Participant's Account Number in which
Old Notes are held and/or the corresponding New Notes are
to be delivered

Aggregate Principal Amount of
Old Notes*

* The principal amount of Old Notes delivered must be in denominations of US\$1,000 and whole multiples of US\$1,000.

Please check this box to confirm that the undersigned, or the Beneficial Owner (as defined below) on behalf of which the undersigned is acting, is a "qualified institutional buyer" as defined under Rule 144A of the U.S. Securities Act of 1933, as amended.

Note: Signatures must be provided below.
Please read the accompanying Instructions carefully.

Ladies and Gentlemen:

The undersigned hereby delivers to Vertex the aggregate principal amount of Old Notes indicated in the table above entitled "Description of Old Notes Delivered".

The undersigned understands that delivery of Old Notes pursuant to any of the procedures described in the Offering Memorandum and in the instructions in this Letter of Transmittal and acceptance of such Old Notes by Vertex will constitute a binding agreement between the undersigned and Vertex.

All authority conferred or agreed to be conferred by this Letter of Transmittal shall not be affected by, and shall survive, the death or incapacity of the undersigned, and any obligation of the undersigned hereunder shall be binding upon the heirs, executors, administrators, trustees in bankruptcy, personal and legal representatives, successors and assigns of the undersigned.

The undersigned hereby represents, warrants and agrees to the representations, warranties and agreements set forth under "The exempted exchanges – Effect of agreeing to the exempted exchanges" in the Offering Memorandum.

If the "Special Return Instructions" box (found below) is completed, please credit the DTC account for any book-entry transfers of Old Notes not accepted for exchange into the account so indicated.

The undersigned recognizes that Vertex has no obligation under the "Special Return Instructions" provision of this Letter of Transmittal to effect the transfer of any Old Notes from the holder(s) of Old Notes if Vertex does not accept for exchange any of the principal amount of the Old Notes delivered pursuant to this Letter of Transmittal.

SPECIAL RETURN INSTRUCTIONS
(See Instructions 2 and 5)

To be completed ONLY if Old Notes in the principal amount not accepted for exchange are to be returned in the name of someone other than the person or persons whose signature(s) appear(s) within this Letter of Transmittal and/or sent to a DTC participant account different from that indicated in the table entitled "Description of Old Notes Delivered."

Please issue Old Notes not accepted for exchange, to:

Name of DTC Participant:

DTC Participant Account Number:

Contact at DTC Participant:

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SIGN HERE
(TO BE COMPLETED BY ALL CONSENTING HOLDERS DELIVERING OLD NOTES)

By completing, executing and delivering this Letter of Transmittal, the undersigned hereby delivers to Vertex the principal amount of the Old Notes listed in the table labeled "Description of Old Notes Delivered."

Signature of Registered Holder(s) or Authorized Signatory
(see guarantee requirement below)

Date

Signature of Registered Holder(s) or Authorized Signatory
(see guarantee requirement below)

Date

Signature of Registered Holder(s) or Authorized Signatory
(see guarantee requirement below)

Date

Area Code and Telephone Number: _____

This Letter of Transmittal must be signed by the Registered Holder(s) exactly as the name(s) appear(s) on a securities position listing of DTC or by any person(s) authorized to become the Registered Holder(s) by endorsements and documents transmitted herewith. If the signature is by a trustee, executor, administrator, guardian, attorney-in-fact, officer or other person, acting in a fiduciary or representative capacity, please set forth at the line entitled "Capacity (full title)" and submit evidence satisfactory to the Trustee and Vertex of such person's authority to so act. See Instruction 3.

Name(s): _____

(Please Type or Print)

Capacity (full title): _____

Address: _____

(Including Zip Code)

MEDALLION SIGNATURE GUARANTEE
(If required—See Instruction 3)

Signature(s) Guaranteed by
an Eligible Institution: _____

(Authorized Signature)

(Title)

(Name of Firm)

(Address)

Dated: _____, 2004

INSTRUCTIONS

1. Delivery of Letter of Transmittal. A holder of Old Notes that wishes to participate in the exempted exchanges must submit to the Trustee a completed Letter of Transmittal as soon as possible.

2. Amount of Delivery. Old Notes delivered will be accepted only in denominations of US\$1,000 and whole multiples of US\$1,000.

3. Signatures on Letter of Transmittal; Instruments of Transfer; Guarantee of Signatures. For purposes of this Letter of Transmittal, the term “Registered Holder” means an owner of record as well as any DTC participant that has Old Notes credited to its DTC account. Except as otherwise provided below, all signatures on this Letter of Transmittal must be guaranteed by a recognized participant in the Securities Transfer Agents Medallion Program, the NYSE Medallion Signature Program or the Stock Exchange Medallion Program (each, a “Medallion Signature Guarantor”). Signatures on the Letter of Transmittal need not be guaranteed if:

- the Letter of Transmittal is signed by a participant in DTC whose name appears on a security position listing as the owner of the Old Notes and the holder(s) has not completed either of the boxes entitled “Special Return Instructions” on the Letter of Transmittal; or
- the Old Notes are delivered for the account of an “eligible guarantor institution.”

An “eligible guarantor institution” is one of the following firms or other entities identified in Rule 17Ad-15 under the Securities Exchange Act of 1934 (as the terms are defined in Rule 17Ad-15):

- (a) a bank;
- (b) a broker, dealer, municipal securities dealer, municipal securities broker, government securities dealer or government securities broker;
- (c) a credit union;
- (d) a national securities exchange, registered securities association or clearing agency; or
- (e) a savings institution that is a participant in a Securities Transfer Association recognized program.

If any of the Old Notes delivered are held by two or more Registered Holders, all of the Registered Holders must sign the Letter of Transmittal.

By executing the Letter of Transmittal (or facsimile thereof), you waive any right to receive any notice of the acceptance of your Old Notes for exchange.

If this Letter of Transmittal or instruments of transfer are signed by trustees, executors, administrators, guardians or attorneys-in-fact, officers of corporations or others acting in a fiduciary or representative capacity, such persons should so indicate when signing and, unless waived by Vertex, evidence satisfactory to Vertex of their authority to so act must be submitted with this Letter of Transmittal.

Beneficial Owners who deliver Old Notes that are registered in the name of a broker, dealer, commercial bank, trust company or other nominee must contact such broker, dealer, commercial bank, trust company or other nominee if they desire to participate in the exempted exchanges.

4. Special Return Instructions. All Old Notes delivered hereby and not accepted for exchange will be returned to the undersigned according to the information provided in the table entitled “Description of

the Old Notes Delivered” or, if completed, according to the “Special Return Instructions” box in this Letter of Transmittal.

5. Requests for Assistance or Additional Copies. Questions and requests for assistance and requests for additional copies of the Offering Memorandum or this Letter of Transmittal may be directed to the Trustee at the address and telephone number indicated herein.

In order to participate in the exempted exchanges, a holder of Old Notes should send or deliver a properly completed and signed Letter of Transmittal and any other required documents to the Trustee to the fax number set forth below.

The Trustee for the exempted exchanges is:

US Bank National Association

60 Livingston Avenue
St. Paul, Minnesota 55107
Attention: Specialized Finance
Tel: (651) 495-3513
Fax: (651) 495-8158

The Dealer Manager for the exempted exchanges is:

UBS Securities LLC

677 Washington Boulevard
Stamford, Connecticut 06901
Attention: William Schneider
Tel: (203) 719-4210

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Exhibit B
Opinion of Company Counsel

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center
Boston, Massachusetts 02111

617 542 6000
617 542 2241 fax

February 13, 2004

UBS Securities LLC
677 Washington Boulevard
Stamford, Connecticut 06901

Ladies and Gentlemen:

This opinion is being furnished to you pursuant to Section 12.4 of the Dealer Manager Agreement, dated February 9, 2004 (the "Dealer Manager Agreement") by and between you (the "Dealer Manager") and Vertex Pharmaceuticals Incorporated, a Massachusetts corporation (the "Company"), pursuant to which the Company will exchange (each, an "Exempted Exchange" and, collectively, the "Exempted Exchanges") certain of its outstanding 5.00% Convertible Subordinated Notes due 2007 (the "Old Notes") for its 5 3/4% Convertible Senior Subordinated Notes due 2011 (the "New Notes"), as more fully described in the offering memorandum dated February 9, 2004 (the "Offering Memorandum") and the related letter of transmittal dated February 9, 2004 (the "Letter of Transmittal" and, together with the Offering Memorandum, the "Offering Documents"). The New Notes will be issued under an indenture dated as of February 13, 2004 (the "Indenture") between the Company and US Bank National Association, as trustee (the "Trustee"). Holders of the New Notes will have the registration rights set forth in the Registration Rights Agreement dated as of February 13, 2004 (the "Registration Rights Agreement") by and among the Company and the Dealer Manager. Capitalized terms defined in the Dealer Manager Agreement and not otherwise defined herein are used herein with the meanings so defined in the Dealer Manager Agreement.

We have acted as outside counsel for the Company in connection with the preparation, execution and delivery of the Dealer Manager Agreement and the consummation of the transactions contemplated thereby. In connection therewith, we have examined executed originals or counterparts of the Dealer Manager Agreement, the Registration Rights Agreement and the Indenture (collectively, the "Transaction Documents"), the Offering Documents and such other documents as we have deemed necessary for purposes of this opinion.

Insofar as this opinion relates to factual matters, we have relied upon representations and warranties of the Company set forth in the Transaction Documents, certificates of officers of the Company and of public officials, and certificates delivered

Boston New York Reston Washington

to you in connection with the Transaction Documents and the transactions contemplated thereby.

As used herein, any reference to "our knowledge", "best of our knowledge", "of which we have knowledge", "known to us" or words of similar import, shall mean the conscious awareness of the existence or absence of any facts or other information by any lawyer in this firm who was involved in representing the Company in connection with the transactions contemplated by the Transaction Documents or is otherwise involved on an ongoing basis in providing legal services to the Company. Except as expressly set forth in this opinion, we have not undertaken any independent investigation, including, without limitation, any investigation of corporate, court or other documents or records, to determine the existence or absence of any such facts or other information, and no inference as to our knowledge of the existence or absence of any facts or other information should be drawn from the fact of our representation of the Company.

In rendering the opinions set forth herein, we have assumed without independent inquiry or investigation, (i) the genuineness of all signatures on all documents and instruments examined by us, (ii) the authenticity of all documents submitted to us as originals, and (iii) the conformity to originals of all documents submitted to us as certified, photostatic or conformed copies, and the authenticity of the originals of such documents. We have also assumed that each of the parties to the Transaction Documents (other than the Company) has all requisite power and authority and has taken all necessary action (corporate or otherwise) to execute and deliver the Transaction Documents to which it is a party and to effect the transactions contemplated thereby and that the Transaction Documents constitute the legal, valid and binding obligation of each of such other parties enforceable in accordance with their respective terms.

Our opinions contained in paragraphs (vi), (vii) and (viii) as to enforceability are subject to the further qualification that such enforceability may be (1) limited by bankruptcy, insolvency (including, without limitation, fraudulent conveyances and fraudulent transfers), reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, (2) limited by general equitable principles, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether such enforceability is considered in a proceeding in equity or at law), (3) subject to the effect of any public policy considerations or court decisions which may limit the rights of any person or entity to obtain indemnification, and (4) subject to the effects of generally applicable rules of law that (A) limit or affect the enforcement of provisions that purport to require waiver or modification of the obligations of good faith, fair dealing, diligence, reasonableness or due notice or to waive equitable rights, remedies, or defenses, or to release or indemnify a party from or against liability for the party's own unlawful or willful misconduct, recklessness or gross negligence, or to preclude modification of the Transaction Documents through custom or course of conduct, (B) limit the enforceability of any liquidated damages provisions to the extent

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that the damages assessed are ascertainable, or (C) provide that forum selection clauses are not necessarily binding on the court or courts in the forum selected.

We call your attention to the fact that members of this firm are admitted to practice law in the Commonwealth of Massachusetts and the State of New York. Accordingly, no opinion is expressed herein with respect to any matter, which is determined by the law of any jurisdiction except the federal laws of the United States of America, the laws of The Commonwealth of Massachusetts and the laws of the State of New York. Insofar as this opinion addresses matters governed by laws of any other jurisdiction, this opinion is delivered as though such matters were governed by and construed in accordance with the domestic substantive laws of The Commonwealth of Massachusetts (without regard to the application of any conflict of law rule that would result in the application of the domestic substantive law of any other jurisdiction). Moreover, we express no opinion and give no statement herein related to any filing or other requirements under Section 14 of the 1934 Act and the rules and regulations promulgated by the Commission thereunder.

Based upon and subject to the foregoing assumptions, limitations and qualifications, and subject to the penultimate paragraph of this letter, we are of the opinion that:

(i) The Company has been duly incorporated and validly exists as a corporation in good standing under the laws of the Commonwealth of Massachusetts.

(ii) The Company has corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Offering Memorandum and to enter into and perform its obligations under the Dealer Manager Agreement, the Registration Rights Agreement, the Indenture and the New Notes.

(iii) The Company is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction within the United States in which such qualification is required, whether by reason of the ownership or leasing of property or the maintenance of an office, except where the failure so to qualify or to be in good standing could not reasonably be expected to result in a Material Adverse Effect.

(iv) The authorized, issued and outstanding capital stock of the Company is as set forth in the Offering Memorandum in the column entitled "Actual" under the caption "Capitalization" (except for subsequent issuances, if any, pursuant to the Dealer Manager Agreement or pursuant to reservations, agreements, employee benefit plans or the exercise of convertible securities or options referred to in the Offering Memorandum); the shares of issued and outstanding capital stock of the Company issued since September 30, 2003 have been duly authorized and validly issued and are fully paid and non-assessable; and none of the outstanding shares of capital stock of the Company was

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issued in violation of the preemptive or other similar rights of any securityholder of the Company, pursuant to any agreement disclosed to us after inquiry of the Company.

(v) Vertex Securities Trust ("Vertex Securities") has been duly organized and is validly existing as a business trust in good standing under the laws of the Commonwealth of Massachusetts, has corporate power and authority to own, lease and operate its properties and is duly qualified as a foreign corporation to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the maintenance of an office, except where the failure so to qualify or to be in good standing could not reasonably be expected to result in a Material Adverse Effect. To the best of our knowledge and information, the Company does not have any subsidiaries other than Vertex Pharmaceuticals (San Diego) LLC, Aurora Instruments Holding LLC, Aurora Instruments LLC, Vertex Holdings, Inc., Vertex Securities Trust and Vertex Pharmaceuticals (Europe) Limited.

(vi) The Dealer Manager Agreement has been duly authorized, executed and delivered by the Company. The Registration Rights Agreement has been duly authorized, executed and delivered by the Company, and constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms.

(vii) The Indenture has been duly authorized, executed and delivered by the Company and (assuming the due authorization, execution and delivery thereof by the Trustee) constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

(viii) The New Notes are in the form contemplated by the Indenture and have been duly authorized by the Company; the New Notes have been executed and authenticated in the manner provided in the Indenture and when delivered in exchange for the Old Notes in accordance with the Exempted Exchanges (assuming the due authorization, execution and delivery of the Indenture by the Trustee) constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, and are entitled to the benefits of the Indenture.

(ix) Upon issuance and delivery of the New Notes in accordance with the Dealer Manager Agreement and the Indenture, the New Notes shall be convertible at the option of the holder thereof for shares of Common Stock in accordance with the terms of the New Notes and the Indenture; the shares of Common Stock initially issuable upon conversion of the New Notes have been duly authorized and reserved for issuance upon such conversion by all necessary corporate action; such shares, when issued upon such conversion against payment of the conversion price and in accordance with the provisions of

arising from actions of the Company and no holder of such Common Stock is or will be subject to personal liability by reason of being such a holder.

(x) The issuance of the shares of Common Stock upon conversion of the New Notes is not subject to the preemptive or other similar rights of any securityholder of the Company pursuant to any agreement disclosed to us after inquiry of the Company.

(xi) The Indenture conforms in all material respects with the 1939 Act.

(xii) To the best of our knowledge, except as disclosed in the Offering Memorandum, there is no pending or threatened action, suit, proceeding, inquiry or investigation, to which the Company or any Subsidiary is a party, or to which the property of the Company or any Subsidiary thereof is subject, before or brought by any court or governmental agency or body, which could reasonably be expected to result in a Material Adverse Effect, or which could materially and adversely affect the properties or assets thereof or the consummation of the transactions contemplated in the Dealer Manager Agreement, the Indenture, the New Notes and the Registration Rights Agreement or the performance by the Company of its obligations thereunder or the transactions contemplated by the Offering Memorandum.

(xiii) The information in the Offering Memorandum under “The exempted exchanges,” “Description of new notes” and “Certain U.S. federal income tax consequences,” and the information in the description of the Company’s common stock and the description of the rights under the Company’s Rights Agreement, contained on pages 78-79 and on page 84, respectively, of the Company’s Amendment No. 1 to the Registration Statement on Form S-4 (Reg. No. 333 - 61480), incorporated by reference in the Offering Memorandum, to the extent that it constitutes matters of law, summaries of legal matters or legal documents or instruments, the Company’s charter and bylaws, or legal conclusions, has been reviewed by us and fairly summarizes the matters referred to therein. To the best of our knowledge, there are no other statutes or regulations that are required to be described in the Offering Memorandum that are not described as required.

(xiv) The New Notes conform in all material respects to the description thereof contained in the Offering Memorandum

(xv) To the best of our knowledge, there are no franchises, contracts, indentures, mortgages, loan agreements, notes or leases that would be required to be described in the Offering Memorandum that are not described or referred to in the Offering Memorandum, and the descriptions thereof or references thereto fairly summarize such arrangements.

(xvi) To the best of our knowledge, neither the Company nor Vertex Securities is in violation of its charter or by-laws and, based solely on an inquiry of the Company, we know of no default by the Company or Vertex Securities that exists in the due

performance or observance of any material obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument that is described or referred to in the Offering Memorandum.

(xvii) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency, domestic or foreign (other than such as may be required under the applicable securities laws of the various jurisdictions in which the New Notes will be offered or sold, as to which we need express no opinion) is necessary or required in connection with the due authorization, execution and delivery of the Dealer Manager Agreement or the Registration Rights Agreement or the due execution, delivery or performance of the Indenture by the Company in connection with the Exempted Exchanges or for the issuance of shares of Common Stock upon conversion of New Notes.

(xviii) It is not necessary in connection with the consummation of the Exempted Exchanges in the manner contemplated by the Dealer Manager Agreement and the Offering Memorandum or in connection with the conversion of the Notes into shares of the Common Stock in the manner contemplated in the Indenture, to register the New Notes or the shares of Common Stock issuable upon conversion of the Notes under the Securities Act or to qualify the Indenture under the Trust Indenture Act.

(xix) The execution, delivery and performance of the Dealer Manager Agreement, the Indenture, the Registration Rights Agreement and the New Notes and the consummation of the transactions contemplated in the Dealer Manager Agreement, the Registration Rights Agreement, the Indenture and in the Offering Memorandum (including the issuance of the shares of Common Stock issuable upon conversion of the New Notes) and compliance by the Company with its obligations under the Dealer Manager Agreement, the Indenture, the Registration Rights Agreement and the New Notes do not and will not, whether with or without the giving of notice or lapse of time or both, conflict with or constitute a breach of, or default under or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or Vertex Securities pursuant to any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or any other agreement or instrument, referred to in the Offering Memorandum, to which the Company or Vertex Securities is a party or by which either of them may be bound, or to which any of the property or assets of the Company or Vertex Securities is subject (except for conflicts, breaches or defaults, liens charges or encumbrances that could not reasonably be expected to have a Material Adverse effect), nor will such action result in any violation of the provisions of the charter or by-laws of the Company or Vertex Securities, or any applicable law, statute, rule, regulation (other than such as may be required under the applicable securities laws of the various jurisdictions in which New Notes will be offered or sold, as to which we offer no opinion), and any judgment, order, writ or decree, known to us, of any government, government instrumentality or court, domestic or foreign, having

jurisdiction over the Company or Vertex Securities or any of their respective properties, assets or operations.

(xx) The Company is not, and, upon the consummation of the Exempted Exchanges as described in the Offering Memorandum, will not be, an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the U.S. Investment Company Act of 1940.

In the course of the preparation of the Offering Memorandum, we participated in conferences with officers, representatives and in-house attorneys of the Company, representatives of the independent public accountants for the Company, and with the Dealer Manager and its counsel during which the contents of the Offering memorandum and related matters were discussed, and although we have not verified and are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Offering Memorandum (except as set forth in opinions (xiii) and (xiv) hereto), on the basis of the foregoing, no facts have come to our attention which have caused us to believe that the Offering Memorandum as of the date of the Offering Memorandum or at the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that we express no view or belief with respect to the financial statements (including the notes thereto) and schedules and other financial and accounting data included in the Offering Memorandum.

We express no opinion as to any matter other than as expressly set forth above, and no other opinion is intended to be implied nor may be inferred herefrom. The opinions expressed herein are given as of the date hereof, and we undertake no obligation hereby and disclaim any obligation to advise you of any change after the date hereof pertaining to any matter referred to herein. This opinion is rendered solely for your benefit and may not be circulated, quoted, relied upon or otherwise referred to by any other person without our written consent, except that US Bank National Association, in its capacity as Trustee under the Indenture, may rely on this opinion as if addressed to it.

Very truly yours,

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY and POPEO, P.C.

REGISTRATION RIGHTS AGREEMENT

among

VERTEX PHARMACEUTICALS INCORPORATED,

and

UBS Securities LLC

as Dealer Manager

Dated February 13, 2004

Resale Registration Rights Agreement (this "Agreement"), dated February 13, 2004, among Vertex Pharmaceuticals Incorporated, a Massachusetts corporation (together with any successor entity, the "Issuer"), and UBS Securities LLC, as Dealer Manager (the "Dealer Manager").

Pursuant to the Dealer Manager Agreement, dated February 10, 2004, between the Issuer and the Dealer Manager (the "Dealer Manager Agreement"), the Dealer Manager has agreed to purchase from the Issuer \$153,135,000 in aggregate principal amount of 5¾% Convertible Senior Subordinated Notes due 2011 (the "Notes"). The Notes will be convertible into fully paid, nonassessable common stock, par value \$.01 per share, of the Issuer (the "Common Stock") on the terms, and subject to the conditions, set forth in the Indenture (as defined herein). To induce the Dealer Manager to purchase the Notes, the Issuer has agreed to provide the registration rights set forth in this Agreement pursuant to the Dealer Manager Agreement.

The parties hereby agree as follows:

1. DEFINITIONS. As used in this Agreement, the following capitalized terms shall have the following meanings:

AGREEMENT: As defined in the preamble hereto.

ADVICE: As defined in Section 4(c)(ii) hereof.

BUSINESS DAY: A day other than a Saturday or Sunday or any federal holiday in the United States.

COMMISSION: Securities and Exchange Commission.

COMMON STOCK: As defined in the preamble hereto.

DAMAGES PAYMENT DATE: Each Interest Payment Date. For purposes of this Agreement, if no Notes are outstanding, "DAMAGES PAYMENT DATE" shall mean each February 15 and August 15.

DEALER MANAGER: As defined in the preamble hereto.

DEALER MANAGER AGREEMENT: As defined in the preamble hereto.

EFFECTIVENESS PERIOD: As defined in Section 2(a)(iii) hereof.

EFFECTIVENESS TARGET DATE: As defined in Section 2(a)(ii) hereof.

EXCHANGE ACT: Securities Exchange Act of 1934, as amended.

HOLDER: A Person who owns, beneficially or otherwise, Transfer Restricted Securities.

INDENTURE: The Indenture, dated as of February 13, 2004, between the Issuer and U.S. Bank National Association, as trustee, pursuant to which the Notes are to be issued, as such

Indenture is amended, modified or supplemented from time to time in accordance with the terms thereof.

INTEREST PAYMENT DATE: As defined in the Indenture.

ISSUER: As defined in the preamble hereto.

LIQUIDATED DAMAGES: As defined in Section 3(a) hereof.

MAJORITY OF HOLDERS: Holders holding over 50% of the aggregate principal amount of Notes outstanding; PROVIDED that, for purpose of this definition, a holder of shares of Common Stock which constitute Transfer Restricted Securities and were issued upon conversion of the Notes shall be deemed to hold an aggregate principal amount of Notes (in addition to the aggregate principal amount of Notes held by such Holder) equal to the aggregate principal amount of Notes converted by such Holder into such shares of Common Stock.

NASD: NASD, Inc.

NOTES: As defined in the preamble hereto.

PERSON: An individual, partnership, corporation, unincorporated organization, trust, joint venture or a government or agency or political subdivision thereof.

PROSPECTUS: The prospectus included in a Shelf Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such Prospectus.

QUESTIONNAIRE DEADLINE: As defined in Section 2(b) hereof.

RECORD HOLDER: With respect to any Damages Payment Date, each Person who is a Holder on the record date with respect to the Interest Payment Date on which such Damages Payment Date shall occur. In the case of a Holder of shares of Common Stock issued upon conversion of the Notes, "RECORD HOLDER" shall mean each Person who is a Holder of shares of Common Stock which constitute Transfer Restricted Securities on the February 1 or August 1 immediately preceding the Damages Payment Date.

REGISTRATION DEFAULT: As defined in Section 3(a) hereof.

SECURITIES ACT: Securities Act of 1933, as amended.

SHELF FILING DEADLINE: As defined in Section 2(a)(i) hereof.

SHELF REGISTRATION STATEMENT: As defined in Section 2(a)(i) hereof.

SUSPENSION PERIOD: As defined in Section 4(b)(i) hereof.

TIA: Trust Indenture Act of 1939, as in effect on the date the Indenture is qualified under the TIA.

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TRANSFER RESTRICTED SECURITIES: Each Note and each share of Common Stock issued upon conversion of Notes until the earlier of:

- (i) the date on which such Note or such share of Common Stock issued upon conversion has been effectively registered under the Securities Act and disposed of in accordance with the Shelf Registration Statement;
- (ii) the date on which such Note or such share of Common Stock issued upon conversion is transferred in compliance with Rule 144 under the Securities Act or may be sold or transferred pursuant to Rule 144(k) under the Securities Act (or any other similar provision then in force); or
- (iii) the date on which such Note or such share of Common Stock issued upon conversion ceases to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise).

UNDERWRITER: As defined in Section 6(a) hereof.

UNDERWRITTEN REGISTRATION OR UNDERWRITTEN OFFERING: A registration in which securities of the Issuer are sold to an underwriter for reoffering to the public.

2. SHELF REGISTRATION.

(a) The Issuer shall:

(i) not later than 120 days after the date hereof (the "Shelf Filing Deadline"), cause to be filed a registration statement pursuant to Rule 415 under the Securities Act (the "Shelf Registration Statement"), which Shelf Registration Statement shall provide for resales of all Transfer Restricted Securities held by Holders that have provided the information required pursuant to the terms of Section 2(b) hereof;

(ii) use its best efforts to cause the Shelf Registration Statement to be declared effective by the Commission as promptly as practicable, but in no event later than 210 days after the date hereof (the "Effectiveness Target Date"); and

(iii) use its best efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the provisions of Section 4(b) hereof to the extent necessary to ensure that (A) it is available for resales by the Holders of Transfer Restricted Securities entitled to the benefit of this Agreement and (B) conforms with the requirements of this Agreement and the Securities Act and the rules and regulations of the Commission promulgated thereunder as announced from time to time for a period (the "Effectiveness Period") of:

- (1) two years following the last date of original issuance of Notes; or

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- (2) such shorter period that will terminate when (X) all of the Holders of Transfer Restricted Securities are able to sell all Transfer Restricted Securities immediately without restriction pursuant to Rule 144(k) under the Securities Act or any successor rule

thereto, (Y) when all Transfer Restricted Securities have ceased to be outstanding (whether as a result of redemption, repurchase and cancellation, conversion or otherwise) or (Z) all Transfer Restricted Securities registered under the Shelf Registration Statement have been sold.

(b) No Holder may include any of its Transfer Restricted Securities in the Shelf Registration Statement pursuant to this Agreement unless such Holder furnishes to the Issuer in writing, at least ten Business Days prior to the effectiveness of the Shelf Registration Statement (the "Questionnaire Deadline"), such information as the Issuer may reasonably request for use in connection with the Shelf Registration Statement or the Prospectus or preliminary Prospectus included therein and in any application to be filed with or under state securities laws. In connection with all such requests for information from Holders, the Issuer shall notify such Holders of the requirements set forth in the preceding sentence.

3. LIQUIDATED DAMAGES.

(a) If:

(i) the Shelf Registration Statement is not filed with the Commission prior to or on the Shelf Filing Deadline;

(ii) the Shelf Registration Statement has not been declared effective by the Commission prior to or on the Effectiveness Target Date;

(iii) subject to the provisions of Section 4(b)(i) hereof, the Shelf Registration Statement is filed and declared effective but, during the Effectiveness Period, shall thereafter cease to be effective or fail to be usable for its intended purpose without being succeeded within five Business Days by a post-effective amendment to the Shelf Registration Statement or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act that cures such failure and, in the case of a post-effective amendment, is itself immediately declared effective; or

(iv) prior to or on the 45th or 60th day, as the case may be, of any Suspension Period, such suspension has not been terminated,

(each such event referred to in foregoing clauses (i) through (iv), a "Registration Default"), the Issuer hereby agrees to pay liquidated damages ("Liquidated Damages") with respect to the Transfer Restricted Securities from and including the day following the Registration Default to but excluding the day on which the Registration Default has been cured:

(A) in respect of the Notes, to each Holder of Notes, (x) with respect to the first 90-day period during which a Registration Default shall have occurred and be continuing, in an amount per year equal to an additional 0.25% of the principal amount of the Notes and (y) with respect to

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the period commencing on the 91st day following the day the Registration Default shall have occurred and be continuing, in an amount per year equal to an additional 0.50% of the principal amount of the Notes; PROVIDED that in no event shall Liquidated Damages accrue at a rate per year exceeding 0.50% of the principal amount of the Notes; and

(B) in respect of any shares of Common Stock, to each Holder of shares of Common Stock issued upon conversion of Notes, (x) with respect to the first 90-day period in which a Registration Default shall have occurred and be continuing, in an amount per year equal to 0.25% of the principal amount of the converted Notes and (y) with respect to the period commencing the 91st day following the day the Registration Default shall have occurred and be continuing, in an amount per year equal to 0.50% of the principal amount of the converted Notes; PROVIDED

that in no event shall Liquidated Damages accrue at a rate per year exceeding 0.50% of the principal amount of the converted Notes.

(b) All accrued Liquidated Damages shall be paid in arrears to Record Holders by the Issuer on each Damages Payment Date by wire transfer of immediately available funds or by federal funds check. Following the cure of all Registration Defaults relating to any particular Note or share of Common Stock, the accrual of Liquidated Damages with respect to such Note or share of Common Stock will cease.

All obligations of the Issuer set forth in this Section 3 that are outstanding with respect to any Transfer Restricted Security at the time such security ceases to be a Transfer Restricted Security shall survive until such time as all such obligations with respect to such Transfer Restricted Security shall have been satisfied in full.

The Liquidated Damages set forth above shall be the exclusive monetary remedy available to the Holders for such Registration Default.

4. REGISTRATION PROCEDURES.

(a) In connection with the Shelf Registration Statement, the Issuer shall comply with all the provisions of Section 4(b) hereof and shall use its best efforts to effect such registration to permit the sale of the Transfer Restricted Securities being sold in accordance with the intended method or methods of distribution thereof, and pursuant thereto, shall as expeditiously as possible prepare and file with the Commission a Shelf Registration Statement relating to the registration on any appropriate form under the Securities Act.

(b) In connection with the Shelf Registration Statement and any Prospectus required by this Agreement to permit the sale or resale of Transfer Restricted Securities, the Issuer shall:

(i) Subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), use its best efforts to keep the Shelf Registration Statement continuously effective during the Effectiveness Period. Upon the occurrence of any event that would cause the Shelf Registration Statement or the Prospectus

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contained therein (A) to contain a material misstatement or omission or (B) not be effective and usable for resale of Transfer Restricted Securities during the Effectiveness Period, the Issuer shall file promptly an appropriate amendment to the Shelf Registration Statement or a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), use its best efforts to cause any such amendment to be declared effective and the Shelf Registration Statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter. Notwithstanding the foregoing, the Issuer may suspend the effectiveness of the Shelf Registration Statement by written notice to the Holders for a period not to exceed an aggregate of 45 days in any 90-day period (each such period, a "Suspension Period") if:

- (x) an event occurs and is continuing as a result of which the Shelf Registration Statement would, in the Issuer's reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and
- (y) the Issuer reasonably determines that the disclosure of such event at such time would have a material adverse effect on the business of the Issuer (and its subsidiaries, if any, taken as a whole);

PROVIDED that in the event the disclosure relates to a previously undisclosed proposed or pending material business transaction, the disclosure of which would impede the Issuer's ability to consummate such transaction, the Issuer may extend a Suspension Period from 45 days to 60 days; PROVIDED, HOWEVER, that Suspension Periods shall not exceed an aggregate of 90 days in any 360-day period.

(ii) Prepare and file with the Commission such amendments and post-effective amendments to the Shelf Registration Statement as may be necessary to keep the Shelf Registration Statement effective during the Effectiveness Period; cause the Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 under the Securities Act, and to comply fully with the applicable provisions of Rules 424 and 430A under the Securities Act in a timely manner; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by the Shelf Registration Statement during the applicable period in accordance with the intended method or methods of distribution by the sellers thereof set forth in the Shelf Registration Statement or Prospectus supplement.

(iii) Advise the selling Holders that have furnished information pursuant to Section 4(d) hereof, the Dealer Manager, and the underwriter(s), if any, promptly (but in any event within five Business Days) and, if requested by such Persons, confirm such advice in writing:

(A) with respect to the Shelf Registration Statement or any post-effective amendment thereto, when the same has become

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effective, and when the Prospectus or any Prospectus supplement or post-effective amendment has been filed,

(B) of any request by the Commission for amendments to the Shelf Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto,

(C) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Transfer Restricted Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes, or

(D) of the existence of any fact or the happening of any event, during the Effectiveness Period, that makes any statement of a material fact made in the Shelf Registration Statement or the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Shelf Registration Statement or the Prospectus in order to make the statements therein not misleading.

If at any time the Commission shall issue any stop order suspending the effectiveness of the Shelf Registration Statement, or any state securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Transfer Restricted Securities under state securities or Blue Sky laws, the Issuer shall use its reasonable best efforts to obtain the withdrawal or lifting of such order at the earliest possible time.

(iv) Furnish to each of the selling Holders that has furnished information pursuant to Section 4(d) hereof, the Dealer Manager and each of the underwriter(s), if any, at least five Business Days before filing with the Commission, a copy of the Shelf Registration Statement and copies of any Prospectus included therein or any amendments or supplements to the Shelf Registration Statement or Prospectus (other than documents incorporated by reference after the initial filing of the Shelf Registration Statement), which documents will be subject to the review of such Holders, Dealer Manager and underwriter(s), if any, for a period of five Business Days, and the Issuer will not file any Shelf Registration Statement or Prospectus or any amendment or supplement to the Shelf Registration Statement or Prospectus (other than documents incorporated by reference) to which a selling Holder of Transfer Restricted Securities covered by the Shelf Registration Statement, Dealer Manager, or the underwriter(s), if any, shall reasonably object. A selling Holder, Dealer Manager, or an underwriter, if any, shall be deemed to have reasonably objected to such filing if the Shelf Registration Statement, amendment, Prospectus or supplement, as applicable, as proposed to be filed, contains a material misstatement or omission. Notwithstanding the foregoing, the Issuer shall not be

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required to furnish the selling Holders with any amendment or supplement to the Shelf Registration Statement or Prospectus filed solely to reflect changes to the amount of Notes held by any particular Holder at the request of such Holder or immaterial revisions to the information contained therein.

(v) Make available at reasonable times for inspection by one or more representatives of the selling Holders, designated in writing by a Majority of Holders whose Transfer Restricted Securities are included in the Shelf Registration Statement, any underwriter participating in any distribution pursuant to the Shelf Registration Statement and any attorney or accountant retained by such selling Holders or any of the underwriter(s), all financial and other records, pertinent corporate documents and properties of the Issuer as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the Issuer's officers, directors, managers and employees to supply all information reasonably requested by any such representative or representatives of the selling Holders, underwriter, attorney or accountant in connection with the Shelf Registration Statement after the filing thereof and before its effectiveness; PROVIDED, HOWEVER, that any information designated by the Issuer as confidential at the time of delivery of such information shall be kept confidential by the recipient thereof.

(vi) If requested by any selling Holders, the Dealer Manager, or the underwriter(s), if any, promptly incorporate in the Shelf Registration Statement or Prospectus, pursuant to a supplement or post-effective amendment if necessary, such information as such selling Holders, the Dealer Manager, and such underwriter(s), if any, may reasonably request to have included therein, including, without limitation: (1) information relating to the "Plan of Distribution" of the Transfer Restricted Securities, (2) information with respect to the principal amount of Notes or number of shares of Common Stock being sold to such underwriter(s), (3) the purchase price being paid therefor and (4) any other terms of the offering of the Transfer Restricted Securities to be sold in such offering; and make all required filings of such Prospectus supplement or post-effective amendment as soon as reasonably practicable after the Issuer is notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment. Notwithstanding the foregoing, following the effective date of the Shelf Registration Statement, the Issuer shall not be required to file more than one such supplement or post-effective amendment to reflect changes in the amount of Transfer Restricted Securities held by any Holders at the request of such Holders in any 30-day period.

(vii) Furnish to each selling Holder, the Dealer Manager and each of the underwriter(s), if any, without charge, at least one copy of the Shelf Registration Statement, as first filed with the Commission, and of each amendment thereto (and any documents incorporated by reference therein or exhibits thereto (or exhibits incorporated in such exhibits by reference) as such Person may request).

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(viii) Deliver to each selling Holder, the Dealer Manager and each of the underwriter(s), if any, without charge, as many copies of the Prospectus (including each preliminary prospectus) and any amendment or supplement thereto as such Persons reasonably may request; subject to any notice by the Issuer in accordance with this Section 4(b) of the existence of any fact or event of the kind described in Section 4(b)(iii)(D), the Issuer hereby consents to the use of the Prospectus and any amendment or supplement thereto by each of the selling Holders and each of the underwriter(s), if any, in connection with the offering and the sale of the Transfer Restricted Securities covered by the Prospectus or any amendment or supplement thereto.

(ix) If an underwriting agreement is entered into and the registration is an Underwritten Registration, the Issuer shall:

(A) upon request, furnish to each selling Holder and each underwriter, if any, in such substance and scope as they may reasonably request and as are customarily made by issuers to underwriters in primary underwritten offerings, upon the date of closing of any sale of Transfer Restricted Securities in an Underwritten Registration:

(1) a certificate, dated the date of such closing, signed by either the Chief Financial Officer or the Chief Executive Officer of the Issuer and confirming, as of the date thereof, the matters set forth in Section 12.5 of the Dealer Manager Agreement and such other matters as such parties may reasonably request;

(2) opinions, each dated the date of such closing, of counsel to the Issuer covering such of the matters set forth in the exhibits to the Dealer Manager Agreement referred to in Section 12.4(A) thereof as are customarily covered in legal opinions to underwriters in connection with primary underwritten offerings of securities; and

(3) customary comfort letters, dated the date of such closing, from the Issuer's independent certified public accountants (and from any other accountants whose report is contained or incorporated by reference in the Shelf Registration Statement), in the customary form and covering matters of the type customarily covered in comfort letters to underwriters in connection with primary underwritten offerings of securities;

(B) set forth in full in the underwriting agreement, if any, indemnification provisions and procedures which provide rights no less protective than those set forth in Section 6 hereof with respect to all parties to be indemnified; and

(C) deliver such other documents and certificates as may be reasonably requested by such parties to evidence compliance with

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clause (A) above and with any customary conditions contained in the underwriting agreement or other agreement entered into by the selling Holders pursuant to this clause (ix).

(x) Before any public offering of Transfer Restricted Securities, cooperate with the selling Holders, the underwriter(s), if any, and their respective counsel in connection with the registration and qualification of the Transfer Restricted Securities under the securities or Blue Sky laws of such jurisdictions as the selling Holders or underwriter(s), if any, may reasonably request and do any and all other acts or

things necessary or advisable to enable the disposition in such jurisdictions of the Transfer Restricted Securities covered by the Shelf Registration Statement; PROVIDED, HOWEVER, that the Issuer shall not be required (A) to register or qualify as a foreign corporation or a dealer of securities where it is not now so qualified or to take any action that would subject it to the service of process in any jurisdiction where it is not now so subject or (B) to subject itself to taxation in any such jurisdiction if it is not now so subject.

(xi) Cooperate with the selling Holders and the underwriter(s), if any, to facilitate the timely preparation and delivery of certificates representing Transfer Restricted Securities to be sold and not bearing any restrictive legends (unless required by applicable securities laws); and enable such Transfer Restricted Securities to be in such denominations and registered in such names as the Holders or the underwriter(s), if any, may request at least two Business Days before any sale of Transfer Restricted Securities made by such underwriter(s).

(xii) Use its best efforts to cause the Transfer Restricted Securities covered by the Shelf Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter(s), if any, to consummate the disposition of such Transfer Restricted Securities.

(xiii) Subject to Section 4(b)(i) hereof, if any fact or event contemplated by Section 4(b)(iii)(D) hereof shall exist or have occurred, use its reasonable best efforts to prepare a supplement or post-effective amendment to the Shelf Registration Statement or related Prospectus or any document incorporated therein by reference or file any other required document so that, as thereafter delivered to the purchasers of Transfer Restricted Securities, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(xiv) Provide CUSIP numbers for all Transfer Restricted Securities not later than the effective date of the Shelf Registration Statement and provide the Trustee under the Indenture with certificates for the Notes that are in a form eligible for deposit with The Depository Trust Company.

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(xv) Cooperate and assist in any filings required to be made with the NASD and in the performance of any due diligence investigation by any underwriter that is required to be retained in accordance with the rules and regulations of the NASD.

(xvi) Otherwise use its best efforts to comply with all applicable rules and regulations of the Commission and all reporting requirements under the rules and regulations of the Exchange Act.

(xvii) Cause the Indenture to be qualified under the TIA not later than the effective date of the Shelf Registration Statement required by this Agreement, and, in connection therewith, cooperate with the trustee and the Holders of Notes to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the TIA; and execute and use its best efforts to cause the trustee thereunder to execute all documents that may be required to effect such changes and all other forms and documents required to be filed with the Commission to enable such Indenture to be so qualified in a timely manner.

(xviii) Cause all Transfer Restricted Securities covered by the Shelf Registration Statement to be listed or quoted, as the case may be, on each securities exchange or automated quotation system on which similar securities issued by the Issuer are then listed or quoted.

(xix) Provide promptly to each Holder upon written request each document filed with the Commission pursuant to the requirements of Section 13 and Section 15 of the Exchange Act after the effective date of the Shelf Registration Statement.

(xx) If requested by the underwriters, make appropriate officers of the Issuer available to the underwriters for meetings with prospective purchasers of the Transfer Restricted Securities and prepare and present to potential investors customary "road show" material in a manner consistent with new issuances of other securities similar to the Transfer Restricted Securities.

(c) Each Holder agrees by acquisition of a Transfer Restricted Security that, upon receipt of any notice from the Issuer of the existence of any fact of the kind described in Section 4(b)(iii)(D) hereof, such Holder will, and will use its reasonable best efforts to cause any underwriter(s) in an Underwritten Offering to, forthwith discontinue disposition of Transfer Restricted Securities pursuant to the Shelf Registration Statement, and hold the content of such notice from the Company in confidence, until:

(i) such Holder has received copies of the supplemented or amended Prospectus contemplated by Section 4(b)(xiii) hereof;
or

(ii) such Holder is advised in writing by the Issuer that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus.

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If so directed by the Issuer, each Holder will deliver to the Issuer (at the Issuer's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Transfer Restricted Securities that was current at the time of receipt of such notice of suspension.

(d) (1) Not less than 30 calendar days prior to the effectiveness of the Shelf Registration Statement, the Company shall mail the a questionnaire to each Holder of Transfer Restricted Securities. Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall furnish to the Issuer in writing by the Questionnaire Deadline, as set forth in the questionnaire, such information regarding such Holder and the proposed distribution by such Holder of its Transfer Restricted Securities as the Issuer may reasonably request for use in connection with the Shelf Registration Statement or Prospectus or preliminary Prospectus included therein. The form of the questionnaire is attached hereto as Exhibit A. Each Holder who intends to be named as a selling Holder in the Shelf Registration Statement shall promptly furnish to the Issuer in writing such other information as the Issuer may

from time to time reasonably request in writing. Each Holder as to which the Shelf Registration Statement is being effected agrees to furnish promptly to the Issuer all information required to be disclosed in order to make information previously furnished to the Issuer by such Holder not materially misleading. The Company shall take action to name each Holder that furnishes to the Issuer the requested information by the Questionnaire Deadline so that such Holder is named as a selling securityholder in the Shelf Registration Statement at the time of its effectiveness and is permitted to deliver the Prospectus forming a part thereof as of such time to purchasers of such Holder's Transfer Restricted Securities in accordance with applicable law. Holders that do not complete the questionnaire and deliver it to the Issuer shall not be named as selling securityholders in the Prospectus or preliminary Prospectus included in the Shelf Registration Statement and therefore shall not be permitted to sell any Transfer Restricted Securities pursuant to the Shelf Registration Statement.

(2) After the Shelf Registration Statement has become effective, the Company shall, upon the request of any Holder of Transfer Restricted Securities, promptly send a questionnaire to such Holder. From and after the date on which the Shelf Registration Statement has become effective, the Company shall (i) as promptly as is practicable after the date a completed and signed questionnaire is delivered to the Company prepare and file with the Securities Exchange Commission (x) a supplement to the Prospectus or, if required by applicable law, a post-effective amendment to the Shelf Registration Statement and (y) any other document required by applicable law, so that the Holder delivering such questionnaire is named as a selling securityholder in the Shelf Registration Statement and is permitted to deliver the Prospectus to purchasers of such Holder's Transfer Restricted Securities in accordance with applicable law, and (ii) if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable best efforts to cause such post-effective amendment to become effective under the Act as promptly as is practicable; provided, however, that if a questionnaire is delivered to the Company during a Suspension Period, the Company shall not be obligated to take the actions set forth in clauses (i) and (ii) until the termination of such Suspension Period.

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5. REGISTRATION EXPENSES.

(a) All expenses incident to the Issuer's performance of or compliance with this Agreement shall be borne by the Issuer regardless of whether a Shelf Registration Statement becomes effective, including, without limitation:

- (i) all registration and filing fees and expenses (including filings made by the Dealer Manager, Holders or underwriters with the NASD);
- (ii) all fees and expenses of compliance with federal securities and state Blue Sky or securities laws;
- (iii) all expenses of printing (including printing of Prospectuses and certificates for the Common Stock to be issued upon conversion of the Notes), messenger and delivery services and telephone;
- (iv) all fees and disbursements of counsel to the Issuer and, subject to Section 5(b) below, the Holders of Transfer Restricted Securities;
- (v) all application and filing fees in connection with listing (or authorizing for quotation) the Common Stock on a national securities exchange or automated quotation system pursuant to the requirements hereof; and
- (vi) all fees and disbursements of independent certified public accountants of the Issuer (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Issuer shall bear its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal, accounting or other duties), the expenses of any annual audit and the fees and expenses of any Person, including special experts, retained by the Issuer.

(b) In connection with the Shelf Registration Statement required by this Agreement, the Issuer shall reimburse the Dealer Manager and the Holders of Transfer Restricted Securities being registered pursuant to the Shelf Registration Statement, as applicable, for the reasonable fees and disbursements of not more than one counsel, which shall be Cleary, Gottlieb, Steen & Hamilton, or such other counsel as may be chosen by a Majority of Holders for whose benefit the Shelf Registration Statement is being prepared.

6. INDEMNIFICATION AND CONTRIBUTION.

(a) The Issuer agrees to indemnify and hold harmless the Dealer Manager, each Holder and each Person who participates as an underwriter (any such Person being an "Underwriter") and each Person, if any, who controls the Dealer Manager, any Holder or any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

- (i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in any Shelf Registration Statement (or any

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amendment or supplement thereto), including all documents incorporated therein by reference, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact contained in any Prospectus (or any amendment or supplement thereto) or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

- (ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or

threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; PROVIDED that (subject to Section 6(d) below) any such settlement is effected with the written consent of the Issuer; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by any indemnified party), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under subparagraph (i) or (ii) above;

PROVIDED, HOWEVER, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Issuer by the Dealer Manager, such Holder or such Underwriter expressly for use in a Shelf Registration Statement (or any amendment thereto) or any Prospectus (or any amendment or supplement thereto).

(b) Each Holder, severally but not jointly, agrees to indemnify and hold harmless the Issuer, the Dealer Manager, each Underwriter and the other selling Holders and each Person, if any, who controls the Issuer, the Dealer Manager, any Underwriter or any other selling Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 6(a) hereof, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in any Shelf Registration Statement (or any amendment or supplement thereto) or any Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with written information with respect to such Holder furnished to the Issuer by such Holder expressly for use in the Shelf Registration Statement (or any amendment thereto) or such Prospectus (or any amendment or supplement thereto); PROVIDED, HOWEVER, that no such Holder shall be liable for any claims hereunder in excess of the amount of net proceeds received by such Holder from the sale of Transfer Restricted Securities pursuant to such Shelf Registration Statement.

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(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action or proceeding commenced against it in respect of which indemnity may be sought hereunder, but failure so to notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. An indemnifying party may participate at its own expense in the defense of such action; PROVIDED, HOWEVER, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying party or parties be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 6 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 6(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(e) If the indemnification provided for in this Section 6 is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, in such proportion as is appropriate to reflect the relative fault of the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative fault of the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or parties on the one hand or the indemnified party or parties on the other hand and the parties'

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relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 6. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 6 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 6, no Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Transfer Restricted Securities purchased by it were resold exceeds the amount of any damages which such Holder has otherwise been required to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. The Holders' obligations to contribute as provided in this Section 6(e) are several and not joint.

No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 6, each Person, if any, who controls the Dealer Manager, a Holder or an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as such Initial Purchaser, such Holder or such Underwriter, and each director of the Issuer, and each Person, if any, who controls the Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Issuer.

7. **RULE 144A.** In the event the Issuer is not subject to Section 13 or 15(d) of the Exchange Act, the Issuer hereby agrees with each Holder, for so long as any Transfer Restricted Securities remain outstanding, to make available to any Holder or beneficial owner of Transfer Restricted Securities in connection with any sale thereof and any prospective purchaser of such Transfer Restricted Securities from such Holder or beneficial owner, the information required by Rule 144A(d)(4) under the Securities Act in order to permit resales of such Transfer Restricted Securities pursuant to Rule 144A.

8. **PARTICIPATION IN UNDERWRITTEN REGISTRATIONS.** No Holder may participate in any Underwritten Registration hereunder unless such Holder:

(i) agrees to sell such Holder's Transfer Restricted Securities on the basis provided in any underwriting arrangements approved by the Persons entitled hereunder to approve such arrangements and

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(ii) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such underwriting arrangements.

9. **SELECTION OF UNDERWRITERS.** The Holders of Transfer Restricted Securities covered by the Shelf Registration Statement who desire to do so may sell such Transfer Restricted Securities in an Underwritten Offering. In any such Underwritten Offering, the investment banker or investment bankers and manager or managers that will administer the offering will be selected by a Majority of Holders whose Transfer Restricted Securities are included in such offering; PROVIDED, that such investment bankers and managers must be reasonably satisfactory to the Issuer.

10. **MISCELLANEOUS.**

(a) **REMEDIES.** The Issuer acknowledges and agrees that any failure by the Issuer to comply with its obligations under Section 2 hereof may result in material irreparable injury to the Dealer Manager or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such failure, the Dealer Manager or any Holder may obtain such relief as may be required to specifically enforce the Issuer's obligations under Section 2 hereof. The Issuer further agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

(b) **ADJUSTMENTS AFFECTING TRANSFER RESTRICTED SECURITIES.** The Issuer shall not, directly or indirectly, take any action with respect to the Transfer Restricted Securities as a class that would adversely affect the ability of the Holders to include such Transfer Restricted Securities in a registration undertaken pursuant to this Agreement.

(c) **NO INCONSISTENT AGREEMENTS.** The Issuer will not, on or after the date of this Agreement, enter into any agreement with respect to its securities that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. In addition, the Issuer shall not grant to any of its security holders (other than the Holders of Transfer Restricted Securities in such capacity) the right to include any of its securities in the Shelf Registration Statement provided for in this Agreement other than the Transfer Restricted Securities. The Issuer has not previously entered into any agreement (which has not expired or been terminated) granting any registration rights with respect to its securities to any Person which rights conflict with the provisions hereof.

(d) **AMENDMENTS AND WAIVERS.** This Agreement may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, unless the Issuer has obtained the written consent of a Majority of Holders.

(e) **NOTICES.** All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail (registered or

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certified, return receipt requested), telex, telecopier, or air courier guaranteeing overnight delivery:

(i) if to a Holder, at the address set forth on the records of the registrar under the Indenture or the transfer agent of the Common Stock, as the case may be; and

(ii) if to the Issuer:

Vertex Pharmaceuticals Incorporated 130 Waverly Street Cambridge, Massachusetts 02139
Attention: Investor Relations

With a copy to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, Massachusetts 02111
Attention: Michael Fantozzi, Esq.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and on the next Business Day, if timely delivered to an air courier guaranteeing overnight delivery.

(f) **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, including without limitation and without the need for an express assignment, subsequent Holders of Transfer Restricted Securities; PROVIDED, HOWEVER, that (i) this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and to the extent such successor or assign acquired Transfer Restricted Securities from such Holder and (ii) nothing contained herein shall be deemed to permit any assignment, transfer or other disposition of Transfer Restricted Securities in violation of the terms of the Indenture. If any transferee of any Holder shall acquire Transfer Restricted Securities, in any manner, whether by operation of law or otherwise, such Transfer Restricted Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Transfer Restricted Securities such person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement.

(g) **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(h) **SECURITIES HELD BY THE ISSUER OR ITS AFFILIATES.** Whenever the consent or approval of Holders of a specified percentage of Transfer Restricted Securities is required hereunder, Transfer Restricted Securities held by the Issuer or its "affiliates" (as such

term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(i) **HEADINGS.** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(j) **GOVERNING LAW.** This Agreement shall be governed by, and construed in accordance with, the law of the State of New York, without regard to conflict of laws principles thereof.

(k) **SEVERABILITY.** If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be affected or impaired thereby.

(l) **ENTIRE AGREEMENT.** This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein with respect to the registration rights granted by the Issuer with respect to the Transfer Restricted Securities. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

VERTEX PHARMACEUTICALS
INCORPORATED

By: /s/ Ian Smith

Name: Ian Smith
Title: Senior Vice President & Chief Financial Officer

UBS Securities LLC
as Dealer Manager

By: /s/ David Lessen

By: /s/ Aradhana Sarin

Authorized Signatory

The undersigned beneficial holder of 5¾% Convertible Subordinated Notes due February 15, 2011 (the “Notes”) of Vertex Pharmaceuticals Incorporated (the “Issuer”), or common stock, par value \$.01 per share issued upon conversion of the Notes (the “Shares” and together with the Notes, the “Transfer Restricted Securities”), of the Issuer understands that the Issuer has filed, or intends to file, with the Securities and Exchange Commission (the “Commission”) a registration statement (the “Shelf Registration Statement”), for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), of the Transfer Restricted Securities in accordance with the terms of the Registration Rights Agreement, dated February 13, 2004 (the “Registration Rights Agreement”), between the Issuer and UBS Securities LLC, as Dealer Manager. A copy of the Registration Rights Agreement is available from the Issuer upon request at the address set forth below. All capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Registration Rights Agreement.

Each beneficial owner of Transfer Restricted Securities is entitled to the benefits of the Registration Rights Agreement. In order to sell or otherwise dispose of any Transfer Restricted Securities pursuant to the Shelf Registration Statement, a beneficial owner of Transfer Restricted Securities generally will be required to be named as a selling securityholder in the related Prospectus, deliver a Prospectus to purchasers of Transfer Restricted Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions, as described below).

Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Issuer as provided below will not be named as selling securityholders in the prospectus and will not be permitted to sell any Transfer Restricted Securities pursuant to the Shelf Registration Statement. Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire on or before the tenth business day prior to the effectiveness of the Shelf Registration Statement so that such beneficial owners may be named as selling securityholders in the related prospectus at the time the Shelf Registration Statement becomes effective. Upon receipt of a completed Notice and Questionnaire from a beneficial owner following the effectiveness of the Shelf Registration Statement, the Issuer will, as promptly as practicable, make filings with the Commission as are necessary to permit such beneficial owner to deliver such prospectus to purchasers of Transfer Restricted Securities, subject to certain limitations set forth in the Registration Rights Agreement. The Issuer has agreed to pay liquidated damages pursuant to the Registration Rights Agreement under certain circumstances as set forth therein.

Certain legal consequences arise from being named as a selling securityholder in the Shelf Registration Statement and the related Prospectus. Accordingly, holders and beneficial owners of Transfer Restricted Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling securityholder in the Shelf Registration Statement and the related Prospectus.

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NOTICE

The undersigned beneficial owner (the “Selling Securityholder”) of Transfer Restricted Securities hereby gives notice to the Issuer of its intention to sell or otherwise dispose of Transfer Restricted Securities beneficially owned by it and listed below in Item 3 (unless otherwise specified under Item 3) pursuant to the Shelf Registration Statement. The undersigned, by signing and returning this Notice and Questionnaire, understands that it will be bound by the terms and conditions of this Notice and Questionnaire and the Registration Rights Agreement.

Pursuant to the Registration Rights Agreement, the undersigned has agreed to indemnify and hold harmless the Issuer, the Dealer Manager, any Underwriter and the other selling holders and each person, if any, who controls such persons within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against certain losses arising in connection with statements concerning the undersigned made in the Shelf Registration Statement or the related Prospectus in reliance upon the information provided in this Notice and Questionnaire.

The undersigned hereby provides the following information to the Issuer and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. (a) Full legal name of Selling Securityholder:
(b) Full legal name of registered holder (if not the same as (a) above) through which Transfer Restricted Securities listed in (3) below are held:
(c) Full legal name of DTC participant (if applicable and if not the same as (b) above) through which Transfer Restricted Securities listed in (3) are held:
(d) Taxpayer identification or social security number of Selling Securityholder:

2. Address for notices to Selling Securityholders:

Telephone:

Fax:

Email:

Contact Person:

3. Beneficial ownership of Transfer Restricted Securities:

(a) Type of Transfer Restricted Securities beneficially owned, and principal amount of Notes or number of shares of Common Stock, as the case may be, beneficially owned:

(b) CUSIP No(s). of such Transfer Restricted Securities beneficially owned:

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4. Beneficial ownership of the Issuer's securities owned by the Selling Securityholder:

EXCEPT AS SET FORTH BELOW IN THIS ITEM (4), THE UNDERSIGNED IS NOT THE BENEFICIAL OR REGISTERED OWNER OF ANY SECURITIES OF THE ISSUER OTHER THAN THE TRANSFER RESTRICTED SECURITIES LISTED ABOVE IN ITEM (3) ("OTHER SECURITIES").

(a) Type and amount of Other Securities beneficially owned by the Selling Securityholder:

(b) CUSIP No(s). of such Other Securities beneficially owned:

5. Relationship with the Issuer

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (5% or more) has held any position or office or has had any other material relationship with the Issuer (or their predecessors or affiliates) during the past three years.

State any exceptions here:

6. Nature of the Selling Securityholder:

(a) Is the Selling Securityholder a reporting company under the Securities Exchange Act, a majority owned subsidiary of a reporting company under the Securities Exchange Act, or a registered investment company under the Investment Company Act? If so, please state which one.

If the entity is a majority owned subsidiary of a reporting company, identify the majority stockholder that is a reporting company.

If the entity is not any of the above, identify the natural person or persons having voting and investment control over the Company's securities that the entity owns.

(b) Is the Selling Securityholder is a registered broker-dealer?

Yes No

If yes, state whether the Selling Securityholder received the Transfer Restricted Securities as compensation for underwriting activities and, if so, provide a brief description of the transaction(s) involved.

State whether the Selling Securityholder is an affiliate of a broker-dealer and if so, list the name(s) of the broker-dealer affiliate(s). For purposes of this Item 6(b), an "affiliate" of a broker-dealer includes any company that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such broker-dealer, and does not include individuals employed by any such broker-dealers or by any of their affiliates.

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Yes No

If the answer is "Yes," you must answer the following:

If the Selling Securityholder is an affiliate of a registered broker-dealer, the Selling Securityholder purchased the Transfer Restricted Securities (i) in the ordinary course of business and (ii) at the time of the purchase of the Transfer Restricted Securities, had no agreements or understandings, directly or indirectly, with any person to distribute the Transfer Restricted Securities.

Yes No

If the answer is "No", state any exceptions here:

If the answer is "No," this may affect your ability to be included in the Shelf Registration Statement.

7. Plan of Distribution

Except as set forth below, the undersigned (including its donees, pledges, transferees and other successors in interest) intends to distribute the Transfer Restricted Securities listed above in Item (3) pursuant to the Shelf Registration Statement only as follows (if at all). Such Transfer Restricted Securities may be sold from time to time directly by the undersigned or, alternatively, through underwriters, broker-dealers or agents. If the Transfer Restricted Securities are sold through underwriters or broker-dealers, the Selling Securityholder will be responsible for underwriting discounts or commissions or agent's commissions. Such Transfer Restricted Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale, or at negotiated prices. Such sales may be effected in transactions (which may involve crosses or block transactions):

(i) on any national securities exchange or quotation service on which the Transfer Restricted Securities may be listed or quoted at the time of sale;

(ii) in the over-the-counter market;

(iii) in transactions otherwise than on such exchanges or services or in the over-the-counter market; or

(iv) through the writing of options.

In connection with sales of the Transfer Restricted Securities or otherwise, the undersigned may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Transfer Restricted Securities and deliver Transfer Restricted Securities to close out such short positions, or loan or pledge Transfer Restricted Securities to broker-dealers that in turn may sell such securities.

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State any exceptions here:

Note: In no event will such method(s) of distribution take the form of an underwritten offering of the Transfer Restricted Securities without the prior agreement of the Issuer.

8. (Optional) Submissions After the Shelf Registration Statement Becomes Effective:

If you are unable to trace your securities back to an individual or entity listed as a selling securityholder in the Shelf Registration Statement, we may need to file a post-effective amendment to the Shelf Registration Statement. This could result in additional delay in your ability to resell your securities pursuant to the Shelf Registration Statement. In order to allow us to determine whether your securities can be traced back to an individual or entity listed as a selling stockholder in the Shelf Registration Statement, please indicate from whom the Transfer Restricted Securities were acquired:

The undersigned acknowledges that it understands its obligation to comply with the provisions of the Exchange Act and the rules and regulations promulgated thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offering of Transfer Restricted Securities pursuant to the Shelf Registration Statement. The undersigned agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Securityholder hereby acknowledges its obligations under the Registration Rights Agreement to indemnify and hold harmless certain persons as set forth therein.

Pursuant to the Registration Rights Agreement, the Issuer has agreed under certain circumstances to indemnify the Selling Securityholders against certain liabilities.

In accordance with the undersigned's obligation under the Registration Rights Agreement to provide such information as may be required by law for inclusion in the Shelf Registration Statement, the undersigned agrees to promptly notify the Issuer of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Shelf Registration Statement remains effective. All notices hereunder and pursuant to the Registration Rights Agreement shall be made in writing at the address set forth below.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to items (1) through (8) above and the inclusion of such information in the Shelf Registration Statement and the related Prospectus. The undersigned understands that such information will be relied upon by the Issuer in connection with the preparation or amendment of the Shelf Registration Statement and the related Prospectus.

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IN WITNESS WHEREOF, the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:

Beneficial Owner

By: _____

Name:

Title:

Please return the completed and executed Notice and Questionnaire to Vertex Pharmaceuticals Incorporated at:

Vertex Pharmaceuticals Incorporated
130 Waverly Street
Cambridge, Massachusetts 02139
Attention: Valerie Andrews, Senior Counsel
Facsimile: (617) 444-7117

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