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): June 4, 2008

EXELIXIS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**0-30235**	**04-3257395**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

170 Harbor Way

P.O. Box 511

South San Francisco, California 94083
(Address of principal executive offices, and including zip code)

(650) 837-7000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

Facility Agreement. On June 4, 2008, Exelixis, Inc. ("Exelixis") entered into a Facility Agreement (the "Facility Agreement") with Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited (collectively, "Deerfield"), pursuant to which Deerfield agreed to loan to Exelixis up to $150,000,000, subject to certain conditions. Exelixis may draw down on the facility in $15,000,000 increments at any time during the eighteen (18) months following the effective date of the Facility Agreement. However, Exelixis is under no obligation to draw down on the facility and may terminate the Facility Agreement without penalty at any time. Deerfield received a one time transaction fee equal to 2.5 percent of the aggregate amount of the facility and will continue to receive an annual commitment fee of 2.25 percent of the aggregate amount of the facility, payable on a quarterly basis during the term of the Facility Agreement. The outstanding principal and interest under the loan, if any, is due by June 4, 2013, and, at Exelixis' option, can be repaid at any time with shares of Exelixis Common Stock (the "Repayment Shares") that have been registered under the Securities Act of 1933, as amended (the "Securities Act"), with certain restrictions, or in cash. Interest under the loan shall not accrue until Exelixis draws down on the facility, at which time interest will begin to accrue at a rate of 6.75 percent per annum compounded annually on the outstanding principal amount of the facility. Deerfield also has limited rights to accelerate repayment of the loan upon certain changes of control of Exelixis or an event of default.

In accordance with the terms of the Facility Agreement, Exelixis issued Deerfield warrants to purchase shares of Exelixis Common Stock and entered into a Registration Rights Agreement with Deerfield, each of which are described below.

Warrants. Upon execution of the Facility Agreement, Exelixis issued to Deerfield warrants to purchase an aggregate of 1,000,000 shares of Exelixis Common Stock at an exercise price of $7.40 per share (the "Initial Warrants"). Subject to certain conditions and limitations, Exelixis has the right to request one or more cash disbursements from Deerfield pursuant to the Facility Agreement, which disbursements would be accompanied by Exelixis' issuance to Deerfield of: (a) for each of the first through fifth disbursements, warrants to purchase an aggregate of 400,000 shares of Exelixis Common Stock at an exercise price equal to the then prevailing exercise price under the Initial Warrants and (b) for each disbursement, warrants to purchase an aggregate of 800,000 shares of Exelixis Common Stock at an exercise price equal to 120% of the average of the Volume Weighted Average Price (as defined in the Facility Agreement) of Exelixis Common Stock for each of the 15 trading days beginning with the trading day following receipt by Deerfield of a disbursement request (collectively, the "Additional Warrants" and, together with the Initial Warrants, the "Warrants"). The Warrants are exercisable for a term of six years from the date of issuance and contain certain limitations that prevent the holder of the Warrants from acquiring shares upon exercise of a Warrant that would result in the number of shares beneficially owned by it to exceed 9.98% of the total number of shares of Exelixis Common Stock then issued and outstanding (the "Deerfield Share Limitation"). The number of shares for which the Warrants are exercisable and the associated exercise prices are subject to certain adjustments as set forth in the Warrants. In addition, upon certain changes in control of Exelixis, to the extent the Warrants are not assumed by the acquiring entity, or upon certain defaults under the Warrants, the holder has the right to net exercise the Warrants for shares of Exelixis Common Stock, or, in certain circumstances, be paid an amount in cash, equal to the Black-Scholes value of the shares of Exelixis Common Stock issuable under Warrants that are outstanding. The maximum number of shares of Exelixis Common Stock that can be issued pursuant to the terms of the Warrants and the Facility Agreement is 20,991,776 shares.

Registration Rights Agreement. In accordance with the terms of the Facility Agreement, Exelixis entered into a Registration Rights Agreement with Deerfield dated June 4, 2008 (the "Registration Rights Agreement"). Pursuant to the terms of the Registration Rights Agreement, Exelixis agreed to file a registration statement with the Securities and Exchange Commission ("SEC") on or prior to 45 days from the effective date of the Registration Rights Agreement (the "Initial Registration Statement"). The Initial Registration Statement is intended to cover the resale of shares of Exelixis Common Stock subject to issuance upon the exercise of the Warrants or shares issued in connection with an event of default or repayment of the facility pursuant to the terms of the Facility Agreement (the "Initial Registration Shares"). Exelixis has additional obligations under the Registration Rights Agreement, subject to SEC rules and regulations, to register either on a primary or resale basis, any Initial Registration Shares not included in the Initial Registration Statement.

The foregoing summaries of the Facility Agreement, the Warrants and the Registration Rights Agreement are not complete and are qualified in their entirety by reference to these agreements, copies of which are filed as exhibits to this Current Report on Form 8-K and are incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement.

The information in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information in Item 1.01 above is incorporated by reference into this Item 3.02. Exelixis relied on the exemption from registration contained in Section 4(2) of the Securities Act, and Regulation D, Rule 506 thereunder, for the issuance of the Warrants, the shares of Common Stock issuable pursuant to the Warrants and the Repayment Shares. As part of executing the Facility

Agreement and receiving the Repayment Shares, the Warrants and the shares of Common Stock issuable pursuant to the Warrants, Deerfield represented to Exelixis that it is an "accredited investor" as defined in Regulation D of the Securities Act and that the securities purchased by Deerfield were being acquired for investment purposes and without a view to resale or distribution in violation of the Securities Act.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
4.9*	Form Warrant to Purchase Common Stock of Exelixis, Inc. issued or issuable to Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited
4.10	Registration Rights Agreement between Exelixis, Inc. and Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited dated June 4, 2008
10.55*	Facility Agreement between Exelixis, Inc. and Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited dated June 4, 2008

* Confidential Treatment of certain portions of this exhibit requested.

SIGNATURE

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

EXELIXIS, INC.

Date: June 6, 2008

/s/ James B. Bucher
James B. Bucher
Vice President, Corporate Legal Affairs and Secretary

Exhibit 4.9

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

THIS WARRANT, THE SECURITIES ISSUABLE UPON EXERCISE HEREOF AND ANY FAILURE PAYMENT SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF OR EXERCISED UNLESS (I) A REGISTRATION STATEMENT REGISTERING SUCH SECURITIES UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS SHALL HAVE BECOME EFFECTIVE, OR (II) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR QUALIFICATION UNDER APPLICABLE STATE SECURITIES LAWS, OR (III) SUCH SECURITIES ARE SOLD PURSUANT TO RULE 144 OR RULE 144A.

AN INVESTMENT IN THESE SECURITIES INVOLVES A HIGH DEGREE OF RISK. HOLDERS MUST RELY ON THEIR OWN ANALYSIS OF THE INVESTMENT AND ASSESSMENT OF THE RISKS INVOLVED.

Warrant to Purchase Shares

Warrant Number

Warrant to Purchase Common Stock
of
EXELIXIS, INC.

THIS CERTIFIES that _____ or any subsequent holder hereof has the right to purchase from EXELIXIS, INC., a Delaware corporation (the "Company"), _____ (_____) fully paid and nonassessable shares, of the Company's common stock, $0.001 par value per share ("Common Stock"), subject to adjustment as provided herein, at a price equal to the Exercise Price as defined in Section 3 below, at any time during the Term (as defined below).

Holder agrees with the Company that this Warrant to Purchase Common Stock of the Company (this "Warrant" or this "Agreement") is issued and all rights hereunder shall be held subject to all of the conditions, limitations and provisions set forth herein.

1. Date of Issuance and Term.

This Warrant shall be deemed to be issued on _____, 2008 ("Date of Issuance"). The term of this Warrant begins on the Date of Issuance and ends at 5:00 p.m., New York City time, on the date that is six (6) years after the Date of Issuance (the "Term"). This Warrant was issued in conjunction with that certain Facility Agreement (the "Facility Agreement") and the Registration Rights Agreement ("Registration Rights Agreement") by and between the Company and _____, each dated _____, 2008, entered into in conjunction herewith.

Notwithstanding anything herein to the contrary, the Company shall not issue to the Holder, and the Holder may not acquire, a number of shares of Common Stock upon exercise of this Warrant to the extent that, upon such exercise, the number of shares of Common Stock then beneficially owned by the Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 9.98% of the total number of shares of Common Stock then issued and outstanding (the "9.98% Cap"). For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the Securities and Exchange Commission (the "SEC"), and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. Upon the written request of the Holder, the Company shall, within two (2) Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

"Affiliate" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"). With respect to a Holder of Warrants, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

"Business Day" means a day on which banks are open for business in The City of New York and San Francisco.

"Grace Period" shall have the meaning set forth in the Registration Rights Agreement.

"Holder" means _____ and any transferee or assignee pursuant to the terms of this Warrant.

"Initial Filing Deadline" shall have the meaning set forth in the Registration Rights Agreement.

"Initial Registration Deadline" shall have the meaning set forth in the Registration Rights Agreement.

"Initial Registration Statement" shall have the meaning set forth in the Registration Rights Agreement.

"Registrable Securities" shall have the meaning set forth in the Registration Rights Agreement.

"Registration" shall have the meaning set forth in the Registration Rights Agreement.

"Registration Period" shall have the meaning set forth in the Registration Rights Agreement.

"Registration Statement" shall have the meaning set forth in the Registration Rights Agreement.

"Trading Day" means any day on which the Common Stock is traded for at least two hours on NASDAQ, or on the principal securities exchange or other securities market on which the Common Stock is then being traded.

2. Exercise.

(a) Manner of Exercise. During the Term, this Warrant may be Exercised as to all or any lesser number of full shares of Common Stock covered hereby (the "Warrant Shares" or the "Shares") upon surrender of this Warrant, with the Exercise Form attached hereto as Exhibit A (the "Exercise Form") duly completed and executed, together with the full Exercise Price (as defined below, which may be satisfied by a Cash Exercise, a Cashless Exercise, a Cashless Major Exercise or a Cashless Default Exercise, as each is defined below) for each share of Common Stock as to which this Warrant is Exercised, at the office of the Company, Exelixis, Inc., 170 Harbor Way, P.O. Box 511, South San Francisco, CA 94083; Fax: (680) 837-7951, or at such other office or agency as the Company may designate in writing, by overnight mail, with an advance copy of the Exercise Form sent to the Company and the transfer agent for the Common Stock ("Transfer Agent") by facsimile (such surrender and payment of the Exercise Price hereinafter called the "Exercise" of this Warrant).

(b) Date of Exercise. If any portion of the Exercise Price is satisfied by a Cash Exercise (as defined below), the "Date of Exercise" of the Warrant shall be defined as the later of (A) the date that the Exercise Form attached hereto as Exhibit A, completed and executed, is sent by facsimile to the Company, provided that the original Warrant and Exercise Form are received by the Company, each as soon as practicable thereafter (or, the date the original Exercise Form is received by the Company, if Holder has not sent advance notice by facsimile) and (B) the date that the Exercise Price is received by the Company. If no portion of the Exercise Price is satisfied by a Cash Exercise, the "Date of Exercise" of the Warrant shall be defined as the date that the Exercise Form attached hereto as Exhibit A, completed and executed, is sent by facsimile to the Company, provided that the original Warrant and Exercise Form are received by the Company, each as soon as practicable thereafter (or, the date the original Exercise Form is received by the Company, if Holder has not sent advance notice by facsimile).

(c) Delivery of Common Stock Upon Exercise. Within three (3) Trading Days after any Date of Exercise, or in the case of a Cashless Major Exercise or a Cashless Default Exercise (each as defined in Section 5(c)(i) below), within the period provided in Section 5(c)(iii) or Section 3(a)(iv), as applicable (the "Delivery Period"), the Company shall issue and deliver (or cause its Transfer Agent to so issue and deliver) in accordance with the terms hereof to or upon the order of the Holder that number of shares of Common Stock ("Exercise Shares") for the portion of this Warrant exercised as shall be determined in accordance herewith. Upon the Exercise of this

Warrant or any part thereof, the Company shall, at its own cost and expense, take all reasonable steps, including obtaining and delivering, an opinion of counsel to assure that the Transfer Agent shall issue stock certificates in the name of Holder (or its nominee) or such other persons as designated by Holder and in such denominations to be specified at Exercise representing the number of shares of Common Stock issuable upon such Exercise.

(d) Delivery Failure. In addition to any other remedies which may be available to the Holder, in the event that the Company fails for any reason to effect delivery of the Exercise Shares by the end of the Delivery Period (a "Delivery Failure"), the Holder will be entitled to revoke all or part of the relevant Exercise Form by delivery of a notice to such effect to the Company whereupon the Company and the Holder shall each be restored to their respective positions immediately prior to the delivery of such notice, except that the liquidated damages described herein shall be payable through the date notice of revocation or rescission is given to the Company.

(e) Legends.

(i) Restrictive Legend. The Holder understands that this Warrant, the Exercise Shares and the Failure Payment Shares (as defined in Section 10 hereof) have not been registered on the Date of Issuance, under the Securities Act. The Holder understands that until such time as (i) this Warrant has been registered under the Securities Act and/or (ii) the Exercise Shares and/or the Failure Payment Shares, as applicable, have been registered under the Securities Act as contemplated by the Registration Rights Agreement, or otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, (A) this Warrant will bear a restrictive legend in substantially the form set forth on the first page of this Warrant (and a stop-transfer order may be placed against transfer of such securities) and (B) the Exercise Shares and the Failure Payment Shares will bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such securities):

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULES 144 OR 144A UNDER SAID ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED "4(1) AND A HALF" SALE, SUBJECT TO DELIVERY OF AN OPINION, AS PROVIDED IN THE WARRANT.
>
> "THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN REGISTRATION RIGHTS AGREEMENT DATED AS OF June 4, 2008, AS AMENDED FROM TIME TO TIME. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY."

(ii) Removal of Restrictive Legends. This Warrant and certificates evidencing the Exercise Shares and any Failure Payment Shares shall not contain any legend restricting the transfer thereof (including any legend set forth above in subsection 2(e)(i)): (A) while a registration statement (including a Registration Statement) covering the sale or resale of such security is effective under the Securities Act, or (B) following any sale of such Warrant, Exercise Shares and/or Failure Payment Shares pursuant to Rule 144, or (C) if such Warrant, Exercise Shares and/or Failure Payment Shares are eligible for sale under Rule 144(b)(1), or (D) if such legend is not required under any other applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) and the Company shall have received an opinion of counsel to the Holder in form reasonably acceptable to the Company to such effect, which, in the case of a so-called "4(1) and a half" sale, shall be in the form of Exhibit C hereto (collectively, the "Unrestricted Conditions"). If the Unrestricted Conditions are met, the Company shall cause its counsel to issue a legal opinion to the Transfer Agent if required by the Company's transfer agent to effect the issuance of the Exercise Shares or any Failure Payment Shares, as applicable, without a restrictive legend or removal of the legend hereunder. If the Unrestricted Conditions are met at the time of issuance of this Warrant, the Exercise Shares and/or any Failure Payment Shares, then this Warrant, the Exercise Shares and/or any Failure Payment Shares, as applicable, shall be issued free of all legends. The Company agrees that at such time as the Unrestricted Conditions are met or such legend is otherwise no longer required under this Section 2(e), it will, no later than three (3) Trading Days following the delivery (the "Unlegended Shares Delivery Deadline") by the Holder to the Company or the Transfer Agent of this Warrant and a certificate representing Exercise Shares or Failure Payment Shares, as applicable, issued with a restrictive legend (such third Trading Day, the "Legend Removal Date"), deliver or cause to be delivered to such Holder this Warrant and/or a certificate (or electronic transfer) representing such shares that is free from all restrictive and other legends.

(iii) Sale of Unlegended Shares. Holder agrees that the removal of the restrictive legend from this Warrant and any certificates representing securities as set forth in Section 2(e) above is predicated upon the Company's reliance that the Holder would sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Warrant, any Exercise Shares and/or any Failure Payment Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

(f) Cancellation of Warrant. This Warrant shall be canceled upon the full Exercise of this Warrant or upon full redemption of this Warrant. As soon as practical after the Date of Exercise, Holder shall be entitled to receive Common Stock for the number of shares purchased upon such Exercise of this Warrant as set forth in Section 2(c), and if this Warrant is not Exercised in full, Holder shall be entitled to receive a new Warrant (containing terms identical to this Warrant) representing any unexercised portion of this Warrant in addition to such Common Stock.

(g) Holder of Record. Each person in whose name any Warrant for shares of Common Stock is issued shall, for all purposes, be deemed to be the Holder of record of such shares on the Date of Exercise of this Warrant, irrespective of the date of delivery of the Common Stock purchased upon the Exercise of this Warrant or the date such Common Stock is credited to the Holder's DTC account, as the case may be. Nothing in this Warrant shall be construed as conferring upon Holder any rights as a stockholder of the Company.

(h) Delivery of Electronic Shares. In lieu of delivering physical certificates representing the Common Stock issuable upon Exercise or legend removal or representing Failure Payment Shares, provided the Company's Transfer Agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer ("FAST") program, upon written request of the Holder, the Company shall use its commercially reasonable efforts to cause its Transfer Agent to electronically transmit the Common Stock issuable to the Holder by crediting the account of the Holder's prime broker with DTC through its Deposit Withdrawal Agent Commission (DWAC) system. The time periods for delivery and penalties described herein shall apply to the electronic transmittals described herein. Any delivery not effected by electronic transmission shall be effected by delivery of physical certificates.

(i) Buy-In. In addition to any other rights available to the Holder, if the Company fails to cause its Transfer Agent to transmit to the Holder a certificate or certificates representing the Exercise Shares pursuant to an Exercise on or before the Delivery Period (other than a failure caused by any incorrect or incomplete information provided by Holder to the Company hereunder, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Exercise Shares which the Holder anticipated receiving upon such Exercise (a "Buy-In"), then the Company shall (1) pay in cash to the Holder the amount by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (A) the number of Exercise Shares that the Company was required to deliver to the Holder in connection with the Exercise at issue times and (B) the price at which the sell order giving rise to such purchase obligation was executed, and (2) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Exercise Shares for which such Exercise was not honored or deliver to the Holder certificate(s) representing the number of shares of Common Stock that would have been issued had the Company timely complied with its Exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted Exercise to cover the sale of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under subsection (1) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In, together with applicable confirmations and other evidence reasonably requested by the Company. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon Exercise of the Warrant as required pursuant to the terms hereof.

3. Payment of Warrant Exercise Price.

(a) Exercise Price. The Exercise Price ("Exercise Price") shall initially equal $____ per share subject to adjustment pursuant to the terms hereof, including but not limited to Section 5 below.

Payment of the Exercise Price may be made by either of the following, or a combination thereof, at the election of Holder:

(i) *Cash Exercise:* The Holder may exercise this Warrant in cash, bank or cashier's check or wire transfer (a "Cash Exercise"); or

(ii) *Cashless Exercise*. The Holder, at its option, may exercise this Warrant in a cashless exercise transaction. In order to effect a Cashless Exercise, the Holder shall surrender this Warrant at the principal office of the Company together with the Exercise Form attached hereto as Exhibit A indicating that the Holder is exercising the Warrant pursuant to a cashless election, in which event the Company shall issue Holder a number of shares of Common Stock computed using the following formula (a "Cashless Exercise"):

$$X = Y (A-B)/A$$

where: X = the number of shares of Common Stock to be issued to Holder.

Y = the number of shares of Common Stock for which this Warrant is being Exercised.

A = the Market Price of one (1) share of Common Stock (for purposes of this Section 3(a)(ii), where "Market Price," as of any date, means the Volume Weighted Average Price (as defined herein) of the Company's Common Stock during the ten (10) consecutive Trading Day period immediately preceding the date in question.

B = the Exercise Price.

As used herein, the "Volume Weighted Average Price" for any security as of any date means the volume weighted average sale price on the NASDAQ Global Select Market or The NASDAQ Global Market ("NASDAQ") as reported by, or based upon data reported by, Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by holders of a majority in interest of the Warrants and the Company ("Bloomberg") or, if NASDAQ is not the principal trading market for such security, the volume weighted average sale price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or, if no volume weighted average sale price is reported for such security, then the last closing trade price of such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security that are listed in the over the counter market by the National Association of Securities Dealers or in the "pink sheets" by the National Quotation Bureau, Inc. If the Volume Weighted Average Price cannot be calculated for such security on such date in the manner provided above, the volume weighted average price shall be the fair market value as determined in good faith by the Company's board of directors.

(iii) *Cashless* Major *Exercise:* To the extent the Holder shall exercise this Warrant or any portion thereof as a Cashless Major Exercise pursuant to Section 5(c)(i) below, the Holder shall surrender this Warrant at the principal office of the Company together with the Exercise Form indicating that the Holder is exercising this Warrant (or such portion thereof) pursuant to a Cashless Major Exercise, in which event the Company shall issue a number of shares of Common Stock equal to the Black-Scholes Value (as defined in Section 5(c)(iii) below) of the remaining unexercised portion of this Warrant (or such applicable portion being exercised) divided by [*] of the closing price of the Common Stock on the principal securities exchange or other securities market on which the Common Stock is then traded on the Trading Day immediately preceding the date on which the applicable Major Transaction is consummated.

(iv) *Cashless Default Exercise*. To the extent the Holder exercises this Warrant as a Cashless Default Exercise pursuant to Section 11(b)(i) below, the Holder shall surrender this Warrant to the principal office of the Company together with the Exercise Form indicating that the Holder is exercising this Warrant pursuant to a Cashless Default Exercise, in which event, unless the Company has exercised its right to effect a Mandatory Redemption in accordance with Section 11(b)(i), the Company shall issue to the Holder, within five (5) Trading Days of the delivery of such Exercise Form, a number of shares of Common Stock (which shares shall be valued at [*] of the Volume Weighted Average Price for the five (5) Trading Days prior to the applicable Default Notice) equal to the greater of (A) the Black-Scholes value (determined by use of the Black-Scholes Option Pricing Model using the criteria set forth on Schedule 1 hereto) of the remaining unexercised portion of this Warrant on the date of delivery of such Exercise Form and (B) the Black-Scholes value (determined by use of the Black-Scholes Option Pricing Model using the criteria set forth on Schedule 1 hereto) of the remaining unexercised portion of this Warrant on the Trading Day immediately preceding the date that the applicable Exercise Shares are issued to the Holder.

4. Transfer and Registration.

(a) *Transfer Rights.* Subject to the provisions of Section 8 of this Warrant, this Warrant may be transferred on the books of the Company, in whole or in part, in person or by attorney, upon surrender of this Warrant properly completed and endorsed. This Warrant shall be canceled upon such surrender and, as soon as practicable thereafter, the person to whom such transfer is made shall be entitled to receive a new Warrant or Warrants as to the portion of this Warrant transferred, and Holder shall be entitled to receive a new Warrant as to the portion hereof retained.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

(b) *Registrable Securities.* The Exercise Shares and the Failure Payment Shares have registration rights pursuant to the Registration Rights Agreement.

5. Adjustments Upon Certain Events.

(a) Participation. The Holder, as the holder of this Warrant, shall be entitled to receive such dividends paid and distributions of any kind made to the holders of Common Stock of the Company to the same extent as if the Holder had Exercised this Warrant into Common Stock (without regard to any limitations on exercise herein or elsewhere and without regard to whether or not a sufficient number of shares are authorized and reserved to effect any such exercise and issuance) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

(b) *Recapitalization or Reclassification.* If the Company shall at any time effect a stock split, recapitalization, reclassification or other similar transaction of such character that the shares of Common Stock shall be changed into or become exchangeable for a larger or smaller number of shares, then upon the effective date thereof, the number of shares of Common Stock which Holder shall be entitled to purchase upon Exercise of this Warrant shall be increased or decreased, as the case may be, in direct proportion to the increase or decrease in the number of shares of Common Stock by reason of such stock split, recapitalization, reclassification or similar transaction, and the Exercise Price shall be, in the case of an increase in the number of shares, proportionally decreased and, in the case of decrease in the number of shares, proportionally increased. The Company shall give Holder the same notice it provides to holders of Common Stock of any transaction described in this Section 5(b).

(c) *Rights Upon Major Transaction*.

(i) *Major Transaction.* To the extent that any Major Transaction will not be treated as an Assumption pursuant to the next following paragraph, then (1) in the case of a Cash-Out Major Transaction and in the case of a Mixed Major Transaction to the extent of the percentage of the cash consideration in the Mixed Major Transaction (determined in accordance with the definition of a Mixed Major Transaction below), the Holder shall have the right to require the Company to redeem the Holder's outstanding Warrants (or the applicable portion in a Mixed Major Transaction) in accordance with Section 5(c)(iii) below and (2) in the case of all other Major Transactions and in the case of a Mixed Major Transaction to the extent of the percentage of the consideration represented by securities of a Successor Entity in the Mixed Major Transaction, the Holder shall have the right to exercise this Warrant as a Cashless Major Exercise. For the avoidance of doubt, in no event shall the Holder have the right to treat a Major Transaction as an Assumption unless the Company has elected to treat such Major Transaction as an Assumption pursuant to the next following paragraph. Notwithstanding anything herein to the contrary, and except as set forth in the next sentence, the Holder may elect to waive its rights under this Section 5(c)(i) with respect to any Major Transaction in which event none of the provisions contained in this Section 5(c)(i) shall apply. In the event of a Major Transaction in which all shares of Common Stock are cancelled and converted into the right to receive cash and/or securities of Another Entity (as defined below), then, any portion of this Warrant that is neither redeemed, assumed or exercised pursuant to the terms of this Warrant prior to the closing of such Major Transaction, shall (A) automatically and immediately convert into shares of Common Stock, and shall be deemed to have been exercised pursuant to a Cashless Exercise, immediately prior to the consummation of such Major Transaction if the aggregate consideration to be received for the Common Stock in such Major Transaction is greater than the aggregate Exercise Price for such shares, or (B) be cancelled and terminated without further action by the Holder or the Company upon consummation of such Major Transaction if the aggregate consideration to be received for the Common Stock in the Major Transaction is less than the aggregate Exercise Price for such shares.

In the event of a Qualified Major Transaction, the Company shall have the right to cause such Qualified Major Transaction (or the applicable portion of a Mixed Major Transaction) to be treated as an Assumption in accordance with Section 5(c)(ii) below with respect to the percentage of this Warrant then owned by the Holder equal to the percentage of the consideration to be paid in the Major Transaction represented by the securities of a Successor Entity. If the Successor Entity is a Publicly Traded Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be equal to the percentage that the value of the aggregate anticipated number of shares of the Publicly Traded Successor Entity to be issued to holders of Common Stock of the Company represents of the aggregate value of all consideration, including cash consideration, in such Major Transaction, as such values are set forth in any definitive agreement for the Major Transaction that has been executed at the time of the first public announcement of the Major Transaction or, if no such value is determinable from such definitive agreement, based on the closing market price for shares of the Publicly Traded Successor Entity on its principal securities exchange on the Trading Day preceding the first public announcement of the Major Transaction. If the Successor Entity is a Private Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be determined in good-faith by the Company's Board of Directors. Any election by the Company to treat this Warrant as an Assumption pursuant to the terms hereof shall be made in the Major Transaction Notice (as defined in Section 5(a)(iii) below) in respect of such Qualified Major Transaction.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Consummation of each of the following events shall constitute a “Major Transaction”:

(A) a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or other similar event (in each case other than an event provided for in Section 5(b) above and other than a merger effected for purposes of changing the Company’s state of incorporation), (1) following which the holders of Common Stock immediately preceding such consolidation, merger, exchange, recapitalization, reorganization, combination or event either (a) no longer hold a majority of the shares of Common Stock or (b) no longer have the ability to elect a majority of the board of directors of the Company or (2) as a result of which shares of Common Stock shall be changed into (or the shares of Common Stock become entitled to receive) the same or a different number of shares of the same or another class or classes of stock or securities of another entity (collectively, a “Change of Control Transaction”);

(B) (1) the sale or transfer of assets in one transaction or a series of related transactions for a purchase price (excluding any consideration allocable to any Excluded Transaction) of more than $[*] million (the “Aggregate Consideration”) or (2) a sale or transfer of more than [*] of the Company’s assets; or

(C) a purchase, tender or exchange offer made to the holders of outstanding shares of Common Stock, such that following such purchase, tender or exchange offer a Change of Control Transaction shall have occurred and is consummated.

If the maximum aggregate consideration payable in a transaction or series of related transactions described in Section 5(c)(i)(B)(1) above (i) includes contingent payments related to future events, and (ii) exceeds the Aggregate Consideration ([*] described below), then for purposes of determining whether the Aggregate Consideration has been reached, the [*] of such contingent payments shall be determined prior to the public announcement of such transaction [*] the Company and the initial Holder hereof.

Notwithstanding the foregoing, none of the following (an “Excluded Transaction”) shall constitute a Major Transaction:

(x) entering into any collaborative arrangement, licensing agreement, [*] providing for the research, development or commercial exploitation of compounds, products or services that provides for the payments received therefrom or the Company’s income or profits to be shared with another Person, including, without limitation, (1) the grant, to an entity engaged in the pharmaceutical or biotechnology industry, of a license or option to obtain a license to any of the Company’s intellectual property or other assets, provided that [*] from such entity [*] by such entity in consideration of such grant (other than any payments [*], which consideration may, but need not, include (without limitation) upfront, milestone, royalty and profit-sharing payments, and (2) the grant of a license or option to obtain a license to, [*], the Company’s intellectual property or other assets to any entity that intends to research and develop or commercialize products or services covered by such intellectual property or embodying or arising from such other assets, whether directly or through the Company or another entity, provided that the Company or a wholly owned subsidiary of [*] or has the [*] that reasonably reflects the [*]; or

(y) the incurrence, grant or existence of, or any sale or transfer of any assets in connection with, any Permitted Lien (as defined in the Facility Agreement).

For purposes hereof:

“Another Entity” shall mean an entity in which the holders of a majority of the shares of Common Stock of the Company immediately prior to the consummation of a Major Transaction do not hold a majority of the equity securities in such entity.

“Cashless Default Exercise” shall mean an exercise of this Warrant as a “Cashless Default Exercise” in accordance with Section 3(a)(iv) and 11(b) hereof.

“Cashless Major Exercise” shall mean an exercise of this Warrant or portion thereof as a “Cashless Major Exercise” in accordance with Section 3(a)(iii) and 5(c)(i) hereof.

“Cash-Out Major Transaction” means a Major Transaction in which the consideration payable to holders of Common Stock in connection with the Major Transaction consists solely of cash.

“Eligible Market” means the over the counter Bulletin Board, the New York Stock Exchange, Inc., the NYSE Arca, the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market or the American Stock Exchange.

“Mixed Major Transaction” means a Major Transaction in which the consideration payable to holders of Common Stock consists partially of cash and partially of securities of a Successor Entity. If the Successor Entity is a Publicly Traded Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be equal to the percentage that the value of the aggregate anticipated number of shares of the Publicly Traded Successor Entity to be issued to holders of Common Stock of the Company represents of the aggregate value of all consideration, including cash consideration, in such Mixed Major Transaction, as such values are set forth in any definitive agreement for the Mixed Major Transaction that has been executed at the time of the first public announcement of the Major Transaction or, if no such value is determinable from such definitive agreement, based on the closing market price for shares of the Publicly Traded Successor Entity on its principal securities exchange on the Trading Day preceding the first public announcement of the Mixed Major Transaction. If the Successor Entity is a Private Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be determined in good-faith by the Company’s Board of Directors.

A “Parent Entity” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of a Major Transaction.

“Person” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

“Private Successor Entity” means a Successor Entity that is not a Publicly Traded Successor Entity.

“Publicly Traded Successor Entity” means a Successor Entity that is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market (as defined above).

“Qualified Major Transaction” means (i) a Major Transaction where the consideration payable to holders of Common Stock in connection with the Major Transaction consists in whole or in part of securities of a Publicly Traded Successor Entity or (ii) a Major Transaction where any non-cash portion of the consideration payable to holders of Common Stock in connection with the Major Transaction consists of securities of a Private Successor Entity, which such Private Successor Entity shall be approved of in writing by the Holder.

A “Successor Entity” shall be a Person as defined in Section 5(c)(ii) below.

(ii) *Assumption.* The Company shall not enter into or be party to a Major Transaction that is to be treated as an Assumption pursuant to Section 5(c)(i), unless any Person purchasing the Company’s assets or Common Stock, or any successor entity resulting from such Major Transaction, or if the Warrant is to be exercisable for shares of capital stock of its Parent Entity (as defined below), its Parent Entity (in each case, a “Successor Entity”), assumes in writing all of the obligations of the Company under this Warrant and the Registration Rights Agreement in accordance with the provisions of this Section (ii), including agreements to deliver to each holder of Warrants in exchange for such Warrants a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Warrants, including, without limitation, an instrument representing the appropriate number of shares of the Successor Entity, having similar exercise rights as the Warrants (including but not limited to a similar Exercise Price and similar Exercise Price adjustment provisions based on the price per share or conversion ratio to be received by the holders of Common Stock in the Major Transaction) and similar registration rights as provided by the Registration Rights Agreement. Upon the occurrence of any Major Transaction treated as an Assumption hereunder, any Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Major Transaction, the provisions of this Warrant and the Registration Rights Agreement (or substantially similar instruments, if applicable) referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Major Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise or redemption of this Warrant at any time after the consummation of the Major Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the exercise of the Warrants prior to such Major Transaction, such shares of common stock (or their equivalent) of the Successor Entity, as adjusted in accordance with the provisions of this Warrant. The provisions of this Section shall apply similarly and equally to successive Major Transactions and shall be applied without regard to any limitations on the exercise of this Warrant other than any applicable beneficial ownership limitations. Any assumption of Company obligations under this paragraph shall be referred to herein as an “Assumption”.

(iii) *Notice; Major Transaction Redemption Right; Notice of Cashless Major Exercise.* At least thirty (30) days prior to the consummation of any Major Transaction, but, in any event, within five Trading Days following the first to occur of (x) the date of the public announcement of such Major Transaction if such announcement is made before 4:00 p.m., New York City time, or (y) the day following the public announcement of such Major Transaction if such announcement is made on and after 4:00 p.m., New York City time, the Company shall deliver written notice thereof via facsimile and overnight courier to the Holder (a "Major Transaction Notice"), which such Major Transaction Notice shall, if applicable, indicate whether the Company desires to have the Warrant treated as an Assumption in accordance with the provisions of Section 5(c)(i) above. Other than in respect of all or a portion of the Warrant that is to be treated as an Assumption or is eligible for a Cashless Major Exercise (without taking into consideration the 9.98% Cap) in accordance with Section 5(c)(i), at any time during the period beginning after the Holder's receipt of a Major Transaction Notice and ending five (5) Trading Days prior to the scheduled consummation of such Major Transaction (the "MT Rights Period"), the Holder may require the Company to redeem (a "Redemption Upon Major Transaction") all or any portion of this Warrant not treated as an Assumption or eligible for a Cashless Major Exercise (without taking into consideration the 9.98% Cap) by delivering written notice thereof ("Major Transaction Redemption Notice") to the Company, which Major Transaction Redemption Notice shall indicate the portion of the principal amount (the "Redemption Principal Amount") of the Warrant that the Holder is electing to have redeemed. The outstanding portion of this Warrant to the extent subject to redemption pursuant to this subsection (iii) (the "Redeemable Shares") shall be redeemed by the Company at a price (the "Major Transaction Warrant Redemption Price") payable in cash equal to the "Black Scholes Value" of the Redeemable Shares determined by use of the Black Scholes Option Pricing Model using the criteria set forth in Schedule 1 hereto (the "Black Scholes Value").

To the extent the Holder shall elect to effect a Cashless Major Exercise in respect of a Major Transaction, the Holder shall deliver its Exercise Form in accordance with Section 3(a)(iii), within the MT Rights Period.

(iv) *Escrow; Payment of Major Transaction Warrant Redemption Price.* Following the receipt of a Major Transaction Redemption Notice or a Cashless Major Exercise from the Holder, the Company shall not effect a Major Transaction that is being treated as a redemption or eligible for a Cashless Major Exercise in accordance with subsection (iii) above, unless it either obtains the written agreement of the Successor Entity that payment of the Major Transaction Warrant Redemption Price and/or applicable Exercise Shares shall be made to the Holder upon consummation of such Major Transaction or it shall first place into an escrow account with an independent escrow agent, at least three (3) Trading Days prior to the closing date of the Major Transaction (the "Major Transaction Escrow Deadline"), an amount in cash or shares of Common Stock, as applicable, equal to the Major Transaction Warrant Redemption Price and/or applicable Exercise Shares. Concurrently upon closing of such Major Transaction, the Company shall pay or shall instruct the escrow agent to pay the Major Transaction Warrant Redemption Price and/or to deliver the applicable Exercise Shares to the Holder. For purposes of determining the amount required to be placed in escrow pursuant to the provisions of this subsection (iv) and without affecting the amount of the actual Major Transaction Warrant Redemption Price and/or the applicable Exercise Shares, the calculation of the price referred to in clause (1) of the first column of Schedule 1 hereto with respect to Stock Price shall be determined based on the Closing Market Price (as defined herein) of the Common Stock on the Trading Day immediately preceding the date that the funds and/or shares, as applicable, are deposited with the escrow agent.

Redemptions and/or Major Cashless Exercises required by this Section 5(c) shall be made in accordance with the provisions of Section 12 and shall have priority to payments to holders of Common Stock in connection with a Major Transaction except to the extent that a court of competent jurisdiction determines that the Holder would be deemed to be a creditor of the Company, in which case the Holder shall be treated on a pari passu basis with the holders of Common Stock. To the extent redemptions and/or Major Cashless Exercises required by this Section 5(c) are deemed or determined by a court of competent jurisdiction to be prepayments of the Warrant by the Company, such redemptions and/or Major Cashless Exercises shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, until the Major Transaction Warrant Redemption Price and/or Major Cashless Exercises is paid in full, this Warrant may be exercised, in whole or in part, by the Holder into shares of Common Stock, or in the event the Exercise Date is after the consummation of the Major Transaction, shares of publicly traded common stock (or their equivalent) of the Successor Entity pursuant to Section 5(c). The parties hereto agree that in the event of the Company's redemption and/or Major Cashless Exercises of any portion of the Warrant under this Section 5(c), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any premium due under this Section 5(c) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty.

(d) *Exercise Price Adjusted.* As used in this Warrant, the term "Exercise Price" shall mean the purchase price per share specified in Section 3(a) of this Warrant, until the occurrence of an event stated in this Section 5 or otherwise set forth in this Warrant, and thereafter shall mean said price as adjusted from time to time in accordance with the provisions of said subsection. No adjustment made pursuant to any provision of this Section 5 shall have the net effect of increasing or decreasing the Exercise Price in relation to the split adjusted and distribution adjusted price of the Common Stock, as applicable.

(e) *Adjustments: Additional Shares, Securities or Assets.* In the event that at any time, as a result of an adjustment made pursuant to this Section 5 or otherwise, Holder shall, upon Exercise of this Warrant, become entitled to receive shares and/or other securities or assets (other than Common Stock) then, wherever appropriate, all references herein to shares of Common Stock shall be deemed to refer to and include such shares and/or other securities or assets; and thereafter the number of such shares and/or other securities or assets shall be subject to adjustment from time to time in a manner and upon terms as nearly equivalent as practicable to the provisions of this Section 5.

(f) *Notice of Adjustments.* Whenever the Exercise Price is adjusted pursuant to the terms of this Warrant, the Company shall promptly mail to the Holder a notice (an "Exercise Price Adjustment Notice") setting forth the Exercise Price after such adjustment and setting forth a statement of the facts requiring such adjustment. The Company shall, upon the written request at any time of the Holder, furnish to such Holder a like Warrant setting forth (i) such adjustment or readjustment, (ii) the Exercise Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon Exercise of the Warrant. For purposes of clarification, whether or not the Company provides an Exercise Price Adjustment Notice pursuant to this Section 5(f), upon the occurrence of any event that leads to an adjustment of the Exercise Price, the Holder would be entitled to receive a number of Exercise Shares based upon the new Exercise Price, as adjusted, for exercises occurring on or after the date of such adjustment, regardless of whether a Holder accurately refers to the adjusted Exercise Price in the Exercise Form.

6. Fractional Interests.

No fractional shares or scrip representing fractional shares shall be issuable upon the Exercise of this Warrant, but on Exercise of this Warrant, Holder may purchase only a whole number of shares of Common Stock. If, on Exercise of this Warrant, Holder would be entitled to a fractional share of Common Stock or a right to acquire a fractional share of Common Stock, such fractional share shall be disregarded and the number of shares of Common Stock issuable upon Exercise shall be the next higher whole number of shares.

7. Reservation of Shares.

From and after the date hereof, the Company shall at all times reserve for issuance such number of authorized and unissued shares of Common Stock (or other securities substituted therefor as herein above provided) as shall be sufficient for the Exercise of this Warrant. If at any time the number of shares of Common Stock authorized and reserved for issuance is below the number of shares sufficient for the Exercise of this Warrant (a "Share Authorization Failure"), the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations under this Section 7, in the case of an insufficient number of authorized shares, and using its commercially reasonable efforts to obtain stockholder approval of an increase in such authorized number of shares. The Company covenants and agrees that upon the Exercise of this Warrant, all shares of Common Stock issuable upon such Exercise shall be duly and validly issued, fully paid and nonassessable and not subject to preemptive rights, rights of first refusal or similar rights of any person or entity.

8. Restrictions on Transfer.

(a) *Registration or Exemption Required.* Assuming the accuracy of the representations and warranties of the Holder contained in Section 8(c), this Warrant has been issued in a transaction exempt from the registration requirements of the Securities Act by virtue of Regulation D and exempt from state registration or qualification under applicable state laws. The Warrant, the Exercise Shares and the Failure Payment Shares may not be pledged, transferred, sold, assigned, hypothecated or otherwise disposed of except pursuant to an effective registration statement, pursuant to Rule 144 or after receipt by the Company of an opinion of counsel for the Holder that any such pledge, transfer, sale, assignment, hypothecation or other disposition shall be exempt from the registration requirements of the Securities Act and applicable state laws, including, without limitation, a so called "4(1) and a half" transaction. The Holder agrees to comply with the reporting obligations applicable to it under Section 16 of the Exchange Act with respect to this Warrant, the Exercise Shares and the Failure Payment Shares and any other shares of Common Stock beneficially owned by it.

(b) *Assignment.* Subject to applicable securities laws and Sections 8(a) and 8(d), the Holder may sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Warrant, in whole or in part. Holder shall deliver a written notice to Company, substantially in the form of the Assignment attached hereto as Exhibit B, indicating the person or persons to whom the Warrant shall be assigned

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

and the respective number of warrants to be assigned to each assignee. The Company shall effect the assignment within three (3) Trading Days of its receipt of a properly completed and executed form of Assignment and, if required by this Warrant, receipt by the Company of an opinion of counsel (the "Transfer Delivery Period"), and shall deliver to the assignee(s) designated by Holder a Warrant or Warrants of like tenor and terms for the appropriate number of shares. This Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors and assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant, and shall be enforceable by any such Holder. For avoidance of doubt, in the event Holder notifies the Company that such sale or transfer is a so called "4(1) and half" transaction, the parties hereto agree that a legal opinion from outside counsel for the Holder delivered to counsel for the Company substantially in the form attached hereto as Exhibit C shall be the only requirement to satisfy an exemption from registration under the Securities Act to effectuate such "4(1) and half" transaction.

(c) *Representations of the Holder.* The right to acquire Common Stock or the Common Stock issuable upon exercise of the Holder's rights contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling, transferring, assigning, pledging, hypothecating or otherwise disposing of this Warrant in any public distribution of the same except pursuant to a registration or exemption. Holder is an "accredited investor" within the meaning of the Securities and Exchange Commission's Rule 501 of Regulation D, as presently in effect. The Holder understands (i) that the Common Stock issuable upon exercise of the Holder's rights contained herein is not registered under the Securities Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 8(c). The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.

(d) *Sale or Transfer of Warrant.* Notwithstanding anything to the contrary herein, Holder agrees that it will not sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Warrant for a period ending on the earlier of (i) 18 months after the Date of Issuance or (ii) the first Disbursement Date under the Facility Agreement.

9. Noncircumvention.

The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be reasonably required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

10. Events of Failure; Definition of Black Scholes Value.

(a) *Definition*.

The occurrence of each of the following shall be considered to be an "Event of Failure."

(i) A Delivery Failure occurs, where a "Delivery Failure" shall be deemed to have occurred if the Company fails to use its reasonable best efforts to deliver Exercise Shares to the Holder within any applicable Delivery Period (other than due to the limitation contained in the proviso in the second paragraph of Section 1);

(ii) A Legend Removal Failure occurs, where a "Legend Removal Failure" shall be deemed to have occurred if the Company fails to use its reasonable best efforts to issue this Warrant and/or Exercise Shares without a restrictive legend, or fails to use it reasonable best efforts to remove a restrictive legend, when and as required under Section 2(e) hereof;

(iii) a Transfer Delivery Failure occurs, where a "Transfer Delivery Failure" shall be deemed to have occurred if the Company fails to use its reasonable best efforts to deliver a Warrant within any applicable Transfer Delivery Period; and

(iv) a Registration Failure (as defined below).

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

For purpose hereof, "Registration Failure" means that (A) the Company fails to file the Initial Registration Statement with the SEC on or before the Initial Filing Deadline or fails to file any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement to the extent required under the Registration Rights Agreement or (B) the Company fails to use reasonable efforts to obtain effectiveness with the SEC, prior to the Initial Registration Deadline with respect to the Initial Registration Statement or as required under the Registration Rights Agreement with respect to any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement, or fails to use reasonable efforts to keep such Registration Statement current and effective as required in Section 3 of the Registration Rights Agreement (subject to the Company's right to delay or suspend effectiveness pursuant to Section 3(q) of the Registration Rights Agreement) or (C) any Registration Statement required to be filed under the applicable Registration Rights Agreement, after its initial effectiveness and during the Registration Period, lapses in effect or sales of all of the Registrable Securities cannot otherwise be made thereunder (whether by reason of the Company's failure to amend or supplement the prospectus included therein in accordance with the Registration Rights Agreement, the Company's failure to file and use reasonable efforts to obtain effectiveness with the SEC of an additional Registration Statement or amended Registration Statement required pursuant to Section 3 of the Registration Rights Agreement or otherwise) for a period of time in excess of the Grace Period, *provided* that in each case, a Registration Failure shall be deemed to not have occurred if such Registration Failure results from a breach by any holder of a Registrable Security of its obligations pursuant to Section 4 of the Registration Rights Agreement.

(b) Failure Payments; Black-Scholes Determination. The Company understands that any Event of Failure (as defined above) could result in economic loss to the Holder. In the event that any Event of Failure occurs (other than an Event of Failure caused by the submission of any incomplete or inaccurate information required to be furnished by the Holder) as compensation to the Holder for such loss, the Company agrees to pay (as liquidated damages and not as a penalty) to the Holder payments payable in, at the Company's option, cash or shares of common stock that are valued for these purposes at [*] of the Volume Weighted Average Price on the date of such calculation ("Failure Payments") at a rate of [*] per annum (or the maximum rate permitted by applicable law, whichever is less) of the Black-Scholes value (as determined below) of the remaining unexercised portion of this Warrant on the date of such Event of Failure (as recalculated on the first Business Day of each month thereafter for as long as Failure Payments shall continue to accrue), which shall accrue daily from the date of such Event of Failure until the Event of Failure is cured, accruing daily and compounded monthly; provided, however, if the Company elects to pay the Failure Payments in shares of Common Stock (the "Failure Payment Shares"), the Holder shall receive up to such amount of shares of Common Stock such that Holder and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) shall not collectively beneficially own greater than 9.98% of the total number of shares of Common Stock of the Company then issued and outstanding, and provided further, that the forgoing proviso shall not be construed to require any cash payment by the Company of the remaining amount of the Failure Payment. For purposes of clarification, it is agreed and understood that Failure Payments shall continue to accrue following any Event of Default until the applicable Default Amount is paid in full. The Holder shall make reasonable efforts to notify the Company if, during any period in which Failure Payments are accruing, Failure Payments cannot be paid by virtue of the ownership restrictions set forth in this subsection (b) and, following such notice, shall make reasonable efforts to notify the Company if, during such period that Failure Payments are accruing the Holder's ownership of Common Stock falls below such threshold.

Notwithstanding the above, with respect to a Registration Failure, in the event that the Company (i) has (A) by the Initial Filing Deadline filed the Initial Registration Statement as required by the Registration Rights Agreement and (B) to the extent required under the Registration Rights Agreement filed any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement and (ii) has responded in writing to any comments to such Registration Statement that the Company has received from the SEC within ten (10) Business Days of such receipt, and nevertheless the SEC has not declared effective (X) the Initial Registration Statement by the Initial Registration Deadline and (Y) with respect to any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement, as required under the Registration Rights Agreement, then the Failure Payments attributable to a Registration Failure shall be reduced from [*] to [*] (calculated as set forth above). The Company shall satisfy any Failure Payments incurred under this Section pursuant to Section 10(c) below.

For purposes hereof, the "Black-Scholes" value of a Warrant shall be determined by use of the Black-Scholes Option Pricing Model using the criteria set forth on Schedule 1 hereto.

(c) Payment of Accrued Failure Payments. The Failure Payment Shares for each Event of Failure shall be issued and delivered on or before the fifth (5th) Trading Day of each month following a month in which Failure Payments accrued. Nothing herein shall limit the Holder's right to pursue actual damages (to the extent in excess of the Failure Payments) for the Company's Event of Failure, and the Holder shall have the right to pursue all remedies available at law or in equity (including a decree of specific performance and/or

injunctive relief). Notwithstanding the above, if a particular Event of Failure results in an Event of Default pursuant to Section 11 hereof, then the Failure Payment, for that Event of Failure only, shall be considered to have been satisfied upon payment to the Holder of an amount equal to the greater of (i) the Failure Payment, or (ii) the Default Amount, payable in accordance with Section 11.

(d) Maximum Interest Rate. Nothing contained herein or in any document referred to herein or delivered in connection herewith shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest or dividends required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

11. Default and Redemption.

(a) *Events Of Default*. Each of the following events shall be considered to be an "Event of Default," unless waived by the Holder:

(i) Failure To Effect Registration. With respect to all Registration Failures, a Registration Failure occurs and remains uncured for a period of more than forty-five (45) days (or sixty (60) days in the case where the Company (i) has (A) by the Initial Filing Deadline filed the Initial Registration Statement as required by the Registration Rights Agreement or (B) to the extent required under the Registration Rights Agreement filed any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement and (ii) has responded in writing to any comments to such Registration Statement that the Company has received from the SEC within ten (10) Business Days of such receipt, and nevertheless the SEC has not declared effective (X) the Initial Registration Statement by the Initial Registration Deadline or (Y) with respect to any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement, as required under the Registration Rights Agreement, and such Registration Failure relates solely to the Company's failure to have the applicable Registration Statement declared effective as required by the Registration Rights Agreement), *provided* that in each case, a Registration Failure shall be deemed to not have occurred if such Registration Failure results from a breach by any holder of a Registrable Security of its obligations pursuant to Section 4 of the Registration Rights Agreement;

(ii) Failure To Deliver Common Stock. Other than as provided in Section 11(a)(iv)(C) below, a Delivery Failure (as defined above) occurs and remains uncured for a period of more than twenty (20) days; or at any time, the Company announces or states in writing that it will not honor its obligations to issue shares of Common Stock to the Holder upon Exercise by the Holder of the Exercise rights of the Holder in accordance with the terms of this Warrant;

(iii) Legend Removal Failure. A Legend Removal Failure (as defined above) occurs and remains uncured for a period of thirty (30) days; and

(iv) Corporate Existence; Major Transaction. (A) The Company has effected a Major Transaction without paying the Major Transaction Warrant Redemption Price, if applicable, to the Holder pursuant to Section 5(c)(iii), (B) with respect to a Major Transaction that is to be treated as an Assumption under the terms hereof, the Company has failed to meet the Assumption requirements of Section 5(c)(ii) prior to effecting a Major Transaction or (C) a Delivery Failure has occurred with respect to the Exercise Shares issuable upon exercise by the Holder of a Cashless Major Exercise.

(b) *Mandatory Redemption; Cashless Default Exercise.*

(i) Mandatory Redemption Amount; Cashless Default Exercise. If any Events of Default shall occur then, upon the occurrence and during the continuation of any Event of Default, the Holder shall have the right to exercise this Warrant pursuant to a Cashless Default Exercise in accordance with Section 3(a)(iv) above; provided, however, that the Company shall have the right to redeem the outstanding amount of this Warrant and pay to the Holder (a "Mandatory Redemption"), in full satisfaction of its obligations hereunder by delivery of a notice to such effect to the Holder within two (2) Business Days following receipt of such Exercise Form delivered in accordance with Section 3(a)(iv), an amount in cash (the "Mandatory Redemption Amount" or the "Default Amount") equal to the greater of (1) the Black-Scholes value (as determined in accordance with Section 10(b)) of the remaining unexercised portion of this Warrant on the date of delivery of such Exercise Form and (2) the Black-Scholes value (also as determined in accordance with Section 10(b)) of the remaining unexercised portion of this Warrant on the Trading Day immediately preceding the date that the Mandatory Redemption Amount is paid to the Holder.

The Mandatory Redemption Amount shall be payable within five (5) Trading Days of the date of delivery of such Exercise Form.

(ii) Liquidated Damages. The parties hereto acknowledge and agree that the sums payable as Failure Payments or pursuant to a Mandatory Redemption shall give rise to liquidated damages and not penalties. The parties further acknowledge that (A) the amount

of loss or damages likely to be incurred by the Holder is incapable or is difficult to precisely estimate, (B) the amounts specified bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by the Holder, and (C) the parties are sophisticated business parties and have been represented by sophisticated and able legal and financial counsel and negotiated this Agreement at arm's length.

The Default Amount, together with all other amounts payable hereunder, shall immediately become due and payable, all without demand, presentment or notice, all of which hereby are expressly waived, together with all costs, including, without limitation, legal fees and expenses, of collection, and the Holder shall be entitled to exercise all other rights and remedies available at law or in equity.

(c) *Remedies, Other Obligations, Breaches And Injunctive Relief.* The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, the Facility Agreement and the Registration Rights Agreement, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

12. Mechanics of Holder's Redemptions.

In the event that the Holder has sent an Exercise Form as provided in Section 11(b)(i) above or a Major Transaction Redemption Notice to the Company pursuant to Section 5(c), respectively (each, a "Redemption Notice"), the Holder shall promptly submit this Warrant to the Company. If the Holder has submitted a Major Transaction Redemption Notice in accordance with Section 5(c)(iii), the Company shall deliver the applicable Major Transaction Redemption Price to the Holder concurrently with the consummation of such Major Transaction. In the event that the Company does not pay the applicable Major Transaction Warrant Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Major Transaction Warrant Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Warrant that was submitted for redemption and for which the applicable Major Transaction Warrant Redemption Price (together with any late charges thereon) has not been paid by submitting a written notice to the Company (the "Return Notice"). Upon the Company's receipt of the Return Notice, (x) the applicable Redemption Notice shall be null and void with respect to such Redemption Principal Amount, (y) the Company shall immediately return this Warrant, or issue a new Warrant to the Holder representing the portion of this Warrant that was submitted for redemption and (z) the Exercise Price of this Warrant or such new Warrant shall be adjusted to the lesser of (A) the Exercise Price as in effect on the date on which the applicable Redemption Notice is voided and (B) the lowest closing price for the Common Stock on NASDAQ, or, if NASDAQ is not the principal trading market for the Common Stock, the principal securities exchange or other securities market on which the Common Stock is then being traded, during the period beginning on and including the date on which the applicable Redemption Notice is delivered to the Company and ending on and including the date on which the applicable Redemption Notice is voided. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Failure Payments which have accrued prior to the date of such notice with respect to the Warrant subject to such notice.

13. Limitation on Issuance of Common Stock.

(a) *Share Cap*. Notwithstanding anything herein to the contrary, the maximum number of shares of Common Stock (i) issued or issuable pursuant to this Warrant and all additional Warrants issued pursuant to the provisions of Section 2.12 of the Facility Agreement may not exceed 12,100,000 shares of Common Stock (the "Maximum Warrant Shares") and (ii) the maximum number of shares of Common Stock issued pursuant to the provisions of Section 2.12 of the Facility Agreement ("Maximum Facility Shares") may not exceed 8,891,776 shares of Common Stock; provided, however, following the 18 month anniversary of the Facility Agreement, to the extent that Warrants to purchase less than 11,000,000 shares of Common Stock have been issued pursuant to the provisions of Section 2.12 of the Facility Agreement, the Maximum Facility Shares shall be increased and the Maximum Warrant Shares shall be decreased to the extent of 110% of that deficiency.

(b) *No Obligation to Net Cash Settle this Warrant*. Notwithstanding anything to the contrary herein, in the event that the Company is not permitted to issue shares of Common Stock to Holder pursuant to this Warrant because the Maximum Warrant Shares and/or the Maximum Facility Shares have been reached or because Holder would acquire a number of shares of Common Stock such that, upon

such acquisition, the number of shares of Common Stock then beneficially owned by the Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 9.98% of the total number of shares of Common Stock of the Company then issued and outstanding, the Company shall not be required to net cash settle or otherwise make any cash payment to Holder to settle this Warrant by virtue of such limitation.

14. Benefits of this Warrant.

Nothing in this Warrant shall be construed to confer upon any person other than the Company and Holder any legal or equitable right, remedy or claim under this Warrant and this Warrant shall be for the sole and exclusive benefit of the Company and Holder.

15. Governing Law.

All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury. If either party shall commence an action or proceeding to enforce any provisions of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

16. Loss of Warrant.

Upon receipt by the Company of evidence of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnity or security reasonably satisfactory to the Company, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

17. Notice or Demands.

Notices or demands pursuant to this Warrant to be given or made by Holder to or on the Company shall be sufficiently given or made if sent by overnight delivery with a nationally recognized overnight courier service or by certified or registered mail, return receipt requested, postage prepaid, and addressed, until another address is designated in writing by the Company, to the address set forth in Section 2(a) above. Notices or demands pursuant to this Warrant to be given or made by the Company to or on Holder shall be sufficiently given or made if sent by overnight delivery with a nationally recognized overnight courier service or by certified or registered mail, return receipt requested, postage prepaid, and addressed, to the address of Holder set forth in the Company's records, until another address is designated in writing by Holder.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

IN WITNESS WHEREOF, the undersigned has executed this Warrant as of the _____ day of _____, 2008.

EXELIXIS, INC.

By: _____
Print Name:
Title:

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT A

EXERCISE FORM FOR WARRANT

TO: EXELIXIS, INC.

CHECK THE APPLICABLE BOX:

☐ ***Cash Exercise***

The undersigned hereby irrevocably exercises the attached warrant (the "Warrant") with respect to _____shares of Common Stock (the "Common Stock") of EXELIXIS, INC., a Delaware corporation (the "Company").

☐ ***Cashless Exercise***

The undersigned hereby irrevocably exercises the Warrant with respect to _____ shares of Common Stock of the Company and herewith makes payment of the Exercise Price with respect to such shares in full, all in accordance with the conditions and provisions of said Warrant.

☐ ***Cashless Major Exercise***

The undersigned hereby irrevocably exercises the Warrant with respect to ____% of the principal amount of the Warrant currently outstanding pursuant to a Cashless Major Exercise in accordance with the terms of the Warrant.

☐ ***Cashless Default Exercise***

The undersigned hereby irrevocably exercises the Warrant pursuant to a Cashless Default Exercise, in accordance with the terms of the Warrant.

1. The undersigned agrees not to sell, transfer, assign, pledge, hypothecate or otherwise dispose of any of the Common Stock obtained on Exercise of the Warrant, except in accordance with applicable securities laws and the provisions of Section 8(a) of the Warrant.
2. The number of shares of Common Stock beneficially owned by the Holder and its Affiliates (as defined in the Warrant) and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) is . For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the Securities and Exchange Commission, and the number of shares beneficially owned has been determined in a manner consistent with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.
3. The undersigned requests that a warrant representing any unexercised portion hereof be issued, pursuant to the Warrant in the name of the undersigned and delivered to the undersigned at the address set forth below.
4. Capitalized terms used but not otherwise defined in this Exercise Form shall have the meaning ascribed thereto in the Warrant.
5. In the event of any conflict between the term of this Exercise Form and any provisions of this Warrant, the terms of the Warrant shall govern.

Dated: _____

_____
Signature

_____
Print Name

_____
Address

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

NOTICE

The signature to the foregoing Exercise Form must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT B

ASSIGNMENT

(To be executed by the registered holder
desiring to transfer the Warrant)

FOR VALUE RECEIVED, the undersigned holder of the attached warrant (the "Warrant") hereby sells, assigns and transfers unto the person or persons below named the right to purchase _____ shares of the Common Stock of **EXELIXIS, INC.**, a Delaware corporation, evidenced by the attached Warrant and does hereby irrevocably constitute and appoint attorney to transfer the said Warrant on the books of the Company, with full power of substitution in the premises.

The undersigned hereby certifies that the Warrant is being sold, assigned or transferred in accordance with all applicable securities laws.

Dated: _____

_____
Signature

Fill in for new registration of Warrant:

_____
Name

_____
Address

_____
Please print name and address of assignee
(including zip code number)

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT C

FORM OF OPINION

_____, 20__

[_____]

Re: Exelixis, Inc. (the "Company")

Dear Sir:

[_____] ("[_____]") intends to transfer _____ [Warrants (the "Warrants")/shares of Common Stock (the "Shares")] of the Company to _____ ("_____") without registration under the Securities Act of 1933, as amended (the "Securities Act"). In connection therewith, we have examined and relied upon the truth of representations contained in an Investor Representation Letter attached hereto and have examined such other documents and issues of law as we have deemed relevant.

Based on and subject to the foregoing, we are of the opinion that the transfer of the [Warrants/Shares] by _____ to _____ may be effected without registration under the Securities Act, provided, however, that the [Warrants/Shares] to be transferred to _____ contain a legend restricting its transferability pursuant to the Securities Act and that transfer of the [Warrants/Shares] is subject to a stop order.

The foregoing opinion is furnished only to _____ and may not be used, circulated, quoted or otherwise referred to or relied upon by you for any purposes other than the purpose for which furnished or by any other person for any purpose, without our prior written consent.

Very truly yours,

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

[FORM OF INVESTOR REPRESENTATION LETTER]

_____, 20__

[_____]

Gentlemen:

_____ ("___") has agreed to purchase _____ [Warrants (the "Warrants")/shares of Common Stock ("Shares")] of Exelixis, Inc. (the "Company") from [_____] ("[_____]"). We understand that the [Warrants/Shares] are "restricted securities." We represent and warrant that _____ is a sophisticated institutional investor that qualifies as an "Accredited Investor" as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended (the "Securities Act").

_____ represents and warrants as of the date hereof as follows:

1. That it is acquiring the [Warrants and the shares of common stock, $0.001 par value per share underlying such Warrants (the "Exercise Shares")/Shares] solely for its account for investment and not with a view to or for sale or distribution of said [Warrants or Exercise Shares/Shares] or any part thereof. _____ also represents that the entire legal and beneficial interests of the [Warrants and Exercise Shares/Shares] _____ is acquiring is being acquired for, and will be held for, its account only;

2. That the [Warrants and the Exercise Shares/Shares] have not been registered under the Securities Act on the basis that no distribution or public offering of the stock of the Company is to be effected. _____ realizes that the basis for the exemption may not be present if, notwithstanding its representations, _____ has a present intention of acquiring the securities for a fixed or determinable period in the future, selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the securities. _____ has no such present intention;

3. That the [Warrants and the Exercise Shares/Shares] must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. _____ recognizes that the Company has no obligation to register the [Warrants/Shares], or to comply with any exemption from such registration;

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

5. That it will not make any disposition of all or any part of the [Warrants or Exercise Shares/Shares] in any event unless and until:

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

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

(iii) _____ shall have notified the Company of the proposed disposition and shall have furnished counsel to the Company with an opinion of counsel, reasonably satisfactory to counsel to the Company, that no registration under the Securities Act or qualification under any state securities laws is required for the proposed disposition.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

We acknowledge that the Company will place stop orders with respect to the [Warrants and the Exercise Shares/Shares], and if a registration statement is not effective, the [Exercise Shares/Shares] shall bear the following restrictive legend:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULES 144 OR 144A UNDER SAID ACT."
>
> "THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN REGISTRATION RIGHTS AGREEMENT DATED AS OF _____, 2008, AS AMENDED FROM TIME TO TIME, AMONG THE COMPANY AND A HOLDER OF ITS OUTSTANDING SECURITIES. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY."

At any time and from time to time after the date hereof, _____ shall, without further consideration, execute and deliver to [_____] or the Company such other instruments or documents and shall take such other actions as they may reasonably request to carry out the transactions contemplated hereby.

Very truly yours,

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Schedule 1

Black-Scholes Value

	Calculation Under Section 5(c)(iii)	Calculation Under Section 3(a)(iv), 10(b) or 11(b)
Remaining Term	Number of calendar days from date of public announcement of the Major Transaction until the six year anniversary of the Date of Issuance.	Number of calendar days from date of the Event of Failure until the six year anniversary of the Date of Issuance.
Interest Rate	A risk-free interest rate corresponding to the US$ LIBOR/Swap rate for a period equal to the Remaining Term.	A risk-free interest rate corresponding to the US$ LIBOR/Swap rate for a period equal to the Remaining Term.
Volatility	50%	50%
Stock Price	The greater of (1) the closing price of the Common Stock on NASDAQ, or, if that is not the principal trading market for the Common Stock, such principal market on which the Common Stock is traded or listed (the "Closing Market Price") on the trading day immediately preceding the date on which a Major Transaction is consummated, (2) the first Closing Market Price following the first public announcement of a Major Transaction, or (3) the Volume Weighted Average Price as of the date immediately preceding the first public announcement of the Major Transaction.	The volume Weighted Average Price on the date of such calculation.
Dividends	Zero.	Zero.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Exhibit 4.10

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "Agreement"), dated as of June 4, 2008, by and between **EXELIXIS, INC.**, a Delaware corporation (the "Company"), and Deerfield Private Design Fund, L.P., a Delaware limited partnership, Deerfield Private Design International, L.P., a limited partnership organized under the laws of the British Virgin Islands, Deerfield Partners, L.P., Delaware limited partnership, and Deerfield International Limited, a corporation organized under the laws of the British Virgin Islands (individually, a "Lender" and together, the "Lenders").

WHEREAS:

A. In connection with the Facility Agreement by and between the parties hereto of even date herewith (the "Facility Agreement"), the Company has agreed, upon the terms and subject to the conditions contained therein, to issue and sell to the Lenders, from time to time, warrants in the amounts described in the Facility Agreement (the "Warrants"), with each of the Warrants exercisable for shares of the Company's common stock, par value $0.001 per share (the "Common Stock"), each upon the terms and conditions and subject to the limitations and conditions set forth in the Warrants, all subject to the terms and conditions of the Facility Agreement; and

B. To induce the Lenders to execute and deliver the Facility Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "Securities Act"), and applicable state securities laws.

NOW, THEREFORE, In consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Lenders hereby agree as follows:

1. DEFINITIONS.

a. As used in this Agreement, the following terms shall have the following meanings:

(i) "Buyer" means each Lender and any permitted transferee or assignee who agrees to become bound by the provisions of this Agreement in accordance with Section 10 hereof.

(ii) "Failure Payment Shares" means the shares of Common Stock issuable pursuant to Section 10 of the Warrants.

(iii) "Initial Filing Deadline" shall mean a date that is forty-five (45) calendar days following the date hereof.

(iv) "Initial Registration Deadline" shall mean the date that is one hundred twenty (120) days after the Initial Filing Deadline.

(v) "Initial Registration Statement" means each Registration Statement required to be filed under Section 2(a)(i) hereof.

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

(vii) "Register," "Registered," and "Registration" refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis, and the declaration or ordering of effectiveness of such Registration Statement by the United States Securities and Exchange Commission (the "SEC").

(viii) “Registrable Securities” means (a) any shares of Common Stock (the “Warrant Shares”) issued or issuable upon exercise of all Warrants (including, without limitation, Subsequent Warrants) issued or to be issued (without giving effect to any limitations on exercise set forth in the Warrants), including pursuant to a Cash Exercise, a Cashless Exercise, a Cashless Major Exercise or a Cashless Default Exercise (each as defined in the Warrants), (b) any Failure Payment Shares, (c) any Repayment Shares, (d) any shares of capital stock issued or issuable as a dividend or other distribution on or in exchange for or otherwise with respect to any of the foregoing and (e) any securities issued or issuable upon any stock split, recapitalization or similar event with respect to the foregoing; *provided, however*, that no such securities shall be deemed Registrable Securities for purposes of this Agreement to the extent that such securities (A) have been sold to the public under a Registration or pursuant to Rule 144 under the Securities Act; (B) have been sold, transferred or otherwise disposed of by a Person in a transaction in which its rights under this Agreement were not validly assigned pursuant to Section 10 hereof or (C) may be immediately sold to the public without registration or restriction (including without limitation as to volume by each holder thereof) under the Securities Act.

(ix) “Registration Statement(s)” means a registration statement(s) of the Company under the Securities Act required to be filed hereunder.

(x) “Repayment Shares” means the shares of Common Stock issuable pursuant to Section 2.12 of the Facility Agreement.

(xi) “Subsequent Warrants” means Warrants that are issued under the Facility Agreement subsequent to the date hereof.

(xii) “Subsequent Warrant Shares” means the shares of Common Stock issuable upon exercise of any Subsequent Warrants.

(xiii) “Subsequent Filing Deadline” means forty-five (45) days following the date of issuance of each Subsequent Warrant with respect to which Subsequent Warrant Shares are not registered for resale or issuance on such date of issuance.

2. REGISTRATION.

a. MANDATORY REGISTRATION.

(i) The Company shall prepare and, on or prior to the Initial Filing Deadline file with the SEC, the Initial Registration Statement on Form S-1 (or, if Form S-3 is then available, on such form) covering the resale of 20,991,776 shares of Common Stock representing Warrant Shares, any Failure Payment Shares and any Repayment Shares (such number and types of Registrable Securities, the “Initial Registration Shares”), which Registration Statement, to the extent allowable under the Securities Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Registration Statement also covers such indeterminate number of shares of Common Stock as may become issuable upon exercise of or otherwise pursuant to the Warrants or pursuant to the Facility Agreement to prevent dilution resulting from stock splits, stock dividends or similar transactions. The number of shares of Common Stock initially included in such Initial Registration Statement shall be without regard to any limitation on a Buyer’s ability to exercise the Warrants or accept Failure Payment Shares or Repayment Shares. The Initial Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided to each Buyer and its counsel prior to its filing or other submission.

(ii) In the event that the Initial Registration Statement as declared or ordered effective does not include all of the Initial Registration Shares (an “Incomplete Initial Registration Statement”), the Company will use its reasonable best efforts, in consultation with the Staff of the SEC, to cause the registration, under a Registration Statement pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis, of the issuance to the Buyers of any Initial Registration Shares, other than Subsequent Warrant Shares, that have not been registered under the Initial Registration Statement (the “Primary Registration”). Such Primary Registration, to the extent allowable under the Securities Act and the rules and regulations promulgated thereunder

(including Rule 416), shall also cover such indeterminate number of shares of Common Stock as may become issuable upon exercise of or otherwise pursuant to the Warrants or pursuant to the Facility Agreement to prevent dilution resulting from stock splits, stock dividends or similar transactions. The number of shares of Common Stock initially included in the Primary Registration shall be without regard to any limitation on a Buyer's ability to exercise the Warrants or accept Failure Payment Shares or Repayment Shares. Any Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) or prospectus supplement in connection with a Primary Registration shall be provided to each Buyer and its counsel prior to its filing or other submission.

(iii) In the event the Company has been informed by the Staff of the SEC that the Staff believes that the Primary Registration cannot be effected under the Securities Act and the rules and regulations promulgated thereunder with respect to all of the Initial Registration Shares that have not been registered under the Initial Registration Statement, the Company shall prepare and, promptly following such time as is allowable under the Securities Act and the rules and regulations promulgated thereunder, file with the SEC one or more additional Registration Statements on such form of Registration Statement as is then available to effect a registration of Registrable Securities covering the resale of any Initial Registration Shares (other than Subsequent Warrant Shares) that have not been registered under the Initial Registration Statement or a Primary Registration (the "Additional Registration Statements"), which Additional Registration Statements, to the extent allowable under the Securities Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Additional Registration Statement also covers such indeterminate number of shares of Common Stock as may become issuable upon exercise of or otherwise pursuant to the Warrants or pursuant to the Facility Agreement to prevent dilution resulting from stock splits, stock dividends or similar transactions. The number of shares of Common Stock initially included in Additional Registration Statements shall be without regard to any limitation on a Buyer's ability to exercise the Warrants or accept Failure Payment Shares or Repayment Shares. Each Additional Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided to each Buyer and its counsel prior to its filing or other submission. If available, the Company shall file the Additional Registration Statements pursuant to General Instruction I(D) of Form S-3.

(iv) In the event that the Initial Registration Statement as declared or ordered effective does not include all of the Subsequent Warrant Shares, the Company shall prepare and promptly, but no later than the applicable Subsequent Filing Deadline, file with the SEC one or more additional Registration Statements on such form of Registration Statement as is then available to effect a registration of Registrable Securities covering the resale of any such Subsequent Warrant Shares that have not been registered under the Initial Registration Statement (the "Subsequent Warrant Registration Statements"), which Subsequent Warrant Registration Statements, to the extent allowable under the Securities Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Subsequent Warrant Registration Statement also covers such indeterminate number of shares of Common Stock as may become issuable upon exercise of or otherwise pursuant to such Subsequent Warrants to prevent dilution resulting from stock splits, stock dividends or similar transactions. The number of shares of Common Stock initially included in Subsequent Warrant Registration Statements shall be without regard to any limitation on a Buyer's ability to exercise such Subsequent Warrants or accept Failure Payment Shares under such Subsequent Warrants. Each Subsequent Warrant Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided to each Buyer and its counsel prior to its filing or other submission. If available, the Company shall file the Subsequent Warrant Registration Statements pursuant to General Instruction I(D) of Form S-3.

b. PIGGY-BACK REGISTRATIONS. If at any time prior to the expiration of the Registration Period (as hereinafter defined) the Company shall determine to file with the SEC a Registration Statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities (other than on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans) (a "Piggyback Eligible Registration Statement"), the Company shall send to each Buyer written notice of such determination and, if within fifteen (15) days after the effective date of such notice, a Buyer shall so request in writing, the Company shall include in such Piggyback Eligible Registration Statement all or any part of the Registrable Securities then outstanding and not otherwise registered pursuant to an effective Registration Statement, that such Buyer requests to be registered, except that if, in connection with any underwritten public offering for the account of the Company, the managing underwriter(s) thereof shall impose a limitation on the

number of Registrable Securities which may be included in the Piggyback Eligible Registration Statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such Piggyback Eligible Registration Statement only such limited portion of the Registrable Securities with respect to which a Buyer has requested inclusion hereunder as the underwriter shall permit;

PROVIDED, HOWEVER, that the Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities, the holders of which are not entitled by contract to inclusion of such securities in such Registration Statement or are not entitled to pro rata inclusion with the Registrable Securities (it being understood, for avoidance of doubt, that the Company shall not be required to exclude any securities pursuant to the Fourth Amended and Restated Registration Rights Agreement, dated February 26, 1999, among the Company and the stockholders party thereto and the Stock Purchase and Stock Issuance Agreement, dated as of October 28, 2002, by and between SmithKlineBeecham Corporation and the Company, as amended by the First Amendment to the Stock Purchase and Stock Issuance Agreement, dated as of January 10, 2005, by and between SmithKlineBeecham Corporation and the Company (the "Existing Agreements")); and

PROVIDED, FURTHER, HOWEVER, that, after giving effect to the immediately preceding proviso, any exclusion of Registrable Securities shall be made pro rata with holders of other securities having the contractual right to include such securities in the Piggyback Eligible Registration Statement other than holders of securities entitled to inclusion of their securities in such Piggyback Eligible Registration Statement by reason of demand registration rights. No right to registration of Registrable Securities under this Section 2(b) shall be construed to limit any registration required under Section 2(a) hereof. If an offering in connection with which a Buyer is entitled to registration under this Section 2(b) is an underwritten offering, then a Buyer shall, unless otherwise agreed by the Company, offer and sell such Registrable Securities in an underwritten offering using the same underwriter or underwriters and, subject to the provisions of this Agreement and the underwriting agreement in such offering, on the same terms and conditions as other shares of Common Stock included in such underwritten offering (including, without limitation, execution of an agreement with the managing underwriter or agent limiting the sale or distribution such Buyer may make of shares of Common Stock or any securities convertible or exchangeable or exercisable for such shares of the Company, except as part of such registration). Notwithstanding anything to the contrary set forth herein, the registration rights of the Buyers pursuant to this Section 2(b) shall only be available to the extent that the Buyer holds Registrable Securities and the Initial Registration Shares are not registered for resale or issuance pursuant to Section 2(a) in accordance with the terms of this Agreement at the time that the Company files a Piggyback Eligible Registration Statement.

3. OBLIGATIONS OF THE COMPANY. In connection with the registration of the Registrable Securities, the Company shall have the following obligations:

a. The Company shall (i) prepare and file with the SEC the Registration Statement(s) required pursuant to Section 2(a) above and thereafter use commercially reasonable efforts to cause each such Registration Statement relating to Registrable Securities to become effective as soon as practicable after such filing, and (ii) subject to Section 3(q) hereof, shall use commercially reasonable efforts to keep each such Registration Statement current and effective pursuant to Rule 415 at all times until such date as the Registrable Securities registered thereunder cease to be Registrable Securities (the "Registration Period"), which Registration Statement(s) (including any amendments or supplements thereto and prospectuses contained therein), except for information provided by a Buyer or any transferee of a Buyer pursuant to Section 4(a), shall 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 therein not misleading.

b. Subject to Section 3(q) hereof, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each Registration Statement as may be necessary to keep each Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by each Registration Statement until the earlier of (i) such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in each Registration Statement, and (ii) the Registrable Securities registered thereunder cease to be Registrable Securities.

c. The Company shall furnish or otherwise make available to each Buyer and its legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company, one copy of each Registration Statement and any amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, and, in the case of a Registration Statement referred to in Section 2(a), each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought or intends to seek confidential treatment), and (ii) such number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as a Buyer may reasonably request in order to facilitate the disposition of the Registrable Securities owned by a Buyer. The Company will promptly notify each Buyer by facsimile of the effectiveness of each Registration Statement or any post-effective amendment. The Company will promptly respond to any and all comments received from the SEC, with a view towards causing each Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and shall file an acceleration request as soon as practicable, but no later than three (3) business days, following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review.

d. The Company shall use commercially reasonable efforts to (i) register and qualify, in any jurisdiction where registration and/or qualification is required, the Registrable Securities covered by the Registration Statements under such other securities or "blue sky" laws of such jurisdictions in the United States as a Buyer shall reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions, *provided, however*, that the Company shall not be required in connection therewith or as a condition thereto to (A) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (B) subject itself to general taxation in any such jurisdiction, or (C) file a general consent to service of process in any such jurisdiction.

e. Subject to Section 3(q) hereof, as promptly as practicable after becoming aware of such event, the Company shall notify each Buyer who holds Registrable Securities of the happening of any event, of which the Company has knowledge, as a result of which the prospectus included in any Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and use its commercially reasonable efforts promptly to prepare a supplement or amendment to any Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to each Buyer as such Buyer may reasonably request.

f. The Company shall use commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of any Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest possible moment and to notify each Buyer who holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.

g. The Company shall permit a single firm of counsel designated by the Buyers to review such Registration Statement and all amendments and supplements thereto (as well as all requests for acceleration or effectiveness thereof), at Buyers' own cost, a reasonable period of time prior to their filing with the SEC (not less than five (5) business days but not more than eight (8) business days) and use commercially reasonable efforts to reflect in such documents any comments as such counsel may reasonably propose (so long as such comments are provided to the Company at least (2) business days prior to the expected filing date) and will not request acceleration of such Registration Statement without prior notice to such counsel; provided that the Company shall make the final decision as to the form and content of each such document.

h. The Company shall hold in confidence and not make any disclosure of information concerning a Buyer provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws or the rules of any securities exchange or trading market on which the Company's securities are then listed or traded, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any

Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning a Buyer is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Buyer prior to making such disclosure, and allow such Buyer, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

i. The Company shall use commercially reasonable efforts to cause all the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, and, if listed on a national exchange, to arrange for at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("FINRA") as such with respect to such Registrable Securities.

j. The Company shall provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the initial Registration Statement.

k. The Company shall cooperate with each Buyer who holds Registrable Securities being offered and the managing underwriter or underwriters as reasonably requested by them with respect to an applicable Registration Statement, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to such Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the managing underwriter or underwriters, if any, or a Buyer may reasonably request and registered in such names as the managing underwriter or underwriters, if any, or a Buyer may request, and, within three (3) business days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Securities (with copies to each Buyer) an appropriate instruction and an opinion of such counsel in the form required by the transfer agent in order to issue such Registrable Securities free of restrictive legends upon the resale of such Registrable Securities pursuant to such Registration Statement.

l. At the reasonable request of a Buyer, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and any prospectus used in connection with the Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

m. The Company shall not, and shall not agree to, allow the holders of any securities of the Company, other than holders of the Registrable Securities and holders of securities pursuant to the Existing Agreements, to include any of their securities in any Registration Statement under Section 2(a) hereof or any amendment or supplement thereto under Section 3(b) hereof without the consent of the Buyers. In addition, the Company shall not offer any securities for its own account or the account of others in any Registration Statement under Section 2(a) hereof or any amendment or supplement thereto under Section 3(b) hereof without the consent of the Buyers.

n. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Buyers of Registrable Securities pursuant to a Registration Statement.

o. The Company shall use commercially reasonable efforts to comply with all applicable laws related to a Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including without limitation the Securities Act and the Exchange Act and the rules and regulations promulgated by the SEC).

p. If required by the Financial Industry Regulatory Authority, Inc. Corporate Financing Department, the Company shall promptly effect a filing with the FINRA pursuant to FINRA Rule 2710 with respect to the public offering contemplated by resales of securities under the Registration Statement (an "Issuer Filing"), and pay the filing fee required by such Issuer Filing. The Company shall use commercially reasonable efforts to pursue the Issuer Filing until the FINRA issues a letter confirming that it does not object to the terms of the offering contemplated by the Registration Statement.

q. Notwithstanding anything to the contrary herein, at any time after the Registration Statement has been declared effective by the SEC, the Company may delay or suspend the effectiveness of any Registration Statement or the use of any prospectus forming a part of the Registration Statement, in its sole discretion, due to the non-disclosure of material, non-public information concerning Company the disclosure of which at the time is not in its best interest, in the good faith opinion of the Company (a "Grace Period"); provided, that the Company shall promptly notify each Buyer in writing of the existence of a Grace Period in conformity with the provisions of this Section 3(q) and the date on which the Grace Period will begin (such notice, a "Commencement Notice"); and, provided further, that no Grace Period shall exceed 45 days, and such Grace Periods shall not exceed an aggregate total of 90 days during any 12-month period. For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date specified by the Company in the Commencement Notice and shall end on and include the date each Buyer receives written notice of the termination of the Grace Period by the Company (which notice may be contained in the Commencement Notice). The provisions of Sections 3(a)(ii), 3(b) and 3(e) hereof shall not be applicable during any Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by Sections 3(a)(ii), 3(b) and 3(e) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable.

r. Notwithstanding anything to the contrary herein, a delay in the effectiveness of the Initial Registration Statement caused solely by the filing of a request for confidential treatment shall not be deemed a breach of the Company's obligations set forth herein and in such event the Initial Registration Deadline shall be deemed extended to the date that is ten business days after the date the SEC agrees to allow confidential treatment pursuant to such request or the date such request is withdrawn by the Company, as applicable.

4. OBLIGATIONS OF THE BUYER. In connection with the registration of the Registrable Securities, each Buyer shall have the following obligations:

a. It shall be a condition precedent to the obligations of the Company to complete a Registration pursuant to this Agreement with respect to the Registrable Securities of a Buyer that such Buyer shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) business days prior to the first anticipated filing date of a Registration Statement under which Registrable Securities will be registered, the Company shall notify each Buyer of the information the Company requires from such Buyer. Any such information shall 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 therein not misleading. A Buyer must provide such information to the Company at least two (2) business days prior to the first anticipated filing date of such Registration Statement if such Buyer elects to have any Registrable Securities included in the Registration Statement.

b. Each Buyer, by the Buyer's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of each Registration Statement hereunder, unless the Buyer has notified the Company in writing of the Buyer's election to exclude all of the Buyer's Registrable Securities from such Registration Statement.

c. In the event of an underwritten offering pursuant to Section 2(b) in which any Registrable Securities are to be included, each Buyer agrees to enter into and perform such Buyer's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless the Buyer has notified the Company in writing of the Buyer's election to exclude all of the Buyer's Registrable Securities from such Registration Statement.

d. Each Buyer agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 3(e), 3(f) or 3(q), the Buyer will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Buyer's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) or 3(f) or notice from the Company of the termination of the Grace Period, and, if so directed by the Company, the Buyer shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Buyer's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

e. Each Buyer agrees that it will not effect any disposition or other transfer of the Registrable Securities that would constitute a sale within the meaning of the Securities Act other than transactions exempt from the registration requirements of the Securities Act or pursuant to, and as contemplated in, a Registration Statement, and that it will promptly notify the Company of any material changes in the information set forth in a Registration Statement furnished by or regarding such Buyer or its plan of distribution other than changes in the number of shares beneficially owned.

5. REGISTRATION FAILURE. In the event of a Registration Failure (as defined in the Warrants), the Buyer shall be entitled to Failure Payments (as defined in the Warrants) and such other rights as set forth in the Warrants.

6. EXPENSES OF REGISTRATION. All expenses of the Company incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees and the fees and disbursements of counsel for the Company, shall be borne by the Company. All expenses of the Buyers incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, underwriting discounts and commissions and legal expenses incurred by any Buyer for review of any Registration Statement, shall be borne by the applicable Buyer.

7. INDEMNIFICATION. In the event any Registrable Securities are included in a Registration Statement under this Agreement:

a. The Company will indemnify, hold harmless and defend (i) each Buyer, (ii) the directors, officers, partners, managers, members, employees, agents and each person who controls each Buyer within the meaning of the Securities Act or the Exchange Act, if any, (iii) any underwriter (as defined in the Securities Act) for each Buyer in connection with an underwritten offering pursuant to Section 2(b) hereof, and (iv) the directors, officers, partners, managers, members, employees, agents and each person who controls any such underwriter within the meaning of the Securities Act or the Exchange Act, if any (each, an “Indemnified Person”), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, “Claims”) to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities (the matters in the foregoing clauses (i) through (iii) being, collectively, “Violations”). The Company shall reimburse the Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 7(a): (A) shall not apply to a Claim arising out of or based upon a Violation to the extent that such Violation occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto; (B) with respect to any preliminary prospectus, shall not inure to the benefit of any such Person from whom the Person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any Person controlling such Person) if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected in the prospectus, as then amended or supplemented, if such prospectus was timely made available by the Company pursuant to Section 3(d), and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to a violation and such Indemnified Person, notwithstanding such advice, used it or failed to deliver the correct prospectus as required by the Securities

Act and such correct prospectus was timely made available pursuant to Section 3(d); (C) shall not be available to the extent such Claim is based on a failure of the Indemnified Person to deliver or to cause to be delivered the prospectus made available by the Company, including a corrected prospectus, if such prospectus or corrected prospectus was timely made available by the Company pursuant to Section 3(d); and (D) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by a Buyer pursuant to Section 10 and shall be binding on any transferee.

b. Promptly after receipt by an Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall, if a Claim in respect thereof is to be made against the Company under this Section 7, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnified Person, as the case may be.

PROVIDED, HOWEVER, that an Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the Company, if, in the reasonable opinion of counsel for a Buyer, the representation by such counsel of the Indemnified Person and the Company would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by such counsel in such proceeding. The Company shall pay for only one separate legal counsel for the Indemnified Persons, and such legal counsel shall be selected by the Buyers. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnified Person under this Section 7, except to the extent that the Company is actually prejudiced in its ability to defend such action. The indemnification required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

c. Each Buyer will indemnify, hold harmless and defend (i) the Company, and (ii) the directors, officers, partners, managers, members, employees, agents and each person who controls the Company within the meaning of the Securities Act or the Exchange Act, if any (each, a “Company Indemnified Person”), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, “Indemnity Claims”) to which any of them may become subject insofar as such Indemnity Claims arise out of or are based upon any Violation which occurs due to the inclusion by the Company in a Registration Statement of false or misleading information about such Buyer, where such information was furnished in writing to the Company by such Buyer expressly for inclusion in such Registration Statement. Such Buyer shall reimburse the Company Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim, provided, however, that the indemnity agreement contained in this Section 7(c) and the agreement with respect to contribution contained in Section 8 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Buyer and which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Buyer shall be liable under this Section 7(c) for only that amount of a Claim as does not exceed the net amount of proceeds received by the Buyer as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company Indemnified Person. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 7(c) with respect to any preliminary prospectus shall not inure to the benefit of any Company Indemnified Person if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented.

d. Promptly after receipt by a Company Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Company Indemnified Person shall, if a Claim in respect thereof is to be made against a Buyer under this Section 7, deliver to such Buyer a written notice of the commencement thereof, and such Buyer shall have the right to participate in, and, to the extent the Buyer so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Buyer and the Company Indemnified Person, as the case may be.

PROVIDED, HOWEVER, that a Company Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the applicable Buyer, if, in the reasonable opinion of counsel for the Company, the representation by such counsel of the Company Indemnified Person and such Buyer would be inappropriate due to actual or potential differing interests between such Company Indemnified Person and any other party represented by such counsel in such proceeding. A Buyer shall pay for only one separate legal counsel for the Company Indemnified Persons, and such legal counsel shall be selected by Company. The failure to deliver written notice to a Buyer within a reasonable time of the commencement of any such action shall not relieve the Buyer of any liability to the Company Indemnified Person under this Section 7, except to the extent that the Buyer is actually prejudiced in its ability to defend such action. The indemnification required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

8. CONTRIBUTION. To the extent any indemnification by the Company or a Buyer is prohibited or limited by law, each of the Company and each Buyer agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 7 to the fullest extent permitted by law, based upon a comparative fault standard, that (i) no Person that is guilty of fraudulent misrepresentation (within the meaning Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person who was not guilty of fraudulent misrepresentation; and (ii) contribution by a Buyer shall be limited in amount to the net amount of proceeds received by the Buyer from the sale of such Registrable Securities pursuant to a Registration Statement.

9. REPORTS UNDER THE 1934 ACT. With a view to making available to the Buyers the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Buyers to sell securities of the Company to the public without registration the Company agrees to:

a. make and keep public information available, as those terms are understood and defined in Rule 144;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

c. furnish to the Buyers so long as the Buyers own Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of the Securities Act and the Exchange Act as required for applicable provisions of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Buyers to sell such securities pursuant to Rule 144 without registration.

Each Buyer shall at all times comply with the restrictions on transfer contained in Section 8 of the Warrant, which provisions are hereby incorporated by reference and made a part hereof.

10. ASSIGNMENT OF REGISTRATION RIGHTS. The rights under this Agreement shall be automatically assignable by each Buyer to any transferee of all or any portion of the Registrable Securities if: (i) the Buyer agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, and (iii) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. In the event that a Buyer transfers all or any portion of its Registrable Securities pursuant to this Section, the Company shall have at least ten (10) business days following the receipt of such notice to file any amendments or supplements necessary to keep a Registration Statement current and effective pursuant to Rule 415, and the commencement date of any Event of Failure (as defined in the Warrants) under the Warrants caused thereby will be extended by ten (10) business days.

11. AMENDMENT OF REGISTRATION RIGHTS. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), with written consent of the Company and the holders of a majority in interest of then-outstanding Registrable Securities. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon the Buyers and the Company.

12. TERMINATION OF RIGHTS AND OBLIGATIONS. The obligations of the Company pursuant to the terms of this Agreement, other than the obligations set forth in Sections 6, 7, 8 and 13, shall terminate upon the earliest of (i) the date upon which all Registrable Securities held by a Holder or issuable to a holder as Repayment Shares or upon exercise of Warrants issued or issuable under the Facility Agreement cease to be Registrable Securities or (ii) the later of (A) one year after the date on which all issuable Warrants have been issued pursuant to the Facility Agreement or (B) one year after the date on which the last Repayment Shares are issued or cease to be issuable pursuant to the Facility Agreement.

13. MISCELLANEOUS.

a. A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns of record or beneficially through a “street name” holder such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

b. Any notices required or permitted to be given under the terms hereof shall be in writing and shall be deemed given only if sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Exelixis, Inc.
170 Harbor Way
San Francisco, CA 94083
Fax: (650) 837-7951
Attn: General Counsel

With copy to:

Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Fax: (650) 849-7400
Attn: Suzanne Sawochka Hooper, Esq.

If to a Buyer:

c/o Deerfield Capital, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Fax: (212) 599-1248
Attn: Alexander Karnal

With a copy to:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
Fax: (212) 940-8776
Attn: Mark I. Fisher, Esq.
Elliot Press, Esq.

Each party shall provide notice to the other party of any change in address.

c. Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

d. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in either the state and federal courts sitting in the City of New York or City of San Francisco, California. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan and the City of San Francisco, California for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

e. This Agreement, the Warrants and the Facility Agreement (including all schedules and exhibits thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the Warrants and the Facility Agreement supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 10 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

g. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

j. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Buyers by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for breach of its obligations hereunder will be inadequate and agrees, in the event of a breach or threatened breach by the Company of any of the provisions hereunder, that the Buyers shall be entitled, in addition to all other available remedies in law or in equity, to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

k. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

l. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

m. In the event a Buyer shall sell or otherwise transfer any of such holder’s Registrable Securities, each transferee shall be allocated a pro rata portion of the number of Registrable Securities included in a Registration Statement for such transferor.

n. There shall be no oral modifications or amendments to this Agreement. This Agreement may be modified or amended only in writing.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, each of the undersigned Buyers and the Company have caused this Agreement to be duly executed as of the 4th day of June, 2008.

COMPANY:
EXELIXIS, INC.

By: /s/ Frank Karbe
Name: Frank Karbe
Title: EVP & CFO

BUYER:
DEERFIELD PRIVATE DESIGN FUND, L.P.

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

DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P.

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

DEERFIELD PARTNERS, L.P.

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

DEERFIELD INTERNATIONAL LIMITED

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

FACILITY AGREEMENT

FACILITY AGREEMENT (this "Agreement"), dated as of June 4, 2008, between Exelixis, Inc., a Delaware corporation (the "Borrower"), Deerfield Private Design Fund, L.P., a Delaware limited partnership, Deerfield Private Design International, L.P., a limited partnership organized under the laws of the British Virgin Islands, Deerfield Partners, L.P., Delaware limited Partnership, and Deerfield International Limited, a corporation organized under the laws of the British Virgin Islands (individually, a "Lender" and together, the "Lenders" and, together with the Borrower, the "Parties").

WITNESSETH

WHEREAS, the Borrower wishes to borrow from the Lenders up to one hundred fifty million Dollars ($150,000,000) for the purpose described in Section 2.1; and

WHEREAS, the Lenders desire to make loans to the Borrower from time to time for such purpose;

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

ARTICLE I

DEFINITIONS

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

"Additional Amounts" has the meaning given to it in Section 2.6(b).

"Business Day" means a day on which banks are open for business in The City of New York and San Francisco.

"Cash and Cash Equivalents" means, with respect to any date of determination cash and cash equivalents and marketable securities as set forth on the Borrower's consolidated balance sheet as of such date.

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations promulgated thereunder.

"Commitment Fee" has the meaning given to it in Section 2.10.

"Commitment Termination Event" means (a) any Event of Default under Section 5.5(d), and (b) the receipt by Borrower of an Acceleration Notice pursuant to Section 5.5.

"Common Stock" means the common stock, par value $0.001 per share, of the Borrower.

"Customary Subordination Terms" means that no payment in respect of the notes described in clause (f) of the definition of Permitted Indebtedness may be made if (a) an Event of Default pursuant to Section 5.5(a) shall have occurred and is continuing, including as a result of the delivery of an Acceleration Notice (as defined in Section 5.5), until such Acceleration Notice is rescinded or the Loan has been paid in full or (b) any other Event of Default shall have occurred and be continuing and the Lenders shall have sent to the Borrower a notice of default (a "Payment Blockage Notice"); provided that no more than one Payment Blockage Notice may be sent during any 365 day period and payments in respect of such notes may resume upon the earliest to occur of (i) the date on which such default is cured or waived, (ii) 91 days after the date the Loan is paid in full, (iii) the date 179 days after the date on which the Payment Blockage Notice is received, and (iv) the date the Payment Blockage Notice is rescinded.

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

"Disbursement" has the meaning given to it in Section 2.2.

"Disbursement Date" means the date on which a Disbursement occurs.

"Disbursement Request" has the meaning given to it in Section 2.2.

"Dollars" and the "$" sign mean the lawful currency of the United States of America.

"Event of Default" has the meaning given to it in Section 5.5.

"Evidence of Disbursement" has the meaning given to it in Section 2.2.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

"Final Payment" means such amount as may be necessary to repay the Loan in full any other amounts owing by the Borrower to the Lenders pursuant to this Agreement and any amounts due and payable by the Borrower pursuant to any Warrant to the extent such Warrant is still held by a Lender.

"Final Payment Date" means the earlier of (i) the date on which the Borrower repays the outstanding principal of the Loan (together with any other amounts accrued and unpaid under this Agreement) to the Lenders pursuant to this Agreement and (ii) the fifth anniversary of the date of this Agreement.

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

"Government Authority" means any government, governmental department, ministry, cabinet, commission, board, bureau, agency, tribunal, regulatory authority, instrumentality, judicial, legislative, fiscal, or administrative body or entity, domestic or foreign, federal, state or local having jurisdiction over the matter or matters and Person or Persons in question, including, with limitation, the SEC.

"Indemnified Person" has the meaning given to it in Section 6.11.

"Indemnity" has the meaning given to it in Section 6.11.

"Interest Rate" means 6.75% per annum compounded annually, payable on the principal amount of the Loan outstanding and added to the aggregate principal amount of the Loan.

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

"Loan" means the loan to be made available by the Lenders to the Borrower pursuant to Section 2.2 in the maximum aggregate amount of one hundred fifty million Dollars ($150,000,000) (excluding any accrued interest added to the principal amount.

"Loss" has the meaning given to it in Section 6.11.

"Major Transaction" has the meaning set forth in the Warrants.

"Major Transaction Put Date" means the date specified for payment in the Put Notice, which date shall not be less than five (5) Business Days after the date that the Put Notice is given.

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, prospects, condition (financial or otherwise) or property of the Borrower, (b) the validity or enforceability of any provision of any Financing Document, (c) the ability of the Borrower to timely perform the Obligations or (d) the rights and remedies of the Lenders under any Financing Document provided, however, that none of the following shall be deemed either alone or in combination to constitute, and none of the following shall be taken into account in determining whether there has been or would be, a Material Adverse Effect: (A) any adverse effect that results directly or indirectly from general economic, business, financial or market conditions; and (B) any adverse effect arising directly or indirectly from or otherwise relating to any of the industries or industry sectors in which the Borrower operates.

"Notes" means the notes issued to the Lenders evidencing the Loan in the forms attached hereto as Exhibit A-1, Exhibit A-2, Exhibit A-3 and Exhibit A-4.

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

"Organizational Documents" means the Amended and Restated Certificate of Incorporation, and the certificate of amendment thereto, and the Amended and Restated By-laws of the Borrower.

"Permitted Indebtedness" means: (a) indebtedness of Borrower in favor of the Lenders arising under this Agreement, (b) indebtedness existing as of the date hereof, (c) indebtedness to trade creditors incurred in the ordinary course of business, (d) indebtedness pursuant to that certain Loan and Security Agreement, dated as of October 28, 2002, as amended, supplemented or otherwise modified from time to time, between the Borrower and Smith Kline Beecham Corporation, (e) indebtedness in respect of purchase money financing, capital lease obligations and equipment financing facilities, including without limitation, indebtedness pursuant to that certain Loan and Security Agreement, dated as of May 22, 2002, as amended, supplemented or otherwise modified from time to time, between the Borrower and Silicon Valley Bank (and any borrowings thereunder converted into term loans), (f) unsecured indebtedness consisting of subordinated convertible notes so long as such notes are subject to the Customary Subordination Terms, (g) indebtedness incurred to finance the purchase of all or a portion of the equity of Symphony Evolution, Inc.; provided that no more than $[*] principal amount of such indebtedness shall rank senior in right of payment to the Loans, (h) indebtedness incurred in connection with collaboration, licensing, joint venture or partnership arrangements, (i) indebtedness incurred to finance insurance premiums or time-based license royalties or payments in the ordinary course of business, (j) indebtedness in respect of netting services, overdraft protections and other similar and customary services in connection with deposit accounts, (k) guaranties in the ordinary course of business of the obligations of suppliers, customers and licensees of the Borrower, (l) indebtedness owed to any Subsidiary of the Borrower, and (m) extensions, refinancings and renewals of any items of Permitted Indebtedness, provided that the principal amounts and premiums, if any, are not increased (plus the amount of any customary penalties).

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

"Permitted Liens" means: (a) Liens existing on the date hereof and disclosed on Exhibit B hereof; (b) Liens in favor of the Lenders; (c) statutory Liens created by operation of applicable law; (d) Liens arising in the ordinary course of business and securing obligations that are not overdue or are being contested in good faith by appropriate proceedings; (e) Liens securing purchase money or capitalized lease equipment financing; (f) Liens for Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings; (g) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation; (h) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), regulatory or statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (i) easements, rights-of-way, municipal and zoning and building ordinances, title defects or other irregularities, restrictions and other similar encumbrances affecting real property which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person; (j) Liens securing judgments for the payment of money not constituting an Event of Default; (k) Liens securing Permitted Indebtedness; (l) Liens on a property of, or on shares of stock of, a Person existing at the time such Person is merged into or consolidated with the Borrower or a Subsidiary and Liens on property existing at the time of acquisition thereof by the Borrower or any Subsidiary; provided that such Liens were not placed on such property in contemplation of the consummation of such merger, consolidation or acquisition and do not extend to any assets other than those of the Person merged into or consolidated with the Borrower or any such Subsidiary, or the property so acquired, and proceeds and products of any of the foregoing; (m) Liens arising from filing Uniform Commercial Code (or substantially equivalent filings outside the United States) regarding leases (other than Indebtedness); (n) leases, licenses, subleases or sublicenses granted to others that do not materially interfere with the business of the Borrower and the Subsidiaries, taken as a whole; (o) any option or other agreement to purchase any asset of the Borrower or any Subsidiary the disposition of which is not otherwise prohibited hereby; and (p) the disposition of accounts receivables in connection with collection in the ordinary course of business.

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

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date hereof, between the Borrower and the Lenders.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder.

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

"Successor Entity" has the meaning set forth in the Warrants.

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

"Warrants" means the warrants attached hereto as part of Exhibit C issued pursuant to Section 2.11.

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

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

ARTICLE II

AGREEMENT FOR THE LOAN

Section 2.1 Use of Proceeds. The Borrower shall use the Loan for general corporate purposes.

Section 2.2 Disbursements. Subject to satisfaction of the conditions contained in Article IV, the Lenders jointly and severally agree to disburse portions of the Loan (each a "Disbursement") to the Borrower in increments of fifteen million Dollars ($15,000,000) on such dates prior to December 4, 2009 as specified by the Borrower from time to time upon delivery of a disbursement request (a "Disbursement Request") in the form of Schedule 1, which shall be delivered not less than fifteen (15) Trading Days prior to the requested Disbursement Date. Against such Disbursement, the Borrower shall deliver to the Lenders a completed receipt (the "Evidence of Disbursement") in the form of Schedule 2, which receipt shall not be effective until the Disbursement is actually advanced to the Borrower. The Loan and the disbursements made hereunder shall be evidenced by the Evidence of Disbursements and one or more accounts or records maintained by the Lenders in the ordinary course of business. At the request of a Lender, the Borrower shall execute and deliver to such Lender a Note, which shall evidence such Lender's disbursements and the portions of the Loan made by such Lender. Each Disbursement shall be allocated 30.67% to Deerfield Private Design Fund, L.P., 49.33% to Deerfield Private Design International, L.P., 7.27% to Deerfield Partners, L.P., and 12.73% to Deerfield International Limited.

Section 2.3 Repayment. The Borrower shall remit the Final Payment to the Lenders on the earlier to occur of (a) the Final Payment Date, (b) the Major Transaction Put Date, and (c) within three (3) Business Days after a Commitment Termination Event. Notwithstanding anything to the contrary herein, the Borrower may prepay all or any portion of the Loan, including any accrued and unpaid Interest, at any time and from time to time on or prior to the Final Payment Date.

Section 2.4 Closing Fee. On the date hereof, the Borrower has paid to Deerfield Management Company, L.P. a closing fee of $3,750,000.

Section 2.5 Payments. Payments of any amounts due to the Lenders under this Agreement shall be made in Dollars in immediately available funds prior to 11:00 a.m New York City time on such date that any such payment is due, at such bank or places, as the Lenders shall from time to time designate in writing. The Borrower shall pay all and any costs (administrative or otherwise) imposed by banks, clearing houses, or any other financial institution, in connection with making any payments under any of the Financing Documents, except for any costs imposed by the Lenders' banking institutions.

Section 2.6 Taxes, Duties and Fees.

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(b) If the Borrower is required to withhold any such amount or is prevented by operation of law or otherwise from paying or causing to be paid such Taxes, duties, fees or other charges as aforesaid except for Excluded Taxes, the principal or other amounts due under this Agreement (as applicable) shall be increased to such amount as shall be necessary to yield and remit to the Lenders the full amount it would have received taking into account any such Taxes (except for Excluded Taxes), duties, fees or other charges payable on amounts payable by the Borrower under this Section 2.6(b) had such payment been made without deduction of such Taxes, duties, fees or other charges (all and any of such additional amounts, herein referred to as the "Additional Amounts").

(c) If Section 2.6(b) above applies and the Lenders so require, the Borrower shall deliver to the Lenders official tax receipts evidencing payment or a copy of the filed Tax return reporting such payment (or certified copies thereof) of the Additional Amounts within thirty (30) days of the date of payment.

(d) If the Lenders receive a refund from a Government Authority to which the Borrower has paid withholding Taxes pursuant to this Section 2.6, or relating to Taxes in respect of which the Borrower paid Additional Amounts, the Lenders shall promptly pay such refund to the Borrower.

Section 2.7 Costs, Expenses and Losses. If, as a result of any failure by the Borrower to pay any sums due under this Agreement on the due date therefor, or to borrow in accordance with a Disbursement Request made pursuant to Section 2.2, the Lenders shall incur costs, expenses and/or losses, by reason of the liquidation or redeployment of deposits from third parties or in connection with obtaining funds to make or maintain any Disbursement, the Borrower shall pay to the Lenders upon request by the Lenders, the amount of such costs, expenses and/or losses within fifteen (15) days after receipt by it of a certificate from the Lenders setting forth in reasonable detail such costs, expenses and/or losses. For the purposes of the preceding sentence, "costs, expenses and/or losses" shall include, without limitation, any interest paid or payable to carry any unpaid amount and any loss, premium, penalty or expense which may be incurred in obtaining, liquidating or employing deposits of or borrowings from third parties in order to make, maintain or fund the Loan or any portion thereof.

Section 2.8 Interest Rate. The outstanding principal amount of the Loan shall bear interest at the Interest Rate (calculated on the basis of the actual number of days elapsed).

Section 2.9 Interest on Late Payments. Without limiting the remedies available to the Lenders under the Financing Documents or otherwise, to the maximum extent permitted by applicable law, if the Borrower fails to make any payment of principal with respect to the Loan when due, the Borrower shall pay, in respect of the outstanding principal amount and interest of the Loan, interest at the rate per annum equal to the Interest Rate plus two hundred (200) basis points for so long as such payment remains outstanding. Such interest shall be payable on demand.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Section 2.10 Commitment Fee. Until the termination of this Agreement, the Borrower shall pay to the Lenders by wire transfer a fee (the "Commitment Fee") in the amount of $843,750 on the first Business Day of July, October, January and April of each year, with respect to the prior quarter, commencing on July 1, 2008 to such account or accounts specified by the Lenders in writing; provided, however, that during the quarter in which this Agreement is executed and if this Agreement is terminated on a day other than the last day of a quarter, the Commitment Fee shall be pro-rated for the period of such quarter that this Agreement was in effect.

Section 2.11 Delivery of Warrants. (a) On the date hereof, the Borrower shall issue to the Lenders Warrants to purchase one million (1,000,000) shares of Common Stock (the "Initial Warrants") in the form annexed hereto as Exhibit D containing an initial Exercise Price (as defined in the Warrants) equal to $7.40.

(b) Concurrently with each of the first five Disbursements, the Borrower shall issue to Lenders Warrants to purchase four hundred thousand (400,000) shares of Common Stock in the form annexed hereto as Exhibit D (except that such Warrants shall not contain Section 8(d) of the Initial Warrants), containing an initial Exercise Price equal to the then prevailing Exercise Price under the Initial Warrant (or if such Warrants are no longer outstanding, such amount as would have constituted the Exercise Price under the Initial Warrants had such Warrants still been outstanding).

(c) Concurrently with each of the Disbursements, the Borrower shall issue to the lenders Warrants to purchase eight hundred thousand (800,000) shares of Common Stock in the form annexed hereto as Exhibit D (except that such Warrants shall not contain Section 8(d) of the Initial Warrants) at an initial Exercise Price equal to 120% of the average of the Volume Weighted Average Price (as defined in subsection (d) below) of the Common Stock for each of the fifteen (15) Trading Days beginning with the Trading Day following receipt by the Lenders of a Disbursement Request.

(d) As used herein, the "Volume Weighted Average Price" for the Common Stock as of any date means the daily volume weighted average price (based on a Trading Day from 9:30 a.m. to 4:00 p.m. (New York time)) of the Common Stock on the NASDAQ Global Select Market ("NASDAQ") as reported by Bloomberg Financial L.P. using the AQR function or an equivalent, reliable reporting service mutually acceptable to and hereafter designed by Deerfield Private Design and the Borrower ("Bloomberg") or, if NASDAQ is not the principal trading market for the Common Stock, the volume weighted average sale price of the Common Stock on the principal trading market for the Common Stock on the principal securities exchange or trading market where the Common Stock is listed or traded as reported by Bloomberg, or, if no volume weighted average sale price is reported for the Common Stock, then the last closing trade

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

price of the Common Stock as reported by Bloomberg, or, if no last closing trading price is reported for the Common Stock by Bloomberg, the average of the bid prices of any market makers for the Common Stock in the over the counter market maintained by the National Association of Securities Dealers or in the "pink sheets" maintained by the National Quotation Bureau, Inc. If the Volume Weighted Average Price cannot be calculated for the Common Stock on such date in the manner provided above, the Volume Weighted Average Price shall be the fair market value as mutually determined by the Borrower.

(e) All Warrants that are issued pursuant to this Section 2.11 shall be allocated to Deerfield Private Design, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited in such ratio as the Lenders shall provide the Borrower at any time and from time to time.

(f) Notwithstanding anything herein to the contrary, number of Warrants issuable on any relevant issue date pursuant to subsections (b) and (c) above shall be adjusted to reflect any adjustments in the number of shares underlying such Warrants that would have taken effect pursuant to the terms of the Warrants had such Warrants been issued on the date hereof and remained outstanding through the date of such issuance.

Section 2.12 Payment in Common Stock.

(a) In lieu of making any payment of principal or accrued and unpaid interest in respect of the Loan in cash (other than as a result of acceleration pursuant to Sections 5.5 and 5.6), the Borrower may elect to satisfy any such payment by the issuance to the Lenders of shares of Common Stock registered for issuance or resale under the Securities Act of 1933 (a "Share Issuance") in accordance with the provisions of this Section 2.12.

(b) Exercise of Right to Make Share Issuance. Subject to the provisions of this Section 2.12, at any time between the close of regular hours of trading on any Trading Day and two hours prior to the opening of regular trading hours for shares of Common Stock on the Principal Market (as defined below) on the immediately following Trading Day, the Borrower may deliver to the Lenders notice by phone, electronic mail and facsimile (the "Share Payment Notice") of its intention to issue shares of Common Stock pursuant to the provisions of this Section 2.12 in payment of principal and interest under the Loan. Subject to such provisions, the Share Payment Notice shall be irrevocable and shall specify the aggregate amount of principal and interest under the Loan that the Borrower intends to satisfy by issuing shares of Common Stock to the Lenders during the applicable Issuance Period (as defined in subsection (i) below) (such amount a "Share Issuance Amount") and the [*] for such Share Issuance.

(c) Share Issuance Closing. [*]

(d) Restrictions on Trading. [*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(e) Borrower Reporting. The Borrower shall file with the SEC a Current Report on Form 8-K disclosing its delivery of a Share Payment Notice no later than 8:35 a.m., New York City time, [*].

(f) Subsequent Share Payments. Following any Share Payment Notice, the Borrower may not deliver a subsequent Share Payment Notice until the date following the earlier of (i) the Share Payment Closing Date following which the Share Issuance Amount specified in such immediately prior Share Payment Notice has been fully satisfied and (ii) the expiration of the applicable Issuance Period related to such prior Share Payment Notice.

(g) Lender Covenant. Subject to compliance with the other provisions contained herein, the Lenders agree, [*].

(h) Limitations on Share Issuances. Notwithstanding anything herein to the contrary:

(i) no payments of principal or interest on the Loan may be made in shares of Common Stock to the extent that the number of shares so issued, together with the number of other shares of Common Stock beneficially owned by the Lenders and their affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Lenders for purposes of Section 13(d) of the Exchange Act, including any shares held by any "group" of which the Lenders are members, but exclusive of shares issuable at such time upon exercise or conversion of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitations set forth in this Section 2.12(h)(i), would exceed 9.98% of the total number of shares of Common Stock of the Borrower then issued and outstanding; and

(ii) the maximum number of shares of Common Stock (i) issued or issuable pursuant to the Warrants issued pursuant to the provisions of Section 2.11 may not exceed 12,100,000 shares of Common Stock (the "Maximum Warrant Shares") and (ii) the maximum number of shares of Common Stock issued pursuant to the provisions of this Section 2.12 ("Maximum Facility Shares") may not exceed 8,891,776 shares of Common Stock; provided, however, following December 4, 2009, to the extent that Warrants to purchase less than 11,000,000 shares of Common Stock have been issued pursuant to the provisions of Section 2.11 hereof, the Maximum Facility Shares shall be increased and the Maximum Warrant Shares shall be decreased to the extent of 110% of that deficiency.

For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the SEC, and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(i) Issuance Period Defined. The "Issuance Period" shall commence on the later of (1) the next full Trading Day following delivery of the Share Payment Notice (it being understood that if a Share Payment Notice is delivered prior to regular hours trading on a Trading Day, the Issuance Period shall commence on such Trading Day) and (2) the next Trading Day following the filing of the Form 8-K required to be filed under Section 2.12(e) above (it being understood that if the Form 8-K is filed by 8:35 a.m., New York City time, on a Trading Day, the Issuance Period shall commence on such Trading Day), and end at the completion of ten Trading Day (including such initial Trading Day).

(j) Allocation of Share Issuance Shares. All shares of Common Stock issuable to the Lenders pursuant to this Section 2.12, all Credit Amounts and all Make Whole Amounts shall be allocated among the Lenders or the Notes, as the case may be, in the same manner as each Disbursement pursuant to Section 2.2 hereof, unless the Lenders notify the Borrower in writing of any different allocation ratio.

(k) Issuance of Shares. It shall be a condition precedent to any Share Issuance on any Share Payment Closing Date that the shares of Common Stock to be issued have been duly authorized by all necessary corporate action, when issued in accordance with the terms hereof shall be listed for trading on the Principal Market, validly issued and outstanding and fully paid and nonassessable, and, when the shares of Common Stock have been issued to the Lenders, the Lenders shall be entitled to all rights accorded to a holder and beneficial owner of Common Stock.

(l) Registration and Listing. The Borrower shall use commercially reasonable efforts to ensure the continued listing of its Common Stock and the listing of the shares of Common Stock issued to the Lenders under this Section 2.12 on the Principal Market.

(m) Failure to Deliver Share Issuance Shares. If the Borrower fails on any Share Payment Closing Date to take all actions within its reasonable control to cause the delivery of the Daily Share Issuance Shares required to be delivered on that date, and such failure is not cured within one (1) Trading Day following such Share Payment Closing Date, no principal amount or interest due under the Loan shall be reduced in respect of such Daily Shares Issuance Shares and the principal amount of the Loan shall be increased by the "Make Whole Amount." As used herein, the Make Whole Amount shall be an amount equal to the loss suffered by the Lenders in respect of sales to purchasers, pursuant to transactions entered into before the Share Payment Closing Date, of shares that were sold by the Lenders in anticipation of receiving such Daily Share Issuance Shares, which shall be based upon documentation reasonably satisfactory to the Borrower demonstrating the difference (if greater than zero) between (A) the price per share paid by the Lenders to purchase such number of shares of Common Stock necessary for the Lenders to meet its share delivery obligations to such purchasers minus (B) the Credit Amount.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of the Borrower. The Borrower represents and warrants as of the date hereof and as of each Disbursement Date as follows:

(a) The Borrower is a corporation duly organized and validly existing under the laws of the State of Delaware.

(b) The Borrower is conducting its business in compliance with its Organizational Documents. The Organizational Documents of the Borrower (including all amendments thereto) as currently in effect have been made available to the Lenders and remain in full force and effect with no defaults outstanding thereunder.

(c) The Borrower has full power and authority to enter into each of the Financing Documents and to make the borrowings and the other transactions contemplated thereby.

(d) All authorizations, consents, approvals, registrations, exemptions and licenses that are necessary for the borrowing hereunder, the execution and delivery of the Financing Documents and the performance by the Borrower of its obligations thereunder, have been obtained and are in full force and effect, except for such registrations and filings in connection with the issuance of the Warrants and shares of Common Stock pursuant the Financing Documents and filings necessary to comply with laws, rules, regulations and orders required in the ordinary course of business.

(e) All authorizations, consents, approvals, registrations, exemptions and licenses with or from Government Authorities that are necessary for the conduct of its business as currently conducted and as proposed to be conducted have been obtained and are in full force and effect, except to the extent any failure to so obtain would not reasonably be expected to have a Material Adverse Effect; provided that the failure to receive or obtain approval from an applicable Governmental Authority for the development or sale of any product shall not constitute a Material Adverse Effect for purposes of this section 3.1(e).

(f) No Default or Event of Default (or any other default or event of default, however described) has occurred under any of the Financing Documents.

(g) Neither the entering into any of the Financing Documents nor the compliance with any of its terms conflicts with, violates or results in a breach of any of the terms of, or constitutes a default or event of default (however described) or requires any consent under, to the extent applicable, (i) any agreement to which the Borrower is a party or by which it is bound, (ii) any of the terms of the Organizational Documents or (iii) any judgment, decree, resolution, award or order or any statute, rule or regulation applicable to the Borrower or its assets, except with respect to clause (i) herein, for any contravention of or default under any agreement that (x) would not materially adversely affect the business financial position or results of operations of the Borrower or (y) would not materially adversely affect the rights and remedies of the Lenders hereunder or any of the Financing Documents.

(h) The Borrower is not engaged in or the subject of any litigation, arbitration, administrative regulatory compliance proceeding, or investigation, nor are there any litigation, arbitration, administrative, regulatory, compliance proceedings or investigations pending or, to the knowledge of the Borrower, threatened before any court or arbitrator or before or by any Government Authority against the Borrower, that would reasonably be expected to result in a Material Adverse Effect and the Borrower is not aware of any facts reasonably likely to give rise to any such proceeding.

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

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

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

Section 3.2 Borrower Acknowledgment. The Borrower acknowledges that it has made the representations and warranties referred to in Section 3.1 with the intention of persuading the Lenders to enter into the Financing Documents and that the Lenders has entered into this Financing Documents on the basis of, and in full reliance on, each of such representations and warranties.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

(a) It is acquiring the Warrants and the shares of Common Stock issued upon exercise of the Warrants (the "Exercise Shares") solely for its account for investment and not with a view to or for sale or distribution of the Warrants or Exercise Shares or any part thereof. Each of the Lenders also represents that the entire legal and beneficial interests of the Warrants and Exercise Shares such Lender is acquiring is being acquired for, and will be held for, its account only. It has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.

(b) The Warrants and the Exercise Shares have not been registered under the Securities Act on the basis that no distribution or public offering of the stock of the Borrower is to be effected. Each of the Lenders realizes that the basis for the exemptions may not be present, if notwithstanding its representations such Lender has a present intention of acquiring the securities for a fixed or determinable period in the future, selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the securities. None of the Lenders has such present intention. Each of the Lenders understands (i) that the Common Stock issuable upon exercise of the Warrants is not registered under the Securities Act or qualified under applicable state securities laws on the ground that the issuance contemplated by the Warrants will be exempt from the registration and qualifications requirements thereof and (ii) that the Borrower's reliance on such exemptions is predicated on the representations set forth in this Section 3.3.

(c) It has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.

(d) The Warrants and the Exercise Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption for such registration is available.

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

(f) It will not make any disposition of all or any part of the Warrants or Exercise Shares until:

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

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

(g) It understands and agrees that all certificates evidencing the shares to be issued to the Lenders may bear the following legend.

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULE 144 UNDER SAID ACT"

"THE SALE, TRANSFER, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS OF A CERTAIN REGISTRATION RIGHTS AGREEMENT DATED AS OF JUNE 4, 2008. AS AMENDED FROM TIME TO TIME, AMONG THE COMPANY AND CERTAIN HOLDERS OF ITS OUTSTANDING SECURITIES. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY."

(h) Such Lender is an "accredited investor" as defined in Regulation D promulgated the Securities Act.

(i) Such Lender is a limited partnership duly organized and validly existing under the laws of the jurisdiction of its formation.

(j) Such Lender has sufficient funds, and will at all times during the term of this Agreement, have sufficient funds to make the Disbursements. Such Lender (i) is capable of paying its debts as they fall due, is not unable and has not admitted its inability to pay debts as they fall due, (ii) is not bankrupt or insolvent and (iii) has not taken action, and no such action has been taken by a third party, for such Lender's winding up, dissolution, or liquidation or similar executory or judicial proceeding or for the appointment of a liquidator, custodian, receiver, trustee, administrator or other similar officer for such Lender or any or all of its assets or revenues.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Section 3.4 Lenders Acknowledgement. Each of the Lenders acknowledges that it has made the representations and warranties referred to in Section 3.3 with the intention of persuading the Borrower to enter into the Financing Document and that the Borrower has entered into the Financing Documents on the basis of, and in full reliance of, each of such representations and warranties. Each of the Lenders also acknowledges that the representations and warranties made by the Borrower in Section 3.1, to the extent that they pertain to the Warrants or the Registration Rights Agreement (with the exception of Subsection (e) of Section 3.1), are made solely to the extent, and will only survive for so long as, any of the Lenders remains a party to the Registration Rights Agreement or the Warrant.

ARTICLE IV

CONDITIONS OF DISBURSEMENTS

Section 4.1 Conditions to Disbursement of the Loan.

(a) The obligation of the Lenders to make the initial Disbursement shall be subject to the fulfillment of the following conditions. The Lenders shall have received a copy of customary closing documents evidencing the authorization of the Borrower to execute, deliver and perform each of the Financing Documents and to engage in the transactions contemplated thereby and an opinion of Borrower's counsel reasonably satisfactory to the Lenders.

(b) Unless otherwise notified by the Borrower and without prejudice to the generality of this Section 4.1, the right of the Lenders to require compliance with any condition under this Agreement which may be waived by the Lenders in respect of any Disbursement is expressly preserved for the purpose of any subsequent Disbursement.

ARTICLE V

PARTICULAR COVENANTS AND EVENTS OF DEFAULT

Section 5.1 Affirmative Covenants. Unless the Lenders shall otherwise agree:

(a) The Borrower shall (i) maintain its existence and qualification to do business in such jurisdictions as may be required to conduct its business, except where the failure to so maintain such qualification would not reasonably be expected to have a Material Adverse Effect, (ii) maintain all approvals necessary for the Financing Documents to be in effect, and (iii) operate its business with due diligence, efficiency and in conformity with sound business practices.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(b) The Borrower shall comply in all material respects with all applicable laws, rules, regulations and orders of any Government Authority, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or where the failure to so comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(c) The Borrower shall obtain, make and keep in full force and effect all licenses, contracts, consents, approvals and authorizations from and registrations with Government Authorities that may be required to conduct its business, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(d) The Borrower shall promptly notify the Lenders of the occurrence of (i) any Default or Event of Default; or (ii) any claims, litigation, arbitration, mediation or administrative or regulatory proceedings that are instituted or threatened against the Borrower; except for matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and (iii) each event which, at the giving of notice, lapse of time, determination of materiality or fulfillment of any other applicable condition (or any combination of the foregoing), would constitute an event of default (however described) under any of the Financing Documents.

(e) (i) If the Borrower is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act, the Borrower will provide quarterly financial statements for itself and its subsidiaries with 45 days after the end of each quarter, and annual financial statements within 120 days after the end of each year; (ii) the Borrower will timely file with the SEC (subject to appropriate extensions made under Rule 12b-25 of the Securities Exchange Act) any annual, quarterly and other reports (other than current reports on Form 8-K) required pursuant to Section 13 or 15(d) of the Exchange Act prepared by the Borrower; and (iii) the Borrower and its Subsidiaries will provide to the Lenders copies of all documents, reports, financial data and other information as the Lenders may reasonably request, and permit the Lenders to visit and inspect any of the properties of the Borrower and its Subsidiaries, and to discuss its and their affairs, finances and accounts with its and their officers, all at such times during regular business hours as the Lenders may reasonably request.

Section 5.2 Negative Covenants. Unless the Lenders shall otherwise agree:

(a) The Borrower shall not (i) liquidate or dissolve, or (ii) enter into any consolidation, merger or reorganize, unless either (A) the Borrower is the surviving corporation, or (B) the Person formed by such consolidation or reorganization or into which the Company is merged shall be (1) 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, or (2) any member country of the European Union, and in either case such resulting, surviving or transferee Person shall expressly assume the Obligations.

(b) The Borrower shall not (i) enter into any partnership, joint venture, syndicate, pool, profit-sharing or royalty agreement or other combination, or engage in any transaction with an Affiliate, whereby its income or profits are, or might be, shared with another Person or enter into any management contract or similar arrangement whereby a substantial part of its business is managed by another Person, (ii) distribute, or permit the distribution, of any assets of the Borrower or its Subsidiaries, including its intangibles, to any shareholders of the Borrower or the holder of any equity interest in any Subsidiary of the Borrower or any of the Borrower Affiliates (other than the Borrower or a Subsidiary of the Borrower); provided, however, that (A) with respect to the restrictions in clause (i) the Borrower may enter into any collaborative arrangement, licensing agreement, joint venture or partnership providing for the research, development or commercial exploitation of compounds, products or services whereby payments received therefrom or its income or profits are, or might be, shared with another Person, including, without limitation, (1) any grant to any entity engaged in the pharmaceutical or biotechnology industry of a license or option to obtain a license to any of the Company's intellectual property or other assets, *provided* that the Company or a wholly owned subsidiary of the Company (and not any third party or any of the Company's stockholders) directly receives from such entity all consideration paid or payable by such entity in consideration of such grant (other than any payments made by such third party in satisfaction of obligations of the Company or its wholly-owned subsidiaries), which consideration may, but need not, including (without limitation) upfront, milestone, royalty and profit-sharing payments, and (2) any grant of a license or option to obtain a license to, or the sale or other transfer of, the Company's intellectual property or other assets to any entity that intends to research and develop or commercialize products or services covered by such intellectual property or embodying or arising from such other assets, whether directly or through the Company or another entity, *provided* that the Company or a wholly owned subsidiary of the Company (and not any third party or any of the Company's stockholders) retains the right or has the obligation to reacquire such intellectual property or other assets or to terminate such license or option, (B) the Borrower may incur, grant or suffer to exist, or sell or transfer any assets in connection with any Permitted Liens, and (C) with respect to the restrictions in clause (ii), royalties and other payments made by any partnership, joint venture, syndicate, pool, profit-sharing or royalty agreement or other combination, to the parties thereto shall not be deemed to be a distribution of assets.

(c) The Borrower shall not create, incur assume, guarantee or become liable with respect to any indebtedness, other than Permitted Indebtedness, or voluntarily prepay any indebtedness, except (i) prepayments of the Loan, (ii) repayments of borrowings under revolving credit facilities (without any reduction in available

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

borrowings thereunder), (iii) prepayments in connection with the conversion of advances under equipment finances into term loans, (iv) repayments of Permitted Indebtedness to the extent refinanced or replaced with indebtedness having a weighted average maturity equal to or greater than the indebtedness being prepaid, and (v) prepayments of loans made in connection with collaboration, licensing, joint venture or joint partnership arrangements in connection with the restructuring of such arrangements.

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

Section 5.4 Major Transaction Put. If a Major Transaction occurs in which the Successor Entity does not satisfy the Qualification Criteria, the Lenders, [*] may deliver a notice to the Borrower (the "Put Notice"), that the Final Payment (the "Put Price") is [*] due and payable. If the Lenders deliver a Put Notice, then on a date [*], the Borrower shall pay the Put Price to the Lenders and the Obligations shall terminate. For the purpose of this Section 5.4, the Qualification Criteria shall mean either (I) (x) the product of (a) [*] and (b) the [*] and (y) [*], or (II) [*]. Enterprise Value shall mean the sum of the Market Cap and such indebtedness minus Cash and Cash Equivalents as reflected on the balance sheet of such entity.

Section 5.5 General Acceleration Provision upon Events of Default. If one or more of the events specified in this Section 5.5 (each an "Event of Default") shall have happened, the Lenders, by written notice to the Borrower, (any such notice, an "Acceleration Notice"), may cancel the Borrower's right to request Disbursements and declare the principal of, accrued interest on, the Loan or any part thereof (together with any other amounts accrued or payable under this Agreement) to be, and the same shall thereupon become, immediately due and payable, without any further notice and without any presentment, demand, or protest of any kind, all of which are hereby expressly waived by the Borrower, and take any further action available at law or in equity, including, without limitation, the sale of the Loan and all other rights acquired in connection with the Loan; provided, however, that an Acceleration Notice shall be deemed to have been sent to Borrower immediately upon the occurrence of any event described in Section 5.5(d) and, in the case of a proceeding of the type described in Section 5.5(d)(iv), shall be deemed to have been withdrawn if such proceeding is dismissed or discontinued within the 90-day period provided for therein (absent the occurrence of any other Event of Default during such 90-day period):

(a) A Lender shall have failed to receive payment of (i) principal when due under the Loan or the Notes, or (ii) any other amounts due under the Loan or the Notes within five (5) Business Days of their due date.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(b) The Borrower shall have failed to comply in any material respect with the due observance or performance of any other covenant contained in this Agreement or any Note and such failure shall not have been cured by Borrower within (i) 30 days after such failure in the case of a breach of Section 5.1(e)(ii) (it being agreed that a cure of such breach within such period is "timely", as such term is used in such Section), or (ii) 30 days after receiving written notice of such default or failure from the Lenders in the case of any other covenant.

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

(d) (i) The Borrower shall generally be unable to pay its debts as such debts become due, or shall admit in writing its inability to pay its debts as they come due or shall make a general assignment for the benefit of creditors; (ii) the Borrower shall declare a moratorium on the payment of its debts; (iii) the commencement by the Borrower of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the commencement of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization, intervention or other similar relief under any applicable law, or the consent by it to the filing of any such petition or to the appointment of an intervenor, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) or of any substantial part of its assets; (iv) the commencement against the Borrower or any substantial part of its assets of a proceeding in any court of competent jurisdiction under any bankruptcy or other applicable law (as now or hereafter in effect) seeking its liquidation, winding up, dissolution, reorganization, arrangement, adjustment, or the appointment of an intervenor, receiver, liquidator, assignee, trustee, sequestrator (or other similar official), and any such proceeding shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall continue unstayed or otherwise in effect, for a period of ninety (90) days; (v) the making by the Borrower of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debt generally as they become due; or (vi) any other event shall have occurred which under any applicable law would have an effect analogous to any of those events listed above in this subsection.

(e) One or more judgments against the Borrower taken as a whole or attachments against any of its property, which in the aggregate exceed [*] unstayed on appeal, undischarged, unbonded or undismissed for a period of thirty (30) days from the date of entry of such judgment.

(f) The Borrower repudiates any of the Financing Documents or challenges the validity or enforceability of Financing Documents.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

(h) There is a failure to perform in any agreement to which the Borrower is a party with a third party or parties resulting in the acceleration of the maturity of any indebtedness for borrowed money in an amount in excess of [*].

(i) If an Event of Default pursuant to any Warrant (as such term is defined in the Warrants) held by a Lender shall have occurred.

(j) Cash and Cash equivalents on the last day of each calendar quarter are less than $[*].

(k) If Borrower makes any payment on account of Indebtedness that is subordinated to the Loan except to the extent the payment is allowed under the subordination provisions applicable to such Indebtedness.

(l) If an event of default occurs with respect to the subordinated convertible notes referred to in clause (f) of the definition of Permitted Indebtedness.

Section 5.6 Automatic Acceleration on Dissolution or Bankruptcy. Notwithstanding any other provisions of this Agreement, if an Event of Default under Section 5.5(d) shall occur, the principal of the Loan (together with any other amounts accrued or payable under this Agreement) shall thereupon become immediately due and payable without any presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower.

Section 5.7 Recovery of Amounts Due. If any amount payable hereunder is not paid as and when due, the Borrower hereby authorizes the Lender to proceed, to the fullest extent permitted by applicable law, without prior notice, by right of set-off, banker’s lien or counterclaim, against any moneys or other assets of the Borrower to the full extent of all amounts payable to the Lenders.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, request or other communication to be given or made under this Agreement shall be in writing. Such notice, request or other communication shall be deemed to have been duly given or made when it shall be delivered by hand, international courier (confirmed by facsimile), or facsimile (with a hard copy delivered within two (2) Business Days) to the Party to which it is required or permitted to be given or made at such Party's address specified below or at such other address as such Party shall have designated by notice to the other Parties.

For the Borrower:

170 Harbor Way
P.O. Box 511
South San Francisco, CA 94083
Attention: General Counsel
Facsimile: (650) 837-7179

with a courtesy copy to:

Cooley Godward Kronish LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306
Attention: Suzanne Sawochka Hooper, Esq.
Facsimile: (650) 849-7400

For the Lenders c/o:

Deerfield Private Design Fund, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Attention: James E. Flynn
Facsimile: (212) 573-8111

with a courtesy copy to:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022-2585
Facsimile: (212) 894-5827
Attention: Robert I. Fisher

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Section 6.2 Waiver of Notice. Whenever any notice is required to be given to the Lenders or the Borrower under the any of the Financing Documents, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 6.3 Reimbursement of Legal and Other Expenses. If any amount owing to the Lenders under any Financing Document shall be collected through enforcement of this Agreement, any refinancing or restructuring of the Loan in the nature of a work-out, settlement, negotiation, or any process of law, or shall be placed in the hands of third Persons for collection, the Borrower shall pay (in addition to all monies then due in respect of the Loan or otherwise payable under any Financing Document) attorneys' and other fees and expenses incurred in respect of such collection.

Section 6.4 Applicable Law and Consent to Non-Exclusive New York Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflicts of laws principles thereof other than Sections 5-1401 and 5-1402 of the General Obligations Law of such State.

(a) Each party hereby irrevocably submits to the jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan or the City of San Francisco for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court that such court, action or proceeding is improper or is an inconvenient venue for such proceeding. Final non-appeal able judgment against any party in any such action, suit or other proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment. Nothing contained in any Financing Document shall affect the right of the Lenders to commence legal proceedings in any court having jurisdiction, or concurrently in more than one jurisdiction, or to serve process, pleadings and other legal papers upon the Borrower in any manner authorized by the laws of any such jurisdiction. The Borrower irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any action, suit or other proceeding arising out of or relating to any Financing Document, brought in the courts of the State of New York or in the United States District Court for the Southern District of New York, and any claim that any such action, suit or other proceeding brought in any such court has been brought in an inconvenient forum.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

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

Section 6.5 Successor and Assigns. This Agreement shall bind and inure to the respective successors and assigns of the Parties, except that (a) the Borrower may not assign or otherwise transfer all or any part of its rights under this Agreement or the Obligations without the prior written consent of the Lenders, and (b) prior to December 4, 2009 a Lender may not assign or otherwise transfer all or any part of its rights and obligations under this Agreement or the Obligations hereunder unless the assignee or transferee expressly agrees to assume such Lender's obligations hereunder. Notwithstanding the foregoing, nothing in this Section 6.5 shall be deemed to limit or otherwise restrict a merger, reorganization or sale of substantially all of the assets of the Borrower.

Section 6.6 Entire Agreement. The Financing Documents contain the entire understanding of the Parties with respect to the matters covered thereby and supersede any and all other written and oral communications, negotiations, commitments and writings with respect thereto. The provisions of this Agreement may be waived, modified, supplemented or amended only by an instrument in writing signed by the authorized officer of each Party.

Section 6.7 Severability. If any provision contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

Section 6.8 Counterparts. This Agreement may be executed in several counterparts, and by each Party on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 6.9 Survival.

(a) This Agreement and all agreements, representations and warranties made in the Financing Documents, and in any document, certificate or statement delivered pursuant thereto or in connection therewith shall be considered to have been relied upon

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

by the other Parties and shall survive the execution and delivery of this Agreement and the making of the Loan hereunder regardless of any investigation made by any such other Party or on its behalf, and shall continue in force until all amounts payable under the Financing Documents shall have been fully paid in accordance with the provisions hereof and thereof, and the Lenders shall not be deemed to have waived, by reason of making the Loan, any Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that the Lenders may have had notice or knowledge of any such Default or may have had notice or knowledge that such representation or warranty was false or misleading at the time any Disbursement was made hereunder.

(b) The obligations of the Borrower under Section 2.7 and the obligations of the Borrower and the Lenders under this Section 6.11 hereof shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loan, or the termination of this Agreement or any provision hereof.

Section 6.10 Waiver. Neither the failure of, nor any delay on the part of, any Party in exercising any right, power or privilege hereunder, or under any agreement, document or instrument mentioned herein, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder, or under any agreement, document or instrument mentioned herein, preclude other or further exercise thereof or the exercise of any other right, power or privilege; nor shall any waiver of any right, power, privilege or default hereunder, or under any agreement, document or instrument mentioned herein, constitute a waiver of any other right, power, privilege or default or constitute a waiver of any default of the same or of any other term or provision. No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to the Lenders upon any default under this Agreement, or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of the Lenders in respect of any such default, or any acquiescence by it therein, affect or impair any right, power or remedy of the Lenders in respect of any other default. All rights and remedies herein provided are cumulative and not exclusive of any rights or remedies otherwise provided by law.

Section 6.11 Indemnity.

(a) The Parties shall, at all times, indemnify and hold each other harmless (the "Indemnity") and each of their respective directors, partners, officers, employees, agents, counsel and advisors (each, an "Indemnified Person") in connection with any losses, claims (including the cost of defending against such claims), damages, liabilities, penalties, or other expenses which may be incurred by or asserted against an Indemnified Person arising out of, any investigation, litigation or proceeding, relating to the Financing Documents (each, a "Loss") the extension of credit hereunder or the Loan or the use or intended use of the Loan, which an Indemnified Person may incur or to which an Indemnified Person may become subject. The Indemnity shall not apply to the extent

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

(b) Without prejudice to the survival of any other agreement of any of the Parties hereunder, the agreements and the obligations of the Parties contained in this Section 6.11 shall survive the termination of each other provision hereof and the payment of all amounts payable to the Lenders hereunder.

Section 6.12 No Usury. The Financing Documents are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration or otherwise, shall the amount paid or agreed to be paid to the Lenders for the Loan exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Lenders shall ever receive anything which might be deemed interest under applicable law, that would exceed the highest lawful rate, such amount that would be deemed excessive interest shall be applied to the reduction of the principal amount owing on account of the Loan, or if such deemed excessive interest exceeds the unpaid balance of principal of the Loan, such deemed excess shall be refunded to the Borrower. All sums paid or agreed to be paid to the Lenders for the Loan shall, to the extent permitted by applicable law, be deemed to be amortized, prorated, allocated and spread throughout the full term of the Loan until payment in full so that the deemed rate of interest on account of the Loan is uniform throughout the term thereof. The terms and provisions of this paragraph shall control and supersede every other provision of this Agreement and the Notes.

Section 6.13 Further Assurances. From time to time, the Borrower shall perform any and all acts and execute and deliver to the Lenders such additional documents as may be necessary or as requested by the Lenders to carry out the purposes of any Financing Document or any or to preserve and protect the Lenders' rights as contemplated therein.

Section 6.14 Termination. The Borrower may by written notice to the Lenders terminate the Agreement upon repayment of all outstanding principal of the Loan (together with any other amounts accrued and unpaid under this Agreement), whereupon the Borrower's Obligations shall terminate subject to the provisions of Section 6.9(b).

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

BORROWER:
EXELIXIS, INC.

By: /s/ Frank Karbe
Name: Frank Karbe
Title: EVP & CFO

LENDER:
DEERFIELD PRIVATE DESIGN FUND, L.P.

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

LENDER:
DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P.

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

LENDER:
DEERFIELD PARTNERS, L.P.

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

LENDER:
DEERFIELD INTERNATIONAL LIMITED

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

SCHEDULE 1

FORM OF DISBURSEMENT REQUEST

[*]

[*]

Ladies and Gentlemen:

Request for Disbursement of the Loan

1. Please refer to the Facility Agreement (the "Facility Agreement"), dated as of June 4, 2008, between Exelixis, Inc. (the "Borrower"), Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited (together the "Lenders").

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

3. The Borrower hereby requests a Disbursement, on [*], of the amount of [*], in accordance with the provisions of Section 2.2 of the Facility Agreement. You are requested to pay the amount to the following account [*] at [*].

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

5. The Borrower hereby certifies as follows:

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(b) All of the conditions set forth in Article IV of the Facility Agreement have been satisfied.

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

EXELIXIS, INC.

By: _____
Name: _____
Title: _____

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

SCHEDULE 2

FORM OF EVIDENCE OF DISBURSEMENT

[*]

[*]

Ladies and Gentlemen:

Re: Disbursement Receipt

Exelixis, Inc. (the "Borrower") hereby acknowledge receipt of the sum of [*] disbursed to us by Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Limited (together the "Lenders") under the Loan provided for in the Facility Agreement, dated as of June 4, 2008, between the Borrower and the Lenders.

Yours faithfully,

EXELIXIS, INC.

By: _____
Name: _____
Title: _____

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT A-1

FORM OF NOTE

PROMISSORY NOTE

June 4, 2008

FOR VALUE RECEIVED, EXELIXIS, INC., a Delaware corporation (the "Maker"), by means of this Promissory Note (this "Note"), hereby unconditionally promises to pay to Deerfield Private Design International, L.P. (the "Payee"), a principal amount equal to the lesser of (a) $74,000,000 and (b) the aggregate amount of Disbursements allocated to the Payee pursuant to Section 2.2 of the Facility Agreement (as defined below), as such principal amount is increased pursuant to the Facility Agreement, in lawful money of the United States of America and in immediately available funds, on the dates provided in the Facility Agreement.

This Note is a "Note" referred to in the Facility Agreement dated as of June 4, 2008 among the Maker, the Payee and the other parties thereto (as modified and supplemented and in effect from time to time, the "Facility Agreement"), with respect to the Loan made by the Payee thereunder. Capitalized terms used herein and not expressly defined in this Note shall have the respective meanings assigned to them in the Facility Agreement.

This Note shall bear interest on the principal amount hereof, as such principal amount may be increased or decreased, at the rates and pursuant to the provisions set forth in the Facility Agreement.

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

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

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

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

No delay or omission by the Payee in exercising any power or right hereunder shall impair such right or power or be construed to be a waiver of any default, nor shall any single or partial exercise of any power or right hereunder preclude the full exercise thereof or the exercise of any other power or right. The provisions of this Note may be waived or amended only in a writing signed by the Maker and the Payee. This Note may be prepaid in whole or in part without premium or penalty, including in shares of Common Stock in accordance with the provisions of the Facility Agreement.

THIS NOTE, AND ANY RIGHTS OF THE PAYEE ARISING OUT OF OR RELATING TO THIS NOTE, MAY, AT THE OPTION OF THE PAYEE, BE ENFORCED BY THE PAYEE IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK OR IN ANY OTHER COURTS HAVING JURISDICTION. FOR THE BENEFIT OF THE PAYEE, THE MAKER HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND HEREBY CONSENTS THAT PERSONAL SERVICE OF SUMMONS OR OTHER LEGAL PROCESS MAY BE MADE AS SET FORTH IN SECTION 6.4 OF THE FACILITY AGREEMENT, WHICH SERVICE THE MAKER AGREES SHALL BE SUFFICIENT AND VALID. THE MAKER HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE.

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Whenever this Note is held by a noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code"), then it is the intention of the Maker and such noteholder that (x) all interest accrued and paid on this Note will qualify for exemption from United States withholding tax as "portfolio interest" because this Note is an obligation which is in "registered form" within the meaning of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and the applicable Treasury Regulations promulgated thereunder, and (y) as such, all interest accrued and paid on this Note will be exempt from United States information reporting under Sections 6041 and 6049 of the Code and United States backup withholding under Section 3406 of the Code. The Maker and the Payee shall cooperate with one another, and execute and file such forms or other documents, or do or refrain from doing such other acts, as may be required, to secure such exemptions from United States withholding tax, information reporting, and backup withholding. In furtherance of the foregoing, any transferee or assignee noteholder that is not a United States person shall represent, warrant and covenant to the Maker that (i) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a "United States person," within the meaning of Section 7701(a)(30) of the Code; (ii) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a person described in Section 881(c)(3) of the Code; (iii) on or prior to the date of transfer or assignment (and on or prior to the date the form provided pursuant to this clause (iii) is no longer valid) until all amounts due under this Note have been paid in full, such noteholder shall provide the Maker with a properly executed U.S. Internal Revenue Service ("IRS") Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (or any successor form prescribed by the IRS), certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder hereunder; (iv) if an event occurs that would require a change in the exempt status of such noteholder or any of the other information provided on the most recent IRS Form W-8BEN (or successor form) previously submitted by such noteholder to the Maker, such noteholder will so inform the Maker in writing (or by submitting to the Maker a new IRS Form W-8BEN or successor form) within 30 days after the occurrence of such event; and (v) such noteholder will not assign or otherwise transfer this Note or any of its rights hereunder except in accordance with the provisions hereof.

In order to qualify as a "registered note" for purposes of the Code, transfer of this Note may be effected only by (i) surrender of this Note to the Maker and the re-issuance of this Note to the transferee, or the Maker's issuance to the Payee of a new note in the same form as this Note but with the transferee denoted as the Payee, or (ii) the recording of the identity of the transferee by the Affiliate of the Payee that is maintaining a record ownership register of this Note as agent to, and on behalf of, the Maker. Such Affiliate in its capacity as such agent shall notify the Maker in writing immediately upon any change in such identity. The terms and conditions of this Note shall be binding upon and inure to the benefit of the Maker and the Payee and their permitted assigns; provided, however, that if any such assignment (whether by

operation of law, by way of transfer or participation, or otherwise) is to any noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, then such noteholder shall submit to the Maker on or before the date of such assignment an IRS Form W-8BEN (or any successor form) certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder under the new note (or other instrument). Any attempted transfer in violation of the relevant provisions of this Note shall be void and of no force and effect. Until there has been a valid transfer of this Note and of all of the rights hereunder by the Payee in accordance with this Note, the Maker shall deem and treat the Payee as the absolute beneficial owner and holder of this Note and of all of the rights hereunder for all purposes (including, without limitation, for the purpose of receiving all payments to be made under this Note).

It is the intention of the Maker and the Payee that this Note is to be a registered instrument and not a bearer instrument and the provisions of this Note are to be interpreted accordingly. This Note is intended to be registered as to both principal and interest and all payments hereunder shall be made to the named Payee or, in the event of a transfer pursuant to the Facility Agreement and this Note, to the transferee identified in the record of ownership of this Note maintained by the Payee on behalf of the Maker. Transfer of this Note may not be effected except in accordance with the provisions hereof.

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

EXELIXIS, INC.

By: /s/ Frank Karbe
Name: Frank Karbe
Title: EVP & CFO

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT A-2

FORM OF NOTE

PROMISSORY NOTE

June 4, 2008

FOR VALUE RECEIVED, EXELIXIS INC., a Delaware corporation (the "Maker"), by means of this Promissory Note (this "Note"), hereby unconditionally promises to pay to Deerfield Private Design Fund, L.P. (the "Payee"), a principal amount equal to the lesser of (a) $46,000,000 and (b) the aggregate amount of Disbursements allocated to the Payee pursuant to Section 2.2 of the Facility Agreement (as defined below), as such principal amount is increased under the Facility Agreement, in lawful money of the United States of America and in immediately available funds, on the dates provided in the Facility Agreement.

This Note is a "Note" referred to in the Facility Agreement dated as of June 4, 2008 among the Maker, the Payee and the other parties thereto (as modified and supplemented and in effect from time to time, the "Facility Agreement"), with respect to the Loan made by the Payee thereunder. Capitalized terms used herein and not expressly defined in this Note shall have the respective meanings assigned to them in the Facility Agreement.

This Note shall bear interest on the principal amount hereof, as such principal amount may be increased or decreased, at the rates and pursuant to the provisions set forth in the Facility Agreement.

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

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

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

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

No delay or omission by the Payee in exercising any power or right hereunder shall impair such right or power or be construed to be a waiver of any default, nor shall any single or partial exercise of any power or right hereunder preclude the full exercise thereof or the exercise of any other power or right. The provisions of this Note may be waived or amended only in a writing signed by the Maker and the Payee. This Note may be prepaid in whole or in part without premium or penalty, including in shares of Common Stock in accordance with the provisions of the Facility Agreement.

THIS NOTE, AND ANY RIGHTS OF THE PAYEE ARISING OUT OF OR RELATING TO THIS NOTE, MAY, AT THE OPTION OF THE PAYEE, BE ENFORCED BY THE PAYEE IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK OR IN ANY OTHER COURTS HAVING JURISDICTION. FOR THE BENEFIT OF THE PAYEE, THE MAKER HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND HEREBY CONSENTS THAT PERSONAL SERVICE OF SUMMONS OR OTHER LEGAL PROCESS MAY BE MADE AS SET FORTH IN SECTION 6.4 OF THE FACILITY AGREEMENT, WHICH SERVICE THE MAKER AGREES SHALL BE SUFFICIENT AND VALID. THE MAKER HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE.

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Whenever this Note is held by a noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code"), then it is the intention of the Maker and such noteholder that (x) all interest accrued and paid on this Note will qualify for exemption from United States withholding tax as "portfolio interest" because this Note is an obligation which is in "registered form" within the meaning of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and the applicable Treasury Regulations promulgated thereunder, and (y) as such, all interest accrued and paid on this Note will be exempt from United States information reporting under Sections 6041 and 6049 of the Code and United States backup withholding under Section 3406 of the Code. The Maker and the Payee shall cooperate with one another, and execute and file such forms or other documents, or do or refrain from doing such other acts, as may be required, to secure such exemptions from United States withholding tax, information reporting, and backup withholding. In furtherance of the foregoing, any transferee or assignee noteholder that is not a United States person shall represent, warrant and covenant to the Maker that (i) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a "United States person," within the meaning of Section 7701(a)(30) of the Code; (ii) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a person described in Section 881(c)(3) of the Code; (iii) on or prior to the date of transfer or assignment (and on or prior to the date the form provided pursuant to this clause (iii) is no longer valid) until all amounts due under this Note have been paid in full, such noteholder shall provide the Maker with a properly executed U.S. Internal Revenue Service ("IRS") Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (or any successor form prescribed by the IRS), certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder hereunder; (iv) if an event occurs that would require a change in the exempt status of such noteholder or any of the other information provided on the most recent IRS Form W-8BEN (or successor form) previously submitted by such noteholder to the Maker, such noteholder will so inform the Maker in writing (or by submitting to the Maker a new IRS Form W-8BEN or successor form) within 30 days after the occurrence of such event; and (v) such noteholder will not assign or otherwise transfer this Note or any of its rights hereunder except in accordance with the provisions hereof.

In order to qualify as a "registered note" for purposes of the Code, transfer of this Note may be effected only by (i) surrender of this Note to the Maker and the re-issuance of this Note to the transferee, or the Maker's issuance to the Payee of a new note in the same form as this Note but with the transferee denoted as the Payee, or (ii) the recording of the identity of the transferee by the Affiliate of the Payee that is maintaining a record ownership register of this Note as agent to, and on behalf of, the Maker. Such Affiliate in its capacity as such agent shall notify the Maker in writing immediately upon any change in such identity. The terms and conditions of this Note shall be binding upon and inure to the benefit of the Maker and the Payee and their permitted assigns; provided, however, that if any such assignment (whether by operation of law, by way of transfer or participation, or otherwise) is to any noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, then such

noteholder shall submit to the Maker on or before the date of such assignment an IRS Form W-8BEN (or any successor form) certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder under the new note (or other instrument). Any attempted transfer in violation of the relevant provisions of this Note shall be void and of no force and effect. Until there has been a valid transfer of this Note and of all of the rights hereunder by the Payee in accordance with this Note, the Maker shall deem and treat the Payee as the absolute beneficial owner and holder of this Note and of all of the rights hereunder for all purposes (including, without limitation, for the purpose of receiving all payments to be made under this Note).

It is the intention of the Maker and the Payee that this Note is to be a registered instrument and not a bearer instrument and the provisions of this Note are to be interpreted accordingly. This Note is intended to be registered as to both principal and interest and all payments hereunder shall be made to the named Payee or, in the event of a transfer pursuant to the Facility Agreement and this Note, to the transferee identified in the record of ownership of this Note maintained by the Payee on behalf of the Maker. Transfer of this Note may not be effected except in accordance with the provisions hereof.

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

EXELIXIS INC.

By: /s/ Frank Karbe
Name: Frank Karbe
Title: EVP & CFO

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT A-3

FORM OF NOTE

PROMISSORY NOTE

June 4, 2008

FOR VALUE RECEIVED, EXELIXIS, INC., a Delaware corporation (the "Maker"), by means of this Promissory Note (this "Note"), hereby unconditionally promises to pay to Deerfield Partners, L.P. (the "Payee"), a principal amount equal to the lesser of (a) $10,900,000 and (b) the aggregate amount of Disbursements allocated to the Payee pursuant to Section 2.2 of the Facility Agreement (as defined below), as such principal amount is increased pursuant to the Facility Agreement, in lawful money of the United States of America and in immediately available funds, on the dates provided in the Facility Agreement.

This Note is a "Note" referred to in the Facility Agreement dated as of June 4, 2008 among the Maker, the Payee and the other parties thereto (as modified and supplemented and in effect from time to time, the "Facility Agreement"), with respect to the Loan made by the Payee thereunder. Capitalized terms used herein and not expressly defined in this Note shall have the respective meanings assigned to them in the Facility Agreement.

This Note shall bear interest on the principal amount hereof, as such principal amount may be increased or decreased, at the rates and pursuant to the provisions set forth in the Facility Agreement.

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

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

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

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

No delay or omission by the Payee in exercising any power or right hereunder shall impair such right or power or be construed to be a waiver of any default, nor shall any single or partial exercise of any power or right hereunder preclude the full exercise thereof or the exercise of any other power or right. The provisions of this Note may be waived or amended only in a writing signed by the Maker and the Payee. This Note may be prepaid in whole or in part without premium or penalty, including in shares of Common Stock in accordance with the provisions of the Facility Agreement.

THIS NOTE, AND ANY RIGHTS OF THE PAYEE ARISING OUT OF OR RELATING TO THIS NOTE, MAY, AT THE OPTION OF THE PAYEE, BE ENFORCED BY THE PAYEE IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK OR IN ANY OTHER COURTS HAVING JURISDICTION. FOR THE BENEFIT OF THE PAYEE, THE MAKER HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND HEREBY CONSENTS THAT PERSONAL SERVICE OF SUMMONS OR OTHER LEGAL PROCESS MAY BE MADE AS SET FORTH IN SECTION 6.4 OF THE FACILITY AGREEMENT, WHICH SERVICE THE MAKER AGREES SHALL BE SUFFICIENT AND VALID. THE MAKER HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE.

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Whenever this Note is held by a noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code"), then it is the intention of the Maker and such noteholder that (x) all interest accrued and paid on this Note will qualify for exemption from United States withholding tax as "portfolio interest" because this Note is an obligation which is in "registered form" within the meaning of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and the applicable Treasury Regulations promulgated thereunder, and (y) as such, all interest accrued and paid on this Note will be exempt from United States information reporting under Sections 6041 and 6049 of the Code and United States backup withholding under Section 3406 of the Code. The Maker and the Payee shall cooperate with one another, and execute and file such forms or other documents, or do or refrain from doing such other acts, as may be required, to secure such exemptions from United States withholding tax, information reporting, and backup withholding. In furtherance of the foregoing, any transferee or assignee noteholder that is not a United States person shall represent, warrant and covenant to the Maker that (i) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a "United States person," within the meaning of Section 7701(a)(30) of the Code; (ii) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a person described in Section 881(c)(3) of the Code; (iii) on or prior to the date of transfer or assignment (and on or prior to the date the form provided pursuant to this clause (iii) is no longer valid) until all amounts due under this Note have been paid in full, such noteholder shall provide the Maker with a properly executed U.S. Internal Revenue Service ("IRS") Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (or any successor form prescribed by the IRS), certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder hereunder; (iv) if an event occurs that would require a change in the exempt status of such noteholder or any of the other information provided on the most recent IRS Form W-8BEN (or successor form) previously submitted by such noteholder to the Maker, such noteholder will so inform the Maker in writing (or by submitting to the Maker a new IRS Form W-8BEN or successor form) within 30 days after the occurrence of such event; and (v) such noteholder will not assign or otherwise transfer this Note or any of its rights hereunder except in accordance with the provisions hereof.

In order to qualify as a "registered note" for purposes of the Code, transfer of this Note may be effected only by (i) surrender of this Note to the Maker and the re-issuance of this Note to the transferee, or the Maker's issuance to the Payee of a new note in the same form as this Note but with the transferee denoted as the Payee, or (ii) the recording of the identity of the transferee by the Affiliate of the Payee that is maintaining a record ownership register of this Note as agent to, and on behalf of, the Maker. Such Affiliate in its capacity as such agent shall notify the Maker in writing immediately upon any change in such identity. The terms and conditions of this Note shall be binding upon and inure to the benefit of the Maker and the Payee and their permitted assigns; provided, however, that if any such assignment (whether by operation of law, by way of transfer or participation, or otherwise) is to any noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, then such

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

noteholder shall submit to the Maker on or before the date of such assignment an IRS Form W-8BEN (or any successor form) certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder under the new note (or other instrument). Any attempted transfer in violation of the relevant provisions of this Note shall be void and of no force and effect. Until there has been a valid transfer of this Note and of all of the rights hereunder by the Payee in accordance with this Note, the Maker shall deem and treat the Payee as the absolute beneficial owner and holder of this Note and of all of the rights hereunder for all purposes (including, without limitation, for the purpose of receiving all payments to be made under this Note).

It is the intention of the Maker and the Payee that this Note is to be a registered instrument and not a bearer instrument and the provisions of this Note are to be interpreted accordingly. This Note is intended to be registered as to both principal and interest and all payments hereunder shall be made to the named Payee or, in the event of a transfer pursuant to the Facility Agreement and this Note, to the transferee identified in the record of ownership of this Note maintained by the Payee on behalf of the Maker. Transfer of this Note may not be effected except in accordance with the provisions hereof.

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

EXELIXIS, INC.

By: /s/ Frank Karbe
Name: Frank Karbe
Title: EVP & CFO

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT A-4

FORM OF NOTE

PROMISSORY NOTE

June 4, 2008

FOR VALUE RECEIVED, EXELIXIS, INC., a Delaware corporation (the "Maker"), by means of this Promissory Note (this "Note"), hereby unconditionally promises to pay to Deerfield International Limited (the "Payee"), a principal amount equal to the lesser of (a) $19,100,000 and (b) the aggregate amount of Disbursements allocated to the Payee pursuant to Section 2.2 of the Facility Agreement (as defined below), as such principal amount is increased under the Facility Agreement, in lawful money of the United States of America and in immediately available funds, on the dates provided in the Facility Agreement.

This Note is a "Note" referred to in the Facility Agreement dated as of June 4, 2008 among the Maker, the Payee and the other parties thereto (as modified and supplemented and in effect from time to time, the "Facility Agreement"), with respect to the Loan made by the Payee thereunder. Capitalized terms used herein and not expressly defined in this Note shall have the respective meanings assigned to them in the Facility Agreement.

This Note shall bear interest on the principal amount hereof, as such principal amount may be increased or decreased, at the rates and pursuant to the provisions set forth in the Facility Agreement.

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

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

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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

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

No delay or omission by the Payee in exercising any power or right hereunder shall impair such right or power or be construed to be a waiver of any default, nor shall any single or partial exercise of any power or right hereunder preclude the full exercise thereof or the exercise of any other power or right. The provisions of this Note may be waived or amended only in a writing signed by the Maker and the Payee. This Note may be prepaid in whole or in part without premium or penalty, including in shares of Common Stock in accordance with the provisions of the Facility Agreement. .

THIS NOTE, AND ANY RIGHTS OF THE PAYEE ARISING OUT OF OR RELATING TO THIS NOTE, MAY, AT THE OPTION OF THE PAYEE, BE ENFORCED BY THE PAYEE IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK OR IN ANY OTHER COURTS HAVING JURISDICTION. FOR THE BENEFIT OF THE PAYEE, THE MAKER HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND HEREBY CONSENTS THAT PERSONAL SERVICE OF SUMMONS OR OTHER LEGAL PROCESS MAY BE MADE AS SET FORTH IN SECTION 6.4 OF THE FACILITY AGREEMENT, WHICH SERVICE THE MAKER AGREES SHALL BE SUFFICIENT AND VALID. THE MAKER HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE.

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

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Whenever this Note is held by a noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "Code"), then it is the intention of the Maker and such noteholder that (x) all interest accrued and paid on this Note will qualify for exemption from United States withholding tax as "portfolio interest" because this Note is an obligation which is in "registered form" within the meaning of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and the applicable Treasury Regulations promulgated thereunder, and (y) as such, all interest accrued and paid on this Note will be exempt from United States information reporting under Sections 6041 and 6049 of the Code and United States backup withholding under Section 3406 of the Code. The Maker and the Payee shall cooperate with one another, and execute and file such forms or other documents, or do or refrain from doing such other acts, as may be required, to secure such exemptions from United States withholding tax, information reporting, and backup withholding. In furtherance of the foregoing, any transferee or assignee noteholder that is not a United States person shall represent, warrant and covenant to the Maker that (i) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a "United States person," within the meaning of Section 7701(a)(30) of the Code; (ii) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a person described in Section 881(c)(3) of the Code; (iii) on or prior to the date of transfer or assignment (and on or prior to the date the form provided pursuant to this clause (iii) is no longer valid) until all amounts due under this Note have been paid in full, such noteholder shall provide the Maker with a properly executed U.S. Internal Revenue Service ("IRS") Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (or any successor form prescribed by the IRS), certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder hereunder; (iv) if an event occurs that would require a change in the exempt status of such noteholder or any of the other information provided on the most recent IRS Form W-8BEN (or successor form) previously submitted by such noteholder to the Maker, such noteholder will so inform the Maker in writing (or by submitting to the Maker a new IRS Form W-8BEN or successor form) within 30 days after the occurrence of such event; and (v) such noteholder will not assign or otherwise transfer this Note or any of its rights hereunder except in accordance with the provisions hereof.

In order to qualify as a "registered note" for purposes of the Code, transfer of this Note may be effected only by (i) surrender of this Note to the Maker and the re-issuance of this Note to the transferee, or the Maker's issuance to the Payee of a new note in the same form as this Note but with the transferee denoted as the Payee, or (ii) the recording of the identity of the transferee by the Affiliate of the Payee that is maintaining a record ownership register of this Note as agent to, and on behalf of, the Maker. Such Affiliate in its capacity as such agent shall notify the Maker in writing immediately upon any change in such identity. The terms and conditions of this Note shall be binding upon and inure to the benefit of the Maker and the Payee and their permitted assigns; provided, however, that if any such assignment (whether by operation of law, by way of transfer or participation, or otherwise) is to any noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, then such

noteholder shall submit to the Maker on or before the date of such assignment an IRS Form W-8BEN (or any successor form) certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder under the new note (or other instrument). Any attempted transfer in violation of the relevant provisions of this Note shall be void and of no force and effect. Until there has been a valid transfer of this Note and of all of the rights hereunder by the Payee in accordance with this Note, the Maker shall deem and treat the Payee as the absolute beneficial owner and holder of this Note and of all of the rights hereunder for all purposes (including, without limitation, for the purpose of receiving all payments to be made under this Note).

It is the intention of the Maker and the Payee that this Note is to be a registered instrument and not a bearer instrument and the provisions of this Note are to be interpreted accordingly. This Note is intended to be registered as to both principal and interest and all payments hereunder shall be made to the named Payee or, in the event of a transfer pursuant to the Facility Agreement and this Note, to the transferee identified in the record of ownership of this Note maintained by the Payee on behalf of the Maker. Transfer of this Note may not be effected except in accordance with the provisions hereof.

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

EXELIXIS, INC.

By: /s/ Frank Karbe
Name: Frank Karbe
Title: EVP & CFO

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT B

PERMITTED LIENS

	Juris.	Secured Party	File No.	Date of Filing	Type of Filing/Comments
1	DE	General Electric Capital Corporation 401 Merritt Seven, 2nd Floor, Norwalk, CT 06856	10983788 61345586	8/17/01 4/21/06	Equipment lease Continuation
2	DE	General Electric Capital Corporation 401 Merritt Seven, 2nd Floor, Norwalk, CT 06856	10983796 61345602	8/17/01 4/21/06	Equipment lease Continuation
3	DE	General Electric Capital Corporation 401 Merritt Seven, Suite 23, Norwalk, CT 06851	11187272 40470528 40478661 63035367	9/19/01 2/20/04 2/20/04 8/31/06	Equipment lease Amendment – delete equipment Amendment – add equipment Continuation
4	DE	General Electric Capital Corporation 401 Merritt Seven, Suite 23, Norwalk, CT 06856	40354235	2/10/04	Equipment lease
5	DE	General Electric Capital Corporation 401 Merritt Seven, Suite 23, Norwalk, CT 06856	40363947	2/10/04	Equipment lease
6	DE	General Electric Capital Corporation 401 Merritt Seven, Suite 23, Norwalk, CT 06856	40492209	2/23/04	Equipment lease

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

7	DE	General Electric Capital Corporation PO Box 414, W-490, Milwaukee, WI 53201	42516096	8/30/04	Equipment lease
8	DE	Silicon Valley Bank 3003 Tasman Drive, Santa Clara, CA 95054	43621499 80204527	12/22/04 1/16/08	Accounts Amendment – restated collateral description
9	DE	CIT Communications Finance Corporation 1 CIT Drive, Livingston, NJ 07039	60969600	3/22/06	Equipment lease

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.