

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): January 15, 2003

QUESTCOR PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

California
(State or Other Jurisdiction
of Incorporation)

0-20772
(Commission File Number)

33-0476164
(I.R.S. Employer Identification No.)

3260 Whipple Road,

Union City, California 94587
(Address of Principal Executive Offices)

Registrant's telephone number, including area code: (510) 400-0700

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This Current Report on Form 8-K is filed by Questcor Pharmaceuticals, Inc., a California corporation (“Questcor” or the “Company”), in connection with the matters described herein.

Item 5. Other Events.

On January 15, 2003, the Company consummated a private placement of Series B Convertible Preferred Stock and Warrants to purchase Common Stock to an investor group comprised of Delta Opportunity Funds, a set of funds managed by Diaz & Altschul Capital Management, LLC; Corporate Opportunities Fund, a fund managed by Sanders Morris Harris Inc.; Montreux Equity Partners; Midsummer Capital, LLC; and Islandia, L.P. Gross proceeds to the Company from the private placement were \$10 million.

The Series B Preferred Stock has an aggregate stated value of \$10 million and is entitled to a quarterly dividend at an initial rate of 8% per annum, which rate will increase to 10% per annum on and after January 1, 2006, and to 12% on and after January 1, 2008. In addition, on the occurrence of designated events the dividend rate will increase by an additional 6% per annum. The Series B Preferred Stock is entitled to a liquidation preference over the Company’s Common Stock and Series A Preferred Stock upon a liquidation, dissolution or winding up of the Company.

The Series B Preferred Stock is convertible at the option of the holder into the Company’s Common Stock at a conversion price of \$0.9412 per share, subject to certain anti-dilution adjustments. The Company has the right commencing on January 1, 2006 (assuming specified conditions are met) to redeem the Series B Preferred Stock at a price of 110% of stated value, together with all accrued and unpaid dividends and arrearage interest. In addition, upon the occurrence of designated Optional Redemption Events, the holders have the right to require the Company to redeem the Series B Preferred Stock at 100% of stated value, together with all accrued and unpaid dividends and arrearage interest.

The terms of the Series B Preferred Stock contain a variety of affirmative and restrictive covenants, including limitations on indebtedness and liens. Each share of Series B Preferred Stock is generally entitled to a number of votes equal to 0.875 times the number of shares of Common Stock issuable upon conversion of such share of Series B Preferred Stock. In addition, the Company agreed that Corporate Opportunities Fund and Montreux Equity Partners are each entitled to appoint a representative to attend Company Board of Directors meetings in a nonvoting observer capacity.

The purchasers of the Series B Preferred Stock also received for no additional consideration Warrants exercisable for an aggregate of 3,399,910 shares of Common Stock at an exercise price of \$1.0824 per share, subject to certain anti-dilution adjustments. The Warrants expire in January 2007.

The foregoing summary is qualified by reference to the documents filed as exhibits to this Current Report on Form 8-K, which are incorporated herein by reference.

Item 7. Financial Statements, *Pro Forma* Financial Information and Exhibits

- (a) Not Applicable
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(b) Not Applicable

(c) Exhibits

- 3.1 Certificate of Determination of Series B Convertible Preferred Stock.
 - 4.1 Form of Common Stock Purchase Warrant dated January 15, 2003 issued by Questcor.
 - 10.1 Form of Subscription Agreement dated as of December 29, 2002 by and between Questcor and purchasers of Series B Convertible Preferred Stock and Common Stock Purchase Warrants.
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SIGNATURE

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

Date: January 16, 2003

QUESTCOR PHARMACEUTICALS, INC.

By: /s/ TIMOTHY E. MORRIS

Timothy E. Morris
Chief Financial Officer

QUESTCOR PHARMACEUTICALS, INC.

CERTIFICATE OF DETERMINATION
OF
SERIES B CONVERTIBLE PREFERRED STOCK

(Pursuant to Section 401 of the California General Corporation Law)

Charles J. Casamento and Timothy E. Morris, in accordance with the provisions of Section 401 of the California General Corporation Law, DO HEREBY CERTIFY THAT:

ONE: They are the Chairman, President and Chief Executive Officer and Chief Financial Officer, respectively of Questcor Pharmaceuticals, Inc., a corporation organized and existing under the California General Corporation Law (the "Corporation").

TWO: The total number of shares of Preferred Stock which the Corporation is authorized to issue is 7,500,000 shares and the total number of shares constituting the series of Preferred Stock designated "Series B Convertible Preferred Stock" is 10,000 and none of the shares of said series have been issued.

THREE: Pursuant to authority vested in the Board of Directors of the Corporation by the Amended and Restated Articles of Incorporation of the Corporation, the Board of Directors, at a meeting duly called and held on December 18, 2002, adopted a resolution providing for the creation of a series of the Corporation's Preferred Stock, no par value, which series is designated "Series B Convertible Preferred Stock," which resolution is as follows:

RESOLVED, that pursuant to authority vested in the Board of Directors by the Amended and Restated Articles of Incorporation, the Board of Directors does hereby provide for the creation of a series of the Preferred Stock, no par value (hereafter called the "Preferred Stock"), of the Corporation, and to the extent that the voting powers and the designations, preferences and relative, participating, optional or other special rights thereof and the qualifications, limitations or restrictions of such rights have not been set forth in the Amended and Restated Articles of Incorporation of the Corporation, does hereby fix the same as follows:

SERIES B CONVERTIBLE PREFERRED STOCK

SECTION 1. CERTAIN DEFINED TERMS. (a) All the agreements or instruments defined in this Certificate of Determination shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof and of this Certificate of Determination.

(b) The following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Additional Dividend Event" means the occurrence of any of the following events:

(1) Absence of Reported Sale Price. For any period of six consecutive Trading Days following the Issuance Date there shall be no reported sale price of the Common Stock on any of the AMEX, the NYSE or the Nasdaq;

(2) Certain Failures to Pay Dividends. The Corporation fails to declare or pay in full any dividend payable on the shares of Series B Preferred Stock on the applicable Dividend Payment Date in circumstances where such declaration or payment would not be permitted by Section 500 of the CGCL or would be prohibited by Section 501 of the CGCL;

(3) Certain Involuntary Proceedings. An involuntary case or other proceeding shall be commenced against the Corporation or any Subsidiary seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty consecutive days;

(4) Judgments. Any court of competent jurisdiction shall enter one or more final judgments against the Corporation or any Subsidiary or any of their respective properties or other assets in an aggregate amount in excess of \$100,000, which is not vacated, bonded, stayed, discharged, satisfied or waived for a period of 30 consecutive days;

(5) Default on Obligations. (A) The Corporation or any Subsidiary shall (i) default in any payment with respect to any Indebtedness which Indebtedness has an outstanding principal amount in excess of \$100,000,

individually or in the aggregate for the Corporation and the Subsidiaries, beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created or (ii) default in the observance or performance of any agreement, covenant or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, any such Indebtedness to become due prior to its stated maturity and such default or event shall continue beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created (after giving effect to any consent or waiver obtained and then in effect hereunder); or (B) any Indebtedness of the Corporation or any Subsidiary which has an outstanding principal amount in excess of \$100,000, individually or in the aggregate for the Corporation and the Subsidiaries, shall, in accordance with its terms, be declared to be due and payable, or required to be prepaid other than by a regularly scheduled or required payment prior to the stated maturity thereof;

(6) Certain Exchanges, Acquisitions, Etc. The occurrence of any transaction or event, other than pursuant to an agreement to which the Corporation is a party and other than a transaction or event which has been approved by the Board of Directors, in connection with which transaction or event all or substantially all the Common Stock shall be exchanged for, converted into, acquired for or constitute the right to receive consideration (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) which is not all or substantially all common stock which is (or will, upon consummation of or immediately following such transaction or event, will be) listed on the AMEX or the NYSE or listed or approved for quotation on Nasdaq;

(7) Certain Changes of Control. The acquisition by a Person or entity or group of Persons or entities acting in concert as a partnership, limited partnership, syndicate or group, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, of beneficial ownership of securities of the Corporation representing 50% or more of the combined voting power of the outstanding voting securities of the Corporation ordinarily (and apart from voting rights accruing in special circumstances) having the right to vote in the election of directors if such acquisition arises from a transfer of outstanding securities of the Corporation that have voting power and not through action taken by the Corporation or any Subsidiary;

(8) Certain Non-Compliance and Breaches. The Corporation (A) fails to comply with clause (1) or (3) of Section 12(d) or (B) fails to comply in any material respect with any provision of any Transaction Document (other than Section 3 or clause (1), (2), (3), (5), (7), (8), (9), (10), (11), (13) or (14) of Section 12(d) and other than as specifically provided in the definition of Optional Redemption Event) or breaches any other material covenant or other material term or condition of any Transaction Document (other than Section 3 or clause (1), (2), (3), (5), (7), (8), (9), (10), (11), (13) or (14) of Section 12(d) and other than as specifically provided in the definition of Optional Redemption Event);

(9) Certain Limitations on Redemption. At any time on or after the Issuance Date the amount available pursuant to Section 500 or Section 501 of the CGCL to pay the Optional Redemption Price of all outstanding shares of Series B Preferred Stock (whether or not any Holder shall at the time have a right to require, or shall have exercised any right to require, redemption of shares of Series B Preferred Stock pursuant to Section 11) shall be less than the aggregate Optional Redemption Price of all shares of Series B Preferred Stock outstanding at such time, other than by reason of the failure of the Corporation to comply with Section 3; or

(10) Failure to Maintain Net Cash, Cash Equivalent and Eligible Investment Balances. The Corporation fails to maintain Net Cash, Cash Equivalent and Eligible Investment Balances in an amount at least equal to 50% of the aggregate Stated Value of the outstanding shares of Series B Preferred Stock;

provided, however, that no event or circumstance that constitutes an Optional Redemption Event shall constitute an Additional Dividend Event.

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the subject Person. For purposes of the term "Affiliate," the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or to cause the direction of the management and policies of a Person, whether through the ownership of securities, by contract or otherwise.

"Aggregate Diluted Price Percentage" means, at any time of determination, the aggregate Diluted Price Percentages for all issuances of Newly Issued Shares issued in reliance on Section 12(d)(13)(B)(ix) at or prior to such time of determination.

"Aggregation Parties" shall have the meaning provided in Section 10(g)(1).

"AMEX" means the American Stock Exchange, Inc.

"AQR Function" means the function designated by Bloomberg Financial L.P. as AQR, for use by subscribers to its financial information services, and which provides a volume-weighted average quote recapitulation of the reported trading prices of a security.

"Arrearage Interest" means at any time interest at the rate equal to the Dividend Rate in effect at such time plus 6% per annum (or such lesser rate equal to the highest rate permitted by applicable law) on any dividend on shares of Series B Preferred Stock which dividend is not paid on a Dividend Payment Date, whether or not declared, and which shall accrue from such Dividend Payment Date.

"Board of Directors" or "Board" means the Board of Directors of the Corporation.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Corporation to have been duly adopted by the Board of Directors, or duly authorized committee thereof (to the extent permitted by applicable law), and to be in full force and effect on the date of such certification, and delivered to the Holders.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to remain closed.

"Cash, Cash Equivalent and Eligible Investment Balances" of any Person on any date shall be determined from such Person's books maintained in accordance with Generally Accepted Accounting Principles, and means, without duplication, the sum of (1) the cash accrued by such Person on an unconsolidated basis on such date and available for use by such Person on such date, (2) all assets which would, on an unconsolidated balance sheet of such Person prepared as of such date in accordance with Generally Accepted Accounting Principles, be classified as cash equivalents and (3) all Eligible Marketable Securities which are assets which would, on an unconsolidated balance sheet of such Person prepared as of such date in accordance with Generally Accepted Accounting Principles, be classified as marketable securities which are current assets.

"CGCL" means the California General Corporation Law or any successor or replacement law of the State of California that governs the Corporation.

"Common Stock" includes the Common Stock, no par value, of the Corporation as authorized on the date hereof, and any other securities into which or for which the Common Stock may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or otherwise and any stock (other than Common Stock) and other securities of the Corporation or any other Person which any Holder at any time shall be entitled to receive, or shall have received, on the exercise of conversion rights of the Series B Preferred Stock, in lieu of or in addition to Common Stock.

"Common Stock Equivalent" means any warrant, option, subscription or purchase right with respect to shares of Common Stock, any security convertible into, exchangeable for, or otherwise entitling the holder thereof to acquire, shares of Common Stock or any warrant, option, subscription or purchase right with respect to any such convertible, exchangeable or other security.

"Company Redemption Price" shall have the meaning provided in the Subscription Agreements.

"Conversion Agent" means Computershare Trust Company, Inc. or its duly appointed successor who shall be serving as transfer agent and registrar for the Common Stock and who shall have been authorized by the Corporation to act as conversion agent for the Series B Preferred Stock in accordance with the Conversion Agent Instruction and the name, address and telephone number of which shall have been given to the Holders by notice from the Corporation.

"Conversion Agent Instruction" means the Conversion Agent Instruction from the Corporation to the Conversion Agent for the benefit of the Holders in the form attached to the Subscription Agreements as ANNEX II, as the same may be modified as provided in the Subscription Agreements.

"Conversion Date" means the date on which a Conversion Notice is given by a Holder, whether by mail, courier, personal service, telephone line facsimile transmission or other means, as provided in Section 10(a).

"Conversion Notice" means a Notice of Conversion of Series B Convertible Preferred Stock substantially in the form set forth in Section 14(a).

"Conversion Price" means \$0.9412, subject to adjustment as provided in Section 10(c).

"Corporation Certificate" means a certificate of the Corporation signed by an Officer.

"Corporation Notice" means a Corporation Notice substantially in the

form set forth in Section 14(c).

"Current Fair Market Value" means when used with respect to the Common Stock as of a specified date:

(i) if the Common Stock is then listed for trading on a national securities exchange or through the Nasdaq or the Nasdaq SmallCap, the average of the daily VWAPs of the Common Stock for each Trading Day in the period of five consecutive Trading Days ending on and including such date;

(ii) if on the date as of which Current Fair Market Value is to be determined the Common Stock is not so listed, the average of the highest bid and lowest asked prices of the Common Stock quoted in the Nasdaq OTC Bulletin Board or the over-the-counter-market, for each Trading Day in the period of five consecutive Trading Days ending on and including such date, as reported by Bloomberg Financial, L.P.; or

(iii) if on the date for which Current Fair Market Value is to be determined the Common Stock is not listed on any national securities exchange, the Nasdaq or the Nasdaq SmallCap or quoted in the Nasdaq System or the over-the-counter market, the Current Fair Market Value of Common Stock shall be the highest price per share which the Corporation could then obtain from a willing buyer (not an employee or director of the Corporation at the time of determination), under no compulsion to buy, in an arms'-length for shares of Common Stock sold by the Corporation, from authorized but unissued shares, as determined in good faith by the Board of Directors.

"Current Market Price" shall mean the arithmetic average of the daily VWAPs per share of Common Stock for the ten consecutive Trading Days ending on and including the Trading Day immediately prior to the date in question; provided, however, that (1) if the ex Date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10(c)(1), (2), (3), (4), (5), and (6) occurs during such ten consecutive Trading Days, the VWAP for each Trading Day prior to the ex Date for such other event shall be adjusted by multiplying such VWAP by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event, (2) if the ex Date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10(c)(1), (2), (3), (4), (5), or (6) occurs on or after the ex Date for the issuance or distribution requiring such computation and prior to the day in question, the VWAP for each Trading Day on and after the ex Date for such other event shall be adjusted by multiplying such VWAP by the

reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event, and (3) if the ex Date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (1) or (2) of this proviso, the VWAP for each Trading Day on or after such ex Date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 10(c)(4) or (6), whose determination shall be conclusive and described in a Board Resolution) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such ex Date. For purposes of any computation under Section 10(c)(6), the Current Market Price of the Common Stock on any date shall be deemed to be the arithmetic average of the daily VWAPs per share of Common Stock for such day and the next two succeeding Trading Days; provided, however, that if the ex Date for any event (other than the Tender Offer requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 10(c)(1), (2), (3), (4), (5), or (6) occurs on or after the Expiration Time for the Tender Offer requiring such computation and prior to the day in question, the VWAP for each Trading Day on and after the ex Date for such other event shall be adjusted by multiplying such VWAP by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event. Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to Section 10(c), such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of Section 10(c) and to avoid unjust or inequitable results as determined in good faith by the Board of Directors.

"Diluted Price Percentage" means, with respect to any issuance of Newly Issued Shares issued in reliance on Section 12(d)(13)(B)(ix), the Diluted Price Percentage computed in accordance with the following formula:

$$DPP = \frac{CP - \frac{((O + (C / FMV)) \times CP)}{(O + N)}}{CP}$$

where,

- C = aggregate consideration received by the Corporation for the Newly Issued Shares
- N = number of Newly Issued Shares

- 0 = number of shares of Common Stock outstanding (calculated on a fully-diluted basis assuming the conversion of all options, warrants, purchase rights or convertible securities which are exercisable at the time of the issuance of the Newly Issued Shares) immediately prior to the issuance of the Newly Issued Shares
- FMV = Current Fair Market Value of the Common Stock at the time of issuance of the Newly Issued Shares
- CP = Conversion Price immediately prior to the issuance of the Newly Issued Shares
- DPP = Diluted Price Percentage for such issuance of Newly Issued Shares

"Dividend Payment Date" means each January 1, April 1, July 1 and October 1.

"Default Rate" means at any time the rate equal to the Dividend Rate in effect at such time plus 6% per annum (or such lesser rate equal to the highest rate permitted by applicable law).

"Dividend Rate" means for any period a rate per annum set forth below opposite such period:

PERIOD - - - - -	DIVIDEND RATE - - - - -
Issuance Date to and including December 31, 2005	8%
January 1, 2006 to and including December 31, 2007	10%
January 1, 2008 and thereafter	12%

; provided, however, that if an Additional Dividend Event shall have occurred then so long as any Additional Dividend Event shall continue the Dividend Rate shall be the amount shown in the table above plus an additional 6 percent per annum.

"Dividend Record Date" means with respect to each Dividend Payment Date the close of business on the Business Day immediately preceding such Dividend Payment Date.

"Eligible Bank" means a corporation organized or existing under the laws of the United States or any state, having combined capital and surplus of at least \$250 million and subject to supervision by United States federal or state authority and which has a branch located in New York, New York.

"Eligible Marketable Securities" of the Corporation as of any date means marketable securities which would be reflected as short-term investments on an unconsolidated balance sheet of the Corporation prepared as of such date in accordance with Generally Accepted Accounting Principles on a basis consistent with the consolidated balance sheet included in the 2001 Form 10-K.

"ESPP" means the Corporation's 2000 Employee Stock Purchase Plan.

"Event Period" means (x) an Optional Redemption Event shall have occurred with respect to which any Holder shall be entitled to exercise redemption rights under Section 11 or with respect to which any Holder shall have exercised such rights and the Corporation shall not have paid, or deposited in accordance with Section 15(c), the Optional Redemption Price or (y) an Additional Dividend Event, or any event which, with notice or passage of time, or both, would become an Additional Dividend Event, shall have occurred and be continuing.

"Excluded Shares" shall have the meaning provided in Section 10(g)(1).

"Expiration Time" shall have the meaning provided in Section 10(c)(6).

"ex Date" means (1) when used with respect to any issuance, distribution or stock dividend, the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the VWAP was obtained without the right to receive such issuance, distribution or stock dividend, (2) when used with respect to any stock split, capital reorganization, subdivision or combination of shares of Common Stock, the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such stock split, capital reorganization, subdivision or combination becomes effective or is publicly announced, and (3) when used with respect to any Tender Offer or other event, the first date on which the Common Stock trades, regular way, on such exchange or in such market after the Expiration Time of such Tender Offer or after the occurrence or public announcement of such event.

"Extended Redemption Date" means with respect to any shares of Series B Preferred Stock of any Holder to which Section 9(b) applies, the date that is 60 days after the latest date on which such Holder's Restricted Ownership Percentage no longer restricts such Holder's right to convert all shares of Series B Preferred Stock held by such Holder.

"Fundamental Change" means

(a) Any consolidation or merger of the Corporation or any Subsidiary with or into another entity (other than a merger or consolidation of a Subsidiary into the Corporation or a wholly-owned Subsidiary) that has

been approved by the Board of Directors where the stockholders of the Corporation immediately prior to such transaction do not collectively own at least 51% of the outstanding voting securities of the surviving entity of such consolidation or merger immediately following such transaction; or the sale of all or substantially all of the assets of the Corporation and the Subsidiaries in a single transaction or a series of related transactions that have been approved by the Board of Directors; provided, however, that any such event or occurrence shall not constitute a Fundamental Change if:

(1) the event or occurrence is a transaction to which the provisions of Section 10(d) apply, the Corporation and the successor or purchasing Person shall have complied in full with the provisions of the Transaction Documents; including, without limitation, Section 10(d), and the successor or purchasing Person is a Permitted Acquiror;

(2) the terms of such transaction provide that from and after the closing of such transaction the Conversion Price shall equal the lesser of (x) the price per share determined in accordance with Section 10(d) and (y) the arithmetic average of the daily VWAPs of one share of common stock of the Permitted Acquiror for the period of five consecutive Trading Days ending on and including the Trading Day prior to the closing of such transaction, in each such case subject to further adjustment as provided in Sections 10(c) and 10(d); and

(3) at the time of closing such transaction and immediately after closing such transaction (x) no Optional Redemption Event shall have occurred or would result from such transaction with respect to which any Holder shall be entitled to exercise redemption rights under Section 11 or with respect to which any Holder shall have exercised such rights and the Corporation shall not have paid, or deposited in accordance with Section 15(c), the Optional Redemption Price and (y) no Additional Dividend Event has occurred and is continuing or would result from such transaction and no event which, with notice or passage of time, or both, would become an Additional Dividend Event has occurred and is continuing or would result from such transaction; or

(b) The occurrence of any transaction or event pursuant to an agreement to which the Corporation is a party and which transaction or event has been approved by the Board of Directors in connection with which transaction or event all or substantially all the Common Stock shall be exchanged for, converted into, acquired for or constitute the right to receive consideration (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) which is not all or substantially all common stock which is (or will,

upon consummation of or immediately following such transaction or event, will be) listed on the AMEX or the NYSE or listed or approved for quotation on Nasdaq; or

(c) The acquisition by a Person or entity or group of Persons or entities acting in concert as a partnership, limited partnership, syndicate or group, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise approved or consented to by the Board of Directors, of beneficial ownership of securities of the Corporation representing 50% or more of the combined voting power of the outstanding voting securities of the Corporation ordinarily (and apart from voting rights accruing in special circumstances) having the right to vote in the election of directors other than any such acquisition that arises from a transfer of outstanding securities of the Corporation that have voting power and not through action taken by the Corporation or any Subsidiary.

"Generally Accepted Accounting Principles" for any Person means the United States generally accepted accounting principles and practices applied by such Person from time to time in the preparation of its audited financial statements.

"Holder" means at any time with respect to any outstanding share of Series B Preferred Stock the Person shown as the holder of record of such share of Series B Preferred Stock on the records of the Corporation relating to the Series B Preferred Stock which records are maintained in accordance with applicable law.

"Holder Notice" means a Holder Notice substantially in the form set forth in Section 14(d).

"Inconvertible Shares" shall have the meaning provided in Section 9(b).

"Indebtedness" as used in reference to any Person means all indebtedness of such Person for borrowed money, the deferred purchase price of property, goods and services (deferred for more than 90 days) and obligations under leases which are required to be capitalized in accordance with Generally Accepted Accounting Principles and obligations for reimbursement of drawings under letters of credit (whether or not a drawing has occurred at the time of determination), and shall include all such indebtedness guaranteed in any manner by such Person or in effect guaranteed by such Person through a contingent agreement to purchase and all indebtedness for the payment or purchase of which such Person has contingently agreed to advance or supply funds and all indebtedness secured by a Lien upon property owned by such Person, although such Person has not assumed or become liable for the payment of such indebtedness, and, for all purposes hereof, such indebtedness shall be treated as though it has been assumed by such Person.

"Issuance Date" means the first date of original issuance of any shares of Series B Preferred Stock.

"Junior Dividend Stock" means, collectively, the Common Stock, the Series A Preferred Stock and any other class or series of capital stock of the Corporation ranking, as to dividends, junior to the Series B Preferred Stock.

"Junior Liquidation Stock" means, collectively, the Common Stock, the Series A Preferred Stock and any other class or series of capital stock of the Corporation ranking junior as to liquidation rights to the Series B Preferred Stock.

"Letter Agreement" means the letter agreement, dated as of the date of the Subscription Agreements, between the Company and the original Holders parties to the Subscription Agreements.

"Lien" shall mean any lien, mortgage, security interest, chattel mortgage, pledge, equity or other encumbrance (statutory or otherwise) of any kind securing satisfaction or performance of an obligation, including, without limitation, any agreement to give any of the foregoing, any conditional sales or other title retention agreement, any lease in the nature thereof, and the filing of or the agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction or similar evidence of any encumbrance, whether within or outside the United States.

"Liquidation Preference" means, for each share of Series B Preferred Stock, the sum of (i) the Stated Value plus (ii) an amount equal to the accrued and unpaid dividends thereon to the date of final distribution to the Holders in connection with the liquidation, dissolution or winding up of the Corporation plus (C) an amount equal to accrued and unpaid Arrearage Interest, if any, on dividends on such share of Series B Preferred Stock to the date of final distribution to the Holders in connection with the liquidation, distribution or winding up of the Corporation.

"Majority Holders" means at any time the Holders of outstanding shares of Series B Preferred Stock which shares constitute a majority of the outstanding shares of Series B Preferred Stock.

"Market Price" means with respect to any security on any date the VWAP of such security on such date on the Principal Market, as reported by Bloomberg Financial, L.P.; provided, however, that during any period the Market Price is being determined, the Market Price shall be subject to equitable adjustments from time to time on terms consistent with Section 10(c) and otherwise reasonably acceptable to the Majority Holders for (i) stock splits, (ii) stock

dividends, (iii) combinations, (iv) capital reorganizations, (v) issuance to all holders of Common Stock of rights or warrants to purchase shares of Common Stock, (vi) distribution by the Corporation to all holders of Common Stock of evidences of indebtedness of the Corporation or cash (other than regular quarterly cash dividends), (vii) Tender Offers by the Corporation or any Subsidiary for, or other repurchases of shares of, Common Stock in one or more transactions which, individually or in the aggregate, result in the purchase of more than ten percent of the Common Stock outstanding, and (viii) similar events relating to the Common Stock, in each case which occur, or with respect to which the ex Date for trading of the Common Stock occurs, during such period.

"Nasdaq" means the Nasdaq National Market.

"Net Cash, Cash Equivalent and Eligible Investment Balances" of any Person on any date means the consolidated Cash, Cash Equivalent and Eligible Investment Balances of such Person and its subsidiaries on such date less the sum (without duplication) of (1) the amount of any outstanding Indebtedness of such Person or any of its subsidiaries which, directly or indirectly, is secured in whole or in part by, or restricts the use of, the consolidated Cash, Cash Equivalent and Eligible Investment Balances of such Person and its subsidiaries plus (2) the amount of outstanding Indebtedness of such Person and its subsidiaries which on such date is classified as short-term debt in accordance with Generally Accepted Accounting Principles, excluding Indebtedness permitted under clause (4) of the term "Permitted Indebtedness".

"Newly Issued Shares" shall have the meaning provided in Section 12(d)(13)(B).

"1934 Act" means the Securities Exchange Act of 1934, as amended, or any successor statute thereto.

"1933 Act" means the Securities Act of 1933, as amended, or any successor statute thereto.

"NYSE" means the New York Stock Exchange, Inc.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the President or the Chief Financial Officer of the Corporation.

"Optional Redemption Date" means the date which is five Business Days after a Holder who is entitled to redemption rights under Section 11(a) and 11(b) gives a Holder Notice.

"Optional Redemption Event" means any one of the following

events:

(1) Fundamental Change. Any Fundamental Change;

(2) Certain Amendments and Changes. The adoption of any amendment to the Articles of Incorporation of the Corporation (other than (A) any such amendment which has been approved by the Majority Holders in accordance with Section 12(b) or (B) any certificate of determination for a series of preferred stock of the Corporation which (i) has been approved by the Majority Holders in accordance with Section 12(b) or (ii) creates any stock which is both Junior Dividend Stock and Junior Liquidation Stock) which materially and adversely affects the rights of the Holders or the taking of any other action by the Corporation which materially and adversely affects the rights of the Holders in respect of their interests in shares of Common Stock that can be acquired upon conversion of shares of Series B Preferred Stock in a manner different and more adverse than it affects the rights of holders of Common Stock generally;

(3) Certain Misstatements, Omissions, Etc. Prior to the end of the Registration Period for any Holder, such Holder shall not be entitled to sell shares of Common Stock issuable or issued upon conversion of shares of Series B Preferred Stock pursuant to the Registration Statement for (x) more than ten consecutive Trading Days, occurring on or after the SEC Effective Date, in any period of 120 consecutive days during the Registration Period for such Holder, (y) more than 30 Trading Days (whether or not consecutive), occurring on or after the SEC Effective Date, in any period of 365 consecutive days during the Registration Period for such Holder, or (z) one or more Trading Days within 60 days after the end of any other such period during which any Holder has been so unable to sell shares of Common Stock, in any such case in the immediately preceding clause (x), (y) or (z) if such inability is due to the Registration Statement or the Prospectus containing any untrue statement of material fact or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading; any other material failure of the Registration Statement or the Prospectus to comply with the 1933 Act, the 1934 Act or the rules and regulations of the SEC which failure arises or results from the Corporation taking any action, or failing to take any action the Corporation could have taken.

(4) Certain Payments of Dividends or Redemption Prices. The Corporation fails to declare or pay in full any dividend payable on the shares of Series B Preferred Stock on the applicable Dividend Payment Date, other than in circumstances where such declaration or payment would not be permitted by Section 500 of the CGCL or would be prohibited by Section 501 of the CGCL, or fails to pay the Optional Redemption Price, the Redemption

Price or the Company Redemption Price of any share of Series B Preferred Stock when due;

(5) Issuance of Shares. The Corporation fails to issue or cause to be issued shares of Common Stock to any Holder upon exercise by such Holder of the conversion rights of such Holder within five Trading Days after the applicable Conversion Date in accordance with the terms of Section 10; fails to issue any shares of Common Stock to the holder of any Warrant upon exercise by such holder of the purchase rights of such holder within five Trading Days after the date such holder exercises such rights in accordance with the terms of the Warrants; or fails to transfer any certificate for shares of Common Stock issued to any Holder upon conversion of Series B Preferred Stock or upon exercise of any Warrant as and when required by this Certificate of Determination, the applicable Subscription Agreement or such Warrant, other than any such failure which results from fire, flood, storm, earthquake, shipwreck, strike, war, acts of terrorism, crash involving facilities of a common carrier, acts of God, or any similar event outside the control of the Corporation (it being understood that the action or failure to act of the Conversion Agent shall be deemed an event outside the control of the Corporation, including but not limited to, fire, flood, storm, earthquake, shipwreck, strike, war, acts of terrorism, crash involving facilities of a common carrier, acts of God, the bankruptcy, liquidation or reorganization of the Conversion Agent under any bankruptcy, insolvency or other similar law or any similar event outside the control of the Conversion Agent);

(6) Certain Non-Compliance and Breaches. The Corporation (A) fails to comply with Section 3 (and in the case of Section 3(b) only, such failure shall continue for five Business Days after notice thereof to the Corporation from any Holder) or clause (5), (7), (8), (9), (10), (11), (13) or (14) of Section 12(d), (B) fails to comply with clause (2) of Section 12(d) and, in the case of this subclause (B) of this clause (6) only, such failure continues for a period of ten days after notice thereof to the Corporation from any Holder, or (C) (x) fails to satisfy any obligation to pay money to any Holder pursuant to or in connection with the Transaction Documents (other than as specifically provided elsewhere in this definition) or (y) fails to comply in any material respect with Section 4(d), 5(b)(4), 5(c), 5(d), 5(f), 5(g), 5(h), 8, 9, 10(d), 10(j) or 10(n) of the Subscription Agreement, any provision of any Warrant, or Section 4, 5(c), 5(d), 6, 10, 11, 12(a), 12(b), 12(c), 15(a) or 15(b) (in any such case other than as specifically provided in the definition of the term Additional Dividend Event, clauses (ii), (iii) or (iv) of the definition of the term Registration Event or any clause of this definition other than this clause (6)(C)) or breaches any other material covenant or other material term or condition in Section 4(d), 5(b)(4), 5(c), 5(d), 5(f), 5(g), 5(h), 8, 9, 10(d), 10(j) or 10(n) of the Subscription Agreement, any provision of any Warrant, or

Section 4, 5(c), 5(d), 6, 10, 11, 12(a), 12(b), 12(c), 15(a) or 15(b) (in any such case other than as specifically provided in the definition of the term Additional Dividend Event, clauses (ii), (iii) or (iv) of the definition of the term Registration Event or any clause of this definition other than this clause (6)(C)) and, in the case of this subclause (C) of this clause (6) only, such breach continues for a period of 30 days after notice thereof to the Corporation from any Holder;

(7) Representations and Warranties. Any written representation or warranty of the Corporation made in or pursuant to any Transaction Document shall be false or misleading in any material respect when made or deemed made; or

(8) Certain Voluntary Proceedings. The Corporation or any Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due or shall admit in writing its inability generally to pay its debts as they become due.

"Optional Redemption Percentage" means 100%.

"Optional Redemption Price" means an amount in cash equal to the sum of (A) the product obtained by multiplying (i) the Stated Value times (ii) the Optional Redemption Percentage plus (B) an amount equal to the accrued and unpaid dividends on the share of Series B Preferred Stock to be redeemed to the applicable Optional Redemption Date plus (C) an amount equal to accrued and unpaid Arrearage Interest, if any, on dividends on such share of Series B Preferred Stock to the applicable Optional Redemption Date.

"Option Share Surrender" means the surrender of shares of Common Stock to the Corporation, or re-acquisition by the Corporation of shares of Common Stock by the Corporation, in payment of the exercise price or tax obligations incurred in connection with the exercise of a stock option granted by the Corporation to any of its employees, directors or consultants.

"Parity Dividend Stock" means any class or series of the Corporation's capital stock ranking, as to dividends, on a parity with the Series B Preferred Stock.

"Parity Liquidation Stock" means any class or series of the Corporation's capital stock ranking on a parity as to liquidation rights with the Series B Preferred Stock.

"Permitted Acquiror" means a solvent corporation which, at the time of determination:

(1) has its common stock listed for trading on any of the NYSE, the AMEX or Nasdaq and has had its common stock so listed continuously for at least the preceding two years;

(2) has a market capitalization in excess of \$2,500,000,000.00;

(3) has reported positive net income for each of the immediately preceding eight consecutive fiscal quarters as shown on its quarterly financial statements prepared in accordance with Generally Accepted Accounting Principles; and

(4) has Net Cash, Cash Equivalent and Investment Balances in an amount in excess of \$250,000,000.00.

"Permitted Indebtedness" means:

(1) Indebtedness outstanding on the Issuance Date and listed on Schedule 4(1) to the Subscription Agreements;

(2) Indebtedness incurred after the Issuance Date in an aggregate amount not to exceed \$2 million at any one time outstanding so long as such Indebtedness is incurred for the purpose of acquiring equipment owned or used or to be owned or used by the Corporation or any Subsidiary (or for the purpose of acquiring the capital stock or similar equity interests of a Subsidiary that is formed for the limited purpose of owning same and does not own or hold any other material assets) and does not exceed the purchase price of the equipment, capital stock or other equity interest so acquired plus reasonable transaction expenses;

(3) Indebtedness incurred after the Issuance Date to a bank or other institutional lender for financing based on the accounts receivable of the Corporation and the Subsidiaries on terms which provide that the amount of such Indebtedness which is permitted to be outstanding varies based on the outstanding amount of the accounts receivable of the Corporation and the Subsidiaries;

(4) Indebtedness incurred after the Issuance Date (x) the proceeds

of which are used exclusively for the purpose of paying the purchase price of one or more pharmaceutical products and related assets acquired by the Corporation or any Subsidiary (or for the purpose of paying the purchase price payable by the Corporation or any Subsidiary of the capital stock or similar equity interests of a Subsidiary that is formed or acquired for the limited purpose of owning the pharmaceutical product or products so acquired and does not hold any other material assets) and for paying of the Company's and the Subsidiary's out-of-pocket transaction costs of such acquisition, (y) which pharmaceutical products are to be manufactured, marketed and sold by the Corporation or a Subsidiary (or any other Person to whom the Corporation licenses the right to market and sell such pharmaceutical product or products) and (z) the principal amount of which Indebtedness does not exceed the purchase price payable by the Corporation or a Subsidiary for the acquisition of such pharmaceutical product or products or for such capital stock or other equity interest so acquired plus the amount of out-of-pocket transaction costs payable by the Corporation in connection with such acquisition;

(5) endorsements for collection or deposit in the ordinary course of business; and

(6) in the case of any Subsidiary, Indebtedness owed by such Subsidiary to the Corporation;

so long as in the case of Indebtedness permitted by the preceding clauses (2), (3), or (4) on the date of incurrence of such Indebtedness (x) no Optional Redemption Event shall have occurred with respect to which any Holder shall be entitled to exercise redemption rights under Section 11 or with respect to which any Holder shall have exercised such rights and the Corporation shall not have paid, or deposited in accordance with Section 15(c), the Optional Redemption Price and (y) no Additional Dividend Event has occurred and is continuing or would result from such incurrence and no event which, with notice or passage of time, or both, would become an Additional Dividend Event has occurred and is continuing or would result from such incurrence.

"Permitted Liens" means

(1) Liens upon any property of any Subsidiary or Subsidiaries as security for Indebtedness owing to the Corporation;

(2) Liens for taxes or assessments or governmental charges or levies on its property if such taxes or assessments or charges or levies shall not at the time be due and payable or if the amount, applicability, or validity of any such tax, assessment, charge or levy shall currently be contested in good faith

by appropriate proceedings or necessary preliminary steps are being taken to contest, compromise or settle the amount thereof or to determine the applicability or validity thereof and if the Corporation or such Subsidiary, as the case may be, shall have set aside on its books reserves (segregated to the extent required by sound accounting practice) deemed by it adequate with respect thereto; deposits or pledges to secure payment of worker's compensation, unemployment insurance, old age pensions or other social security; deposits or pledges to secure performance of bids, tenders, contracts (other than contracts for the payment of money borrowed or credit extended), leases, public or statutory obligations, surety or appeal bonds, or other deposits or pledges for purposes of like general nature in the ordinary course of business; mechanics', carriers', workers', repairmen's or other like Liens arising in the ordinary course of business securing obligations which are not overdue for a period of 60 days, or which are in good faith being contested or litigated, or deposits to obtain the release of such Liens; Liens created by or resulting from any litigation or legal proceedings or proceedings being contested in good faith by appropriate proceedings, provided any execution levied thereon shall be stayed; leases made, or existing on property acquired, in the ordinary course of business; landlords' Liens under leases to which the Corporation or any Subsidiary is a party; and zoning restrictions, easements, licenses or restrictions on the use of real property or minor irregularities in title thereto; provided that all such Liens described in this subsection (2) do not, in the aggregate, materially impair the use of such property in the operations of the business of the Corporation or any Subsidiary or the value of such property for the purpose of such business;

(3) Liens securing Indebtedness permitted under clause (2) of the definition of the term "Permitted Indebtedness" so long as in each such case such Lien does not extend to any property of the Corporation or the Subsidiaries other than the equipment being acquired or financed; and

(4) Liens securing Indebtedness permitted under clause (3) of the definition of the term "Permitted Indebtedness" so long as in each such case such Lien does not extend to any property of the Corporation or the Subsidiaries other than the accounts receivables of the Corporation and the Subsidiaries;

(5) Liens securing Indebtedness permitted under clause (4) of the definition of the term "Permitted Indebtedness" so long as in each such case such Lien does not extend to any property of the Corporation or the Subsidiaries other than the pharmaceutical product or products (or common stock or other equity interest in a Subsidiary) being acquired;

(6) Liens securing the obligations of the Corporation to the Holders

ratably and not securing the obligations of the Corporation to any other Person; and

(7) Liens existing on the Issuance Date and listed in Schedule 4(r) to the Subscription Agreements;

so long as at the time of incurrence of any such Lien (other than Liens described in clause (7) of this definition) (x) (x) no Optional Redemption Event shall have occurred with respect to which any Holder shall be entitled to exercise redemption rights under Section 11 or with respect to which any Holder shall have exercised such rights and the Corporation shall not have paid, or deposited in accordance with Section 15(c), the Optional Redemption Price and (y) no Additional Dividend Event has occurred and is continuing or would result from such incurrence and no event which, with notice or passage of time, or both, would become an Additional Dividend Event has occurred and is continuing or would result from such incurrence.

"Person" means any natural person, partnership, corporation, limited liability company, trust, incorporated organization, unincorporated association, joint stock company or association or similar entity or any government, governmental agency or political subdivision.

"Principal Market" means whichever of (x) the national securities exchange, (y) the Nasdaq or (z) such other securities market on which the Common Stock is listed for trading which on such time constitutes the principal securities market for the Common Stock.

"Prospectus" means the prospectus forming part of the Registration Statement at the time the Registration Statement is declared effective and any amendment or supplement thereto, including any documents or information incorporated therein by reference.

"Purchased Shares" shall have the meaning provided in Section 10(c)(6).

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

"Redemption Date" means the Business Day on which shares of Series B Preferred Stock are to be redeemed pursuant to Section 9(a), determined in

accordance with Section 9(a).

"Redemption Notice" means a Redemption Notice substantially in the form set forth in Section 14(b).

"Redemption Percentage" means 110%.

"Redemption Period" means the period that commences on January 1, 2006.

"Redemption Price" means an amount in cash equal to the sum of (A) the product obtained by multiplying (i) the Stated Value times (ii) the Redemption Percentage plus (B) an amount equal to the accrued and unpaid dividends on the share of Series B Preferred Stock to be redeemed to the applicable Redemption Date plus (C) an amount equal to accrued and unpaid Arrearage Interest, if any, on dividends on such share of Series B Preferred Stock to the applicable Redemption Date.

"Registrable Securities" means (1) the shares of Common Stock issuable or issued upon conversion of shares of Series B Preferred Stock, (2) if the Common Stock is changed, converted or exchanged by the Corporation or its successor, as the case may be, into any other stock or other securities on or after the date this Certificate of Determination is filed with the Secretary of State of the State of California, such other stock or other securities which are issued or issuable in respect of or in lieu of the shares of Common Stock issuable or issued upon conversion of shares of Series B Preferred Stock and (3) if any other securities are issued to holders of the Common Stock (or such other shares or other securities into which or for which the Common Stock is so changed, converted or exchanged as described in the immediately preceding clause (2)) upon any reclassification, share combination, share subdivision, share dividend, merger, consolidation or similar transaction or event, such other securities which are issued or issuable in respect of or in lieu of the shares of Common Stock issuable or issued upon conversion of shares of Series B Preferred Stock.

"Registration Period" means the period from the Issuance Date to the earliest of (1) the date which is four years after the Issuance Date, (2) the date on which no Person who is entitled to the benefits of Section 8 of any Subscription Agreement and who is or was a Holder any longer owns or has any right to acquire any Registrable Securities and (3) the date on which each Person who is entitled to the benefits of Section 8 of any Subscription Agreement and who is or was a Holder may sell, pursuant to Rule 144 under the 1933 Act (or any successor or replacement rule or regulation), all Registrable Securities owned by such Person or which such Person has the right to acquire, without the filing of any notice with the SEC and without restriction on the manner of sale or amount of securities sold.

"Registration Statement" means the Registration Statement required to be filed by the Corporation with the SEC pursuant to Section 8 of each Subscription Agreement.

"Restricted Ownership Percentage" shall have the meaning provided in Section 10(g)(1).

"Rule 144A" means Rule 144A as promulgated under the 1933 Act, or any successor rule thereto.

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

"SEC Effective Date" means the date on which the Registration Statement is first ordered effective by the SEC.

"Securities" shall have the meaning provided in Section 10(c)(4).

"Senior Dividend Stock" means any class or series of capital stock of the Corporation ranking, as to dividends, senior to the Series B Preferred Stock.

"Senior Liquidation Stock" means any class or series of capital stock of the Corporation ranking senior as to liquidation rights to the Series B Preferred Stock.

"Series A Preferred Stock" means the Series A Preferred Stock, no par value, of the Corporation.

"Series B Preferred Stock" means the Series B Convertible Preferred Stock, no par value, of the Corporation.

"Stated Value" means \$1,000 per share of Series B Preferred Stock.

"Subscription Agreements" means the several Subscription Agreements, dated as of December 29, 2002, by and between the Corporation and the several original Holders pursuant to which the shares of Series B Preferred Stock were issued.

"Subsidiary" means any corporation or other entity of which a majority of the capital stock 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 Corporation.

"Tender Offer" means a tender offer or exchange offer.

"Trading Day" means a day on whichever of (x) the national securities exchange, (y) the Nasdaq or (z) such other securities market, in any such case which at the time constitutes the principal securities market for the Common Stock, is open for general trading of securities.

"Transaction Documents" means, individually or collectively, the Subscription Agreements, this Certificate of Determination, the Warrants, the Conversion Agent Instruction, the Letter Agreement and each other instrument statement or certificate given in writing in connection herewith or therewith.

"Trigger Event" shall have the meaning provided in Section 10(c)(4).

"VWAP" of any security on any Trading Day means the volume-weighted average price of such security on such Trading Day on the Principal Market, as reported by Bloomberg Financial, L.P. (based on a Trading Day from 9:30 a.m., Eastern Time, to 4:00 p.m., Eastern Time, using the AQR Function, for such Trading Day; provided, however, that during any period the VWAP is being determined, the VWAP shall be subject to equitable adjustments from time to time on terms consistent with Section 10(c) and otherwise reasonably acceptable to the Majority Holders for (i) stock splits, (ii) stock dividends, (iii) combinations, (iv) capital reorganizations, (v) issuance to all holders of Common Stock of rights or warrants to purchase shares of Common Stock, (vi) distribution by the Corporation to all holders of Common Stock of evidences of indebtedness of the Corporation or cash (other than regular quarterly cash dividends), (vii) Tender Offers by the Corporation or any Subsidiary for, or other repurchases of shares of, Common Stock in one or more transactions which, individually or in the aggregate, result in the purchase of more than ten percent of the Common Stock outstanding, and (viii) similar events relating to the Common Stock, in each case which occur, or with respect to which the ex Date occurs, during such period.

"Warrants" means the Common Stock Purchase Warrants issued by the Corporation pursuant to the Subscription Agreements.

SECTION 2. DESIGNATION AND AMOUNT. The shares of such series shall be designated as "Series B Convertible Preferred Stock", and the number of shares constituting the Series B Preferred Stock shall be 10,000, and shall not be subject to increase. The Corporation shall not issue any shares of Series B Preferred Stock other than pursuant to the Subscription Agreements, unless such issuance shall have been approved by the Majority Holders. Any shares of Series B Preferred Stock which are redeemed by the Corporation and retired and any shares of Series B Preferred Stock which are converted in accordance with Section 10 shall be restored to the status of authorized, unissued and undesignated shares of the

Corporation's class of Preferred Stock and shall not be subject to issuance, and may not thereafter be outstanding, as shares of Series B Preferred Stock.

SECTION 3. CERTAIN STATUTORY MATTERS. (a) The Corporation shall use its best efforts to assure that at all times after the Issuance Date the Corporation would be permitted by Sections 500 and 501 of the CGCL (or any successor or replacement provisions or laws) to pay the Optional Redemption Price of all outstanding shares of Series B Preferred Stock if the Holders were to exercise their rights under Section 11 (whether or not such rights are at the time exercisable); provided, however, that the Corporation's incurrence of Indebtedness permitted under clause (4) of the term "Permitted Indebtedness" shall not constitute a failure to use its best efforts as required by this Section 3.

(b) Within five days after each date on which the Corporation is required to file a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K pursuant to Section 13 or 15(d) under the 1934 Act, the Corporation shall furnish to each Holder a Corporation Certificate (x) setting forth in reasonable detail as of the end of the quarter or year to which such report relates the computations provided for in Section 500 of the CGCL (or any such successor or replacement provisions or laws) and (y) the amount that would have available at the end of such quarter or year, as the case may be, for payment of the Optional Redemption Price of the Series B Preferred Stock if the Holders had exercised their redemption rights under Section 11.

(c) The Corporation shall also provide a Corporation Certificate as to the matters to be contained in the Corporation Certificates described in Section 3(b), with the computations therein to be made as of a date within five Business Days prior to the date the Corporation provides any Corporation Certificate pursuant to this Section 3(c), within five Trading Days after any Holder requests the same by notice to the Corporation which notice is given to the Corporation by such Holder during an Event Period.

SECTION 4. RANK. The shares of Series B Preferred Stock shall rank senior to the Common Stock, the Series A Preferred Stock and any shares of any other series of Preferred Stock or any shares of any other class of preferred stock of the Corporation, now or hereafter issued, as to payment of dividends and distribution of assets upon liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, except as otherwise approved by the Holders of a majority of the outstanding shares of Series B Preferred Stock in accordance with Section 12(b). Nothing in this Section 4 shall prohibit the Corporation from issuing shares of capital stock if such issuance is made in compliance with Section 12(b) and the applicable provisions of the California General Corporation Law.

SECTION 5. DIVIDENDS AND DISTRIBUTIONS. (a) The Holders shall be entitled to receive, when, as, and if declared by the Board of Directors out of funds legally available for such purpose, dividends at the applicable Dividend Rate per annum per share, and no more (except as otherwise provided herein), which shall be fully cumulative, shall accrue without interest (except as otherwise provided herein as to dividends in arrears) from the date of original issuance of each share of Series B Preferred Stock and shall be payable quarterly on each Dividend Payment Date of each year commencing April 1, 2003 (except that if any such date is not a Business Day, then such dividend shall be payable on the next succeeding day that is a Business Day) to holders of record as they appear on the stock books of the Corporation on the applicable Dividend Record Dates for such Dividend Payment Date.

Dividends on the Series B Preferred Stock shall be paid in cash as herein provided. The amount of the dividends payable per share of Series B Preferred Stock for each quarterly dividend period shall be computed by multiplying (x) the applicable Dividend Rate times (y) the Stated Value and then dividing the product so obtained by four. The amount of dividends payable for the initial dividend period and any period shorter than a full quarterly dividend period shall be computed on the basis of a 360-day year of twelve 30-day months. Dividends not paid on a Dividend Payment Date, whether or not such dividends have been declared, will bear Arrearage Interest until paid. No dividends or other distributions, other than dividends payable solely in shares of any Junior Dividend Stock, shall be paid or set apart for payment on any shares of Junior Dividend Stock or Parity Dividend Stock, and no purchase, redemption, or other acquisition shall be made by the Corporation of any shares of Junior Dividend Stock or Parity Dividend Stock unless and until all accrued and unpaid dividends on the Series B Preferred Stock and Arrearage Interest on dividends in arrears at the rate specified herein shall have been paid or declared and set apart for payment.

If at any time any dividend on any Senior Dividend Stock shall be in default, in whole or in part, no dividend shall be paid or declared and set apart for payment on the Series B Preferred Stock unless and until all accrued and unpaid dividends with respect to the Senior Dividend Stock, including the full dividends for the then current dividend period, shall have been paid or declared and set apart for payment, without interest. Without the prior written consent of the Majority Holders, no dividends shall be paid or declared and set apart for payment on any Parity Dividend Stock for any period unless dividends in an equivalent amount per share (based on the relative stated values) shall have been, or contemporaneously are, paid or declared and set apart for such payment on the Series B Preferred Stock. No cash dividends shall be paid or declared and set apart for payment on the Series B Preferred Stock for any period unless all accrued but unpaid dividends have been, or contemporaneously are, paid or declared and set apart for payment on

the Parity Dividend Stock for all dividend periods terminating on or prior to the date of payment of such dividends.

Any references to "distribution" contained in this Section 5 shall not be deemed to include any stock dividend or distributions made in connection with any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary.

(b) If an Additional Dividend Event occurs, then so long as any Additional Dividend Event continues, the Holders shall be entitled to receive, when, as, and if declared by the Board of Directors out of funds legally available for such purpose, dividends at a higher rate per annum, as specified in the definition of the term Dividend Rate, for the period from the occurrence of such Additional Dividend Event to the date no Additional Dividend Event is continuing. The Corporation will notify each Holder of the occurrence of each Additional Dividend Event within six Business Days after the same occurs or becomes known to the Corporation, which notice shall state the nature of such Additional Dividend Event and briefly describe the circumstances giving rise thereto.

(c) Neither the Corporation nor any Subsidiary shall redeem, repurchase or otherwise acquire in any one transaction or series of related transactions any shares of Common Stock (other than in a Tender Offer to which Section 5(d) is applicable), Junior Dividend Stock or Junior Liquidation Stock (other than the repurchase of shares of Series A Preferred Stock that are outstanding on the Issuance Date at a price not in excess of the amount per share set forth in the Letter Agreement) if the number of shares so repurchased, redeemed or otherwise acquired in such transaction or series of related transactions (excluding any Option Share Surrender) is more than either (x) 5% of the number of shares of Common Stock, Junior Dividend Stock or Junior Liquidation Stock, as the case may be, outstanding immediately prior to such transaction or series of related transactions or (y) 1% of the number of shares of Common Stock, Junior Dividend Stock or Junior Liquidation Stock, as the case may be, outstanding immediately prior to such transaction or series of related transactions if such transaction or series of related transactions is with any one Person or group of Persons who are Affiliates of one another, unless (i) if such redemption, repurchase or acquisition occurs prior to the end of the Registration Period, at the time thereof the Registration Statement is effective and available for use by the Holders named as selling stockholders in the Registration Statement, (ii) no Optional Redemption Event shall have occurred with respect to which any Holder shall be entitled to exercise redemption rights under Section 11 or with respect to which any Holder shall have exercised such rights and the Corporation shall not have paid, or deposited in accordance with Section 15(c), Optional Redemption Price and (iii) the Corporation or such Subsidiary offers to purchase for cash from each Holder at the time of such redemption, repurchase or acquisition the same percentage of such Holder's shares of Series B Preferred Stock

as the percentage of the number of outstanding shares of Common Stock, Junior Dividend Stock or Junior Liquidation Stock, as the case may be, to be so redeemed, repurchased or acquired, at a purchase price per share of Series B Preferred Stock equal to the sum of (1) the product obtained by multiplying (A) the Stated Value times (B) the Redemption Percentage plus (2) an amount equal to the accrued and unpaid dividends on such share of Series B Preferred Stock to the date of repurchase pursuant to this Section 5(c) plus an amount equal to the Arrearage Interest, if any, on dividends on such share of Series B Preferred Stock to the date of repurchase pursuant to this Section 5(c).

(d) Neither the Corporation nor any Subsidiary shall (1) make any Tender Offer for outstanding shares of Common Stock, unless the Corporation contemporaneously therewith makes an offer, or (2) enter into an agreement regarding a Tender Offer for outstanding shares of Common Stock by any Person other than the Corporation or any Subsidiary, unless such Person agrees with the Corporation to make an offer, in either such case to each Holder to purchase for cash at the time of purchase in such Tender Offer the same percentage of shares of Series B Preferred Stock held by such Holder as the percentage of outstanding shares of Common Stock offered to be purchased in such Tender Offer at a price per share of Series B Preferred Stock equal to the greater of (i) the sum of (a) the product obtained by multiplying (1) the Stated Value times (2) Redemption Percentage plus (b) an amount equal to the accrued and unpaid dividends on such share of Series B Preferred Stock to the date of purchase pursuant to this Section 5(d) plus (c) an amount equal to the Arrearage Interest, if any, on dividends on such share of Series B Preferred Stock to the date of purchase pursuant to this Section 5(d), and (ii) an amount equal to the product obtained by multiplying (x) the number of shares of Common Stock which would, but for the purchase pursuant to such Tender Offer, be issuable on conversion in accordance with Section 10(a) of one share of Series B Preferred Stock if a Conversion Notice were given by the Holder of such share of Series B Preferred Stock on the date of purchase pursuant to such Tender Offer times (y) the price per share of Common Stock offered in such Tender Offer.

SECTION 6. LIQUIDATION PREFERENCE. In the event of a liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the Holders shall be entitled to receive out of the assets of the Corporation, whether such assets constitute stated capital or surplus of any nature, an amount per share of Series B Preferred Stock equal to the Liquidation Preference, and no more, before any payment shall be made or any assets distributed to the holders of Junior Liquidation Stock; provided, however, that such rights shall accrue to the Holders only in the event that the Corporation's payments with respect to the liquidation preference of the holders of Senior Liquidation Stock that has been issued in compliance with this Certificate of Determination are fully met. After the liquidation preferences of such Senior Liquidation Stock are fully met, the entire

assets of the Corporation available for distribution shall be distributed ratably among the Holders and any Parity Liquidation Stock that has been issued in compliance with this Certificate of Determination in proportion to the respective preferential amounts to which each is entitled (but only to the extent of such preferential amounts). After payment in full of the Liquidation Preference of the shares of the Series B Preferred Stock and the liquidation preference of such Parity Liquidation Stock that has been issued in compliance with this Certificate of Determination, the Holders shall not be entitled to any further participation in any distribution of assets by the Corporation. Neither a consolidation or merger of the Corporation with another Person nor a sale or transfer of all or part of the Corporation's assets to any other Person or Persons in and of itself will be considered a liquidation, dissolution, or winding up of the Corporation.

SECTION 7. MANDATORY REDEMPTION. The Corporation shall not be required to redeem or repurchase shares of Series B Preferred Stock except at the option of the Holders pursuant to Section 11.

SECTION 8. NO SINKING FUND. The shares of Series B Preferred Stock shall not be entitled to the benefits of any sinking fund for the redemption or repurchase of shares of Series B Preferred Stock.

SECTION 9. REDEMPTION AT OPTION OF CORPORATION.

(A) OPTIONAL REDEMPTION. (1) At any time during the Redemption Period, the Corporation shall have the right to redeem on the applicable Redemption Date all or from time to time any part constituting at least 1,000 shares of Series B Preferred Stock (or such lesser number of shares of Series B Preferred Stock as shall at the time be outstanding) of the outstanding shares of Series B Preferred Stock so long as on the date the Corporation gives the Redemption Notice and at all times thereafter through such Redemption Date (v) the Corporation shall be in compliance in all material respects with its obligations to the Holders (including, without limitation, its obligations under the Transaction Documents), (w) if such Redemption Notice is given before the end of the Registration Period, the Registration Statement shall be effective and available for use by the selling stockholders named therein and shall reasonably be expected to remain effective and available for such use for the 30 days following such Redemption Date, (x) no Optional Redemption Event shall have occurred with respect to which any Holder shall be entitled to exercise redemption rights under Section 11 or with respect to which any Holder shall have exercised such rights and the Corporation shall not have paid, or deposited in accordance with Section 15(c), the Optional Redemption Price, (y) no Additional Dividend Event shall have occurred or be continuing and (z) the Corporation has Net Cash, Cash Equivalent and Eligible Investment Balances which are sufficient, after taking into account the Corporation's cash requirements during the period from the date the Redemption

Notice is given to the Redemption Date, to pay the Redemption Price of the shares of Series B Preferred Stock to be redeemed. Any redemption of outstanding shares of Series B Preferred Stock pursuant to this Section 9(a) shall be made at the applicable Redemption Price. In order to exercise its right of redemption under this Section 9(a), the Corporation shall give a Redemption Notice to the Holders not less than 30 or more than 45 Business Days prior to the Redemption Date.

(2) On the Redemption Date (or such later date as a particular Holder shall surrender to the Corporation the certificate(s) for the shares of Series B Preferred Stock redeemed), the Corporation shall pay to or upon the order of each Holder by wire transfer of immediately available funds to such account as shall be specified for such purpose by such Holder an amount equal to the Redemption Price of all of such Holder's shares of Series B Preferred Stock to be redeemed that are outstanding on the Redemption Date. A Holder of such shares of Series B Preferred Stock shall not be entitled to payment of the Redemption Price of such shares of Series B Preferred Stock until such Holder shall have surrendered the certificate(s) for such shares of Series B Preferred Stock to the Corporation or, in the case of the loss, theft or destruction of any such certificate, given indemnity in accordance with Section 15(b).

(3) The Corporation shall not be entitled to give a Redemption Notice with respect to, or to redeem, any shares of Series B Preferred Stock with respect to which a Conversion Notice has been given on a Conversion Date which is on or prior to the date on which a Redemption Notice is given. If a Redemption Notice has been given, thereafter the proceedings for such redemption shall not affect the rights of the Holders to convert in accordance with Section 10 any shares of Series B Preferred Stock called for redemption at any time prior to the Redemption Date for such shares. The number of shares of Series B Preferred Stock to be redeemed from a particular Holder, as stated in the redemption notice given to such Holder, shall be reduced by conversions of shares of Series B Preferred Stock for which such Holder gives a Conversion Notice in accordance with Section 10 at any time on or after the date the Corporation gives such Redemption Notice to such Holder and prior to the applicable Redemption Date. If on the applicable Redemption Date the Corporation fails to pay the Redemption Price of any outstanding shares of Series B Preferred Stock to be redeemed in full to such Holder or to deposit the same with an Eligible Bank in accordance with Section 15(c), such Holder shall be entitled to convert in accordance with Section 10 the shares of Series B Preferred Stock of such Holder so called for redemption at any time after such Redemption Date and prior to the date on which the Corporation pays the Redemption Price in full to such Holder for all shares of Series B Preferred Stock to be redeemed from such Holder (together with any amount due to such Holder pursuant to Section 15(d)) or so deposits the same (together with any amount due to such Holder pursuant to Section 15(d)) and gives notice to such Holder of such deposit and in the case of any such conversion of any share of Series B Preferred

Stock, upon delivery to the converting Holder of the shares of Common Stock issuable upon such conversion the Corporation shall have no further liability in respect of the Redemption Price of such share of Series B Preferred Stock, other than payment of the amount payable pursuant to Section 15(d) in respect of the period from the applicable Redemption Date to the Conversion Date for such conversion.

(4) Any redemption of shares of Series B Preferred Stock pursuant to this Section 9(a) shall be made as nearly as practical pro rata from all Holders based on the number of outstanding shares of Series B Preferred Stock held by each Holder, subject to reduction of the shares of Series B Preferred Stock to be redeemed from any Holder by reason of conversions of shares of Series B Preferred Stock of such Holder between the date the Redemption Notice is given and the Redemption Date.

(B) LIMITATION ON REDEMPTION. (1) Notwithstanding any other provision of this Certificate of Determination or applicable law to the contrary, in case the Corporation shall give a Redemption Notice to the Holders, and on the date the Corporation gives such Redemption Notice or at any time thereafter to and including the applicable Redemption Date, any Holder shall be restricted in converting shares of Series B Preferred Stock by reason of such Holder's Restricted Ownership Percentage (the "Inconvertible Shares"), then the Redemption Date for all Inconvertible Shares held by such Holder, so called for redemption by the Corporation and which such Holder may not convert at any such time during such period from the date the Corporation gives such Redemption Notice to the applicable Redemption Date shall be extended to be the Extended Redemption Date. On the applicable Redemption Date, the Corporation shall deposit in accordance with Section 15(c) the Redemption Price of all shares of Series B Preferred Stock to be held and paid to the Holders whose shares of Series B Preferred Stock are to be redeemed on Extended Redemption Dates for any such shares redeemed on such Extended Redemption Dates. Any shares of Series B Preferred Stock for which there is an Extended Redemption Date shall remain convertible by the Holder in accordance with Section 10 at any time to and including the day prior to the applicable Extended Redemption Date.

(2) Notwithstanding anything to the contrary contained in Section 10(g), solely for the purposes of calculating a Holder's Restricted Ownership Percentage for purposes of this Section 9(b), the shares of Common Stock issuable upon exercise of the Warrants held by such Holder shall not be deemed to be Excluded Shares and shall be taken into account in calculating such Holder's Restricted Ownership Percentage to determine the amount of such Holders Inconvertible Shares.

(C) NO OTHER REDEMPTION AT THE OPTION OF THE CORPORATION. Except as otherwise specifically provided in Section 5(c) of the Subscription Agreement or Section 9(a) and (b), the Corporation shall not have any right to redeem any shares of Series B Preferred Stock at the option of the Corporation.

SECTION 10. CONVERSION.

(A) RIGHT TO CONVERT. Subject to and upon compliance with the provisions of this Section 10, each Holder shall have the right, at such Holder's option, at any time (except that if the Corporation shall have exercised its redemption rights under Section 9 or such Holder shall have exercised redemption rights under Section 11, such conversion right shall terminate with respect to the shares of Series B Preferred Stock to be redeemed at the close of business on the last Trading Day prior to the date the Corporation pays or deposits in accordance with Section 15(c) the applicable Optional Redemption Price or Redemption Price, as the case may be, unless the Corporation shall default in payment due upon redemption of any share of Series B Preferred Stock) to convert the outstanding shares of Series B Preferred Stock held by such Holder, or from time to time any portion of such shares, plus an amount equal to accrued and unpaid dividends on such shares, into that number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) obtained by dividing (1) the sum of (x) the aggregate Stated Value of all shares of Series B Preferred Stock being converted by such Holder on the same Conversion Date plus (y) accrued and unpaid dividends on the shares of Series B Preferred Stock being converted to the applicable Conversion Date plus (z) accrued and unpaid Arrearage Interest, if any, on dividends on the shares of Series B Preferred Stock being converted to the applicable Conversion Date by (2) the Conversion Price in effect on the applicable Conversion Date, by giving a Conversion Notice in the manner provided in Section 10(b); provided, however, that, if at any time any share of Series B Preferred Stock is converted in whole or in part pursuant to this Section 10(a), the Corporation does not have available for issuance upon such conversion as authorized and unissued shares or in its treasury at least the number of shares of Common Stock required to be issued pursuant hereto, then, at the election of such Holder made by notice from such Holder to the Corporation, such share of Series B Convertible Preferred Stock, to the extent that sufficient shares of Common Stock are not then available for issuance upon conversion, shall be converted into the right to receive from the Corporation, in lieu of the shares of Common Stock into which such share of Series B Convertible Preferred Stock would otherwise be converted and which the Corporation is unable to issue, payment in an amount equal to the product obtained by multiplying (x) the number of shares of Common Stock which the Corporation is unable to issue times (y) the arithmetic average of the daily VWAP of the Common Stock during the five consecutive Trading Days immediately prior to the applicable Conversion Date. Any such payment shall, for all purposes of this Certificate of Determination, be deemed to be satisfaction in full of the Corporation's obligation to

issue upon such conversion shares of Common Stock that are not then available for issuance upon such conversion. A Holder is not entitled to any rights of a holder of Common Stock until such Holder has converted one or more shares of Series B Preferred Stock to Common Stock, and only to the extent any such shares of Series B Preferred Stock are deemed to have been converted to Common Stock under this Section 10. For purposes of Sections 10(e) and 10(f), whenever a provision references the shares of Common Stock into which any share of Series B Preferred Stock is convertible or the shares of Common Stock issuable upon conversion of any share of Series B Preferred Stock or words of similar import, any determination required by such provision shall be made as if a sufficient number of shares of Common Stock were then available for issuance upon conversion in full of all outstanding shares of Series B Preferred Stock.

(B) EXERCISE OF CONVERSION PRIVILEGE; ISSUANCE OF COMMON STOCK ON CONVERSION; NO ADJUSTMENT FOR INTEREST OR DIVIDENDS. (1) In order to exercise the conversion privilege with respect to the Series B Preferred Stock, a Holder shall give a Conversion Notice (or such other notice which is acceptable to the Corporation) to the Corporation and the Conversion Agent or to the office or agency designated by the Corporation for such purpose by notice to the Holders. A Conversion Notice may be given by telephone line facsimile transmission to the numbers set forth on the form of Conversion Notice.

(2) As promptly as practicable, but in no event later than three Trading Days, after a Conversion Notice is given, the Corporation shall issue and shall deliver to the Holder giving such Conversion Notice or such Holder's designee the number of full shares of Common Stock issuable upon such conversion of shares of Series B Preferred Stock in accordance with the provisions of this Section 10 and make payment by wire transfer of immediately available funds to such account as shall be specified from time to time by such Holder or deliver a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, as provided in Section 10(b)(6) and, if applicable, any cash payment required pursuant to the proviso to the first sentence of Section 10(a) (which payment, if any, shall be paid no later than five Trading Days after the applicable Conversion Date).

(3) Each conversion of shares of Series B Preferred Stock shall be deemed to have been effected on the applicable Conversion Date, and the Person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on such Conversion Date the holder of record of the shares represented thereby; provided, however, that if a Conversion Date is a date on which the stock transfer books of the Corporation shall be closed such conversion shall constitute the Person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion

shall be at the Conversion Price in effect on the applicable Conversion Date. Upon conversion of any shares of Series B Preferred Stock, the accrued and unpaid dividends on such shares of Series B Preferred Stock to (but excluding) the applicable Conversion Date shall be deemed to be paid to the Holder through receipt of such number of shares of Common Stock issued upon conversion of such shares of Series B Preferred Stock as shall have an aggregate Current Fair Market Value on the Trading Day immediately preceding such Conversion Date equal to the amount of such accrued and unpaid dividends.

(4) A Conversion Notice shall be deemed for all purposes to be in proper form except in the case of manifest error, in which case such Conversion Notice shall be so deemed in proper form unless the Corporation notifies the Holder who gives a Conversion Notice by telephone line facsimile transmission within two Trading Days after such Conversion Notice has been given (which notice from the Corporation shall specify all defects in the Conversion Notice) and any Conversion Notice containing any such defect shall nonetheless be effective on the date given if such Holder promptly undertakes to correct all such defects. No such claim of error shall limit or delay performance of the Corporation's obligation to issue upon such conversion the number of shares of Common Stock which are not in dispute. The Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock or other securities or property on conversion of shares of Series B Preferred Stock in a name other than that of such Holder, and the Corporation shall not be required to issue or deliver any such shares or other securities or property unless and until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of any such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The converting Holder shall be responsible for the amount of any withholding tax payable in connection with any conversion of shares of Series B Preferred Stock.

(5) (A) If a Holder shall have given a Conversion Notice in accordance with the terms of this Certificate of Determination, the Corporation's obligation to issue and deliver the certificates for Common Stock shall be absolute and unconditional, irrespective of any action or inaction by such Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, any failure or delay in the enforcement of any other obligation of the Corporation to any Holder, or any setoff, counterclaim, recoupement, limitation or termination, or any breach or alleged breach by any Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by any Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with such conversion; provided, however, that nothing herein shall limit or prejudice the right of the Corporation to pursue any such claim in any other manner permitted by

applicable law. The occurrence of an event which requires an adjustment of the Conversion Price as contemplated by Section 10(c) shall in no way restrict or delay the right of any Holder to receive certificates for Common Stock upon conversion of shares of Series B Preferred Stock and the Corporation shall use its commercially reasonable best efforts to implement such adjustment on terms reasonably acceptable to the Majority Holders within two Trading Days after such occurrence.

(B) If the Corporation fails to issue and deliver the shares of Common Stock to a converting Holder in connection with a particular conversion of shares of Series B Preferred Stock within five Trading Days after such Holder gives the Conversion Notice for such conversion, in addition to any other liabilities the Corporation may have hereunder and under applicable law (i) the Corporation shall pay or reimburse such Holder on demand for all out-of-pocket expenses, including, without limitation, reasonable fees and expenses of legal counsel, incurred by the Holder as a result of such failure, (ii) if as a result of such failure such Holder shall suffer any direct damages or liabilities from such failure (including, without limitation, margin interest and the cost of purchasing securities to cover a sale (whether by such Holder or such Holder's securities broker) or borrowing of shares of Common Stock by such Holder for purposes of settling any trade involving a sale of shares of Common Stock made by such Holder during the period beginning on the Issuance Date and ending on the date the Corporation delivers or causes to be delivered to such Holder such shares of Common Stock, then the Corporation shall upon demand of such Holder pay to the Holder an amount equal to the actual direct, out-of-pocket damages and liabilities suffered by such Holder by reason thereof which such Holder documents to the reasonable satisfaction of the Corporation, and (iii) the Holder may by written notice (which may be given by mail, courier, personal service or telephone line facsimile transmission) or oral notice (promptly confirmed in writing), given at any time prior to delivery to such Holder of the shares of Common Stock issuable in connection with such exercise of the Holder's conversion right, rescind such exercise and the Conversion Notice relating thereto, in which case such Holder shall thereafter be entitled to convert, in accordance with this Section 10 that portion of such shares of Series B Preferred Stock as to which such exercise is so rescinded. Notwithstanding the foregoing, the Corporation shall not be liable to such Holder under clause (ii) of the immediately preceding sentence to the extent the failure of the Corporation to deliver or to cause to be delivered such shares of Common Stock results from fire, flood, storm, earthquake, shipwreck, strike, war, acts of terrorism, crash involving facilities of a common carrier, acts of God, or any similar event outside the control of the Corporation (it being understood that the action or failure to act of the Conversion Agent shall not be deemed an event outside the control of the Corporation except to the extent resulting from fire, flood, storm, earthquake, shipwreck, strike, war, acts of terrorism, crash involving facilities of a common carrier, acts of God, the bankruptcy, liquidation or reorganization of the Conversion Agent under any bankruptcy, insolvency or other similar law or any similar event outside the control of the Conversion Agent). A

converting Holder shall notify the Corporation in writing (or by telephone conversation, confirmed in writing) as promptly as practicable following the third Trading Day after such Holder gives a Conversion Notice if such Holder becomes aware that such shares of Common Stock so issuable have not been received as provided herein, but any failure so to give such notice shall not affect the Holder's rights under this Certificate of Determination or otherwise.

(6) No fractional shares of Common Stock shall be issued upon conversion of any shares of Series B Preferred Stock but, in lieu of any fraction of a share of Common Stock which would otherwise be issuable in respect of such conversion, the Corporation shall pay lawful money of the United States of America for such fractional share, based on a value of one share of Common Stock being equal to the Market Price of the Common Stock on the applicable Conversion Date.

(C) ADJUSTMENT OF CONVERSION PRICE. The Conversion Price shall be adjusted from time to time by the Corporation as follows:

(1) Adjustments for Certain Dividends or Distributions in Common Stock. In case the Corporation shall on or after the Issuance Date pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following such Record Date. If any dividend or distribution of the type described in this Section 10(c)(1) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(2) Weighted Adjustments for Issuance of Certain Rights or Warrants. In case the Corporation shall on or after the Issuance Date issue rights or warrants (other than any rights or warrants referred to in Section 10(c)(4)) to all holders of its outstanding shares of Common Stock entitling them (for a period expiring within 45 days after the date fixed for the determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction of which the

numerator shall be the number of shares of Common Stock outstanding at the close of business on the applicable Record Date plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such Current Market Price, and the denominator shall be the number of shares of Common Stock outstanding at the close of business on such Record Date plus the total number of additional shares of Common Stock so offered for subscription or purchase. Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants then, upon the expiration or termination of such rights or warrants, the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such Record Date had not been fixed. In determining whether any rights or warrants entitle the holder to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors whose determination shall be conclusive and set forth in a Board Resolution, a copy of which, certified by the Secretary or an Assistant Secretary of the Corporation, shall be given to each Holder by the Corporation promptly after such determination.

(3) Adjustments for Certain Subdivisions of the Common Stock. In case the outstanding shares of Common Stock shall on or after the Issuance Date be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the earlier of the day following the day upon which such subdivision becomes effective and the day on which the ex Date for trading of the Common Stock occurs with respect to such subdivision shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the earlier of the day following the day upon which such combination becomes effective and the day on which the ex Date for trading of the Common Stock with respect to such combination occurs shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the earlier of the day following the day upon which such subdivision or combination becomes effective and the day on which the ex Date for trading of the Common Stock occurs with respect to such subdivision or combination.

(4) Adjustments for Certain Dividends and Distributions.

In case the Corporation shall on or after the Issuance Date, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Corporation (other than any dividends or distributions to which Section 10(c)(1) applies) or evidences of its indebtedness, cash or other assets (including securities, but excluding any rights or warrants referred to in Section 10(c)(2) and dividends and distributions paid exclusively in cash and excluding any capital stock, evidences of indebtedness, cash or assets distributed upon a merger or consolidation to which Section 10(d) applies) (the foregoing hereinafter in this Section 10(c)(4) called the "Securities"), then, in each such case, subject to the second paragraph of this Section 10(c)(4), the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction of which the numerator shall be the Current Market Price on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution, a copy of which, certified by the Secretary or an Assistant Secretary of the Corporation, shall be given to each Holder by the Corporation promptly after such determination) on such date of the portion of the Securities so distributed applicable to one share of Common Stock and the denominator shall be such Current Market Price, such reduction to become effective immediately prior to the opening of business on the day following such Record Date; provided, however, that if the then fair market value (as so determined) of the portion of the Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holders shall have the right to receive upon conversion of shares of Series B Preferred Stock the amount of Securities such Holder would have received had such Holder converted such Holder's shares of Series B Preferred Stock immediately prior to such Record Date. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 10(c)(4) by reference to the actual or when issued trading market for any Securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price to the extent possible.

Rights or warrants distributed by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Corporation's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a "Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall not be deemed to have been distributed for purposes of this

Section 10(c) (and no adjustment to the Conversion Price under this Section 10(c) will be required) until the occurrence of the earliest Trigger Event. If any such rights or warrants, including any such existing rights or warrants distributed prior to the Issuance Date are subject to Trigger Events, upon the satisfaction of each of which such rights or warrants shall become exercisable to purchase different securities, evidences of indebtedness or other assets, then the occurrence of each such Trigger Event shall be deemed to be such date of issuance and record date with respect to new rights or warrants (and a termination or expiration of the existing rights or warrants without exercise by the holder thereof) (so that, by way of illustration and not limitation, the dates of issuance of any such rights shall be deemed to be the dates on which such rights become exercisable to purchase capital stock of the Corporation, and not the date on which such rights may be issued, or may become evidenced by separate certificates, if such rights are not then so exercisable). In addition, in the event of any distribution of rights or warrants, or any Trigger Event with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 10(c) was made (1) in the case of any such rights or warrants all of which shall have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Price shall be readjusted as if such rights and warrants had not been issued.

For purposes of this Section 10(c)(4) and Sections 10(c)(1) and (2), any dividend or distribution to which this Section 10(c)(4) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock to which Section 10(c)(2) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets, shares of capital stock, rights or warrants other than such shares of Common Stock or rights or warrants to which Section 10(c)(2) applies (and any Conversion Price reduction required by this Section 10(c)(4) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Price reduction required by Sections 10(c)(1) and (2) with respect to such dividend or distribution shall then be made), except (A) the Record Date of such dividend or distribution shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "Record Date fixed for such determination" and "Record Date" within the meaning of Section 10(c)(1) and as "the date fixed for the determination of

stockholders entitled to receive such rights or warrants", "the Record Date fixed for the determination of the stockholders entitled to receive such rights or warrants" and "such Record Date" within the meaning of Section 10(c)(2) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the Record Date fixed for such determination" within the meaning of Section 10(c)(1).

(5) Adjustments for Certain Cash Dividends. In case the Corporation shall on or after the Issuance Date, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a merger or consolidation to which Section 10(d) applies or as part of a distribution referred to in Section 10(c)(4)) in an aggregate amount that, combined with (1) the aggregate amount of any other such distributions to all holders of its Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 10(c)(5) has been made, and (2) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution, a copy of which, certified by the Secretary or an Assistant Secretary of the Corporation, shall be given to each Holder by the Corporation promptly after such determination) of consideration payable in respect of any Tender Offer by the Corporation or any Subsidiary for all or any portion of the Common Stock concluded within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to Section 10(c)(6) has been made, exceeds 10% of the product of (x) the Current Market Price on the Record Date with respect to such distribution times (y) the number of shares of Common Stock outstanding on such date, then, and in each such case, immediately after the close of business on such date, unless the Corporation elects to reserve such cash for distribution to the Holders upon the conversion of shares of Series B Preferred Stock (and shall have made adequate provision) so that the Holders will receive upon such conversion, in addition to the shares of Common Stock to which the Holders are entitled, the amount of cash which the Holders would have received if the Holders had, immediately prior to the Record Date for such distribution of cash, converted their shares of Series B Preferred Stock into Common Stock, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction (i) the numerator of which shall be equal to the Current Market Price on such Record Date less an amount equal to the quotient of (x) the excess of such combined amount over such 10% and (y) the number of shares of Common Stock outstanding on such Record Date and (ii) the denominator of which shall be equal to the Current Market Price on such Record Date; provided, however, that in the event the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on such Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that the Holders shall

have the right to receive upon conversion of shares of Series B Preferred Stock the amount of cash the Holders would have received had the Holders converted all of their shares of Series B Preferred Stock immediately prior to such Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(6) Adjustments for Certain Tender Offers. In case a Tender Offer on or after the Issuance Date made by the Corporation or any Subsidiary for all or any portion of the Common Stock shall expire and such Tender Offer (as amended upon the expiration thereof) shall require the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the Tender Offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution, a copy of which, certified by the Secretary or an Assistant Secretary of the Corporation, shall be given to each Holder by the Corporation promptly after such determination) that combined together with (1) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution, a copy of which, certified by the Secretary or an Assistant Secretary of the Corporation, shall be given to each Holder by the Corporation promptly after such determination), as of the expiration of such Tender Offer, of consideration payable in respect of any other Tender Offers, by the Corporation or any Subsidiary for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such Tender Offer and in respect of which no adjustment pursuant to this Section 10(c)(6) has been made and (2) the aggregate amount of any distributions to all holders of the Corporation's Common Stock made exclusively in cash within 12 months preceding the expiration of such Tender Offer and in respect of which no adjustment pursuant to Section 10(c)(5) has been made, exceeds 10% of the product of the Current Market Price as of the last time (the "Expiration Time") tenders could have been made pursuant to such Tender Offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to close of business on the date of the Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the Tender Offer) of all shares validly tendered and not withdrawn as of the

Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction (if any) to become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Corporation is obligated to purchase shares pursuant to any such Tender Offer, but the Corporation is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such Tender Offer had not been made. If the application of this Section 10(c)(6) to any Tender Offer would result in an increase in the Conversion Price, no adjustment shall be made for such Tender Offer under this Section 10(c)(6).

(7) Reductions in Conversion Price. The Corporation may make such reductions in the Conversion Price, in addition to those required by Sections 10(c)(1), (2), (3), (4), (5), or (6) as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(8) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price; provided, however, that any adjustments which by reason of this Section 10(c)(8) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 10 shall be made by the Corporation and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value of the Common Stock or from par value to no par value or from no par value to par value.

(9) Whenever the Conversion Price is adjusted as herein provided, the Corporation shall promptly, but in no event later than ten Business Days thereafter, give notice to the Holders setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, but which statement shall not include any information which would be material non-public information for purposes of the 1934 Act. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(10) In any case in which this Section 10(c) provides that an adjustment shall become effective immediately after a Record Date for an event, the Corporation may defer until the occurrence of such event (i) issuing to the Holders in connection with any conversion of shares of Series B Preferred Stock after such

Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such Holders any amount in cash in lieu of any fraction pursuant to Section 10(b)(6).

(11) For purposes of this Section 10(c), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Corporation will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Corporation other than dividends or distributions payable only in shares of Common Stock.

(D) EFFECT OF RECLASSIFICATION, CONSOLIDATION, MERGER OR SALE. (1) If any of the following events occur, namely (A) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (B) any consolidation, merger or combination of the Corporation with another corporation or other entity as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (C) any sale or conveyance of the properties and assets of the Corporation as, or substantially as, an entirety to any other corporation or other entity as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Corporation or the successor or purchasing corporation or other entity, as the case may be, shall prior to such transaction:

(x) amend its articles of incorporation or comparable instrument to provide that the shares of Series B Preferred Stock shall be convertible into the kind and amount of shares of stock and other securities or property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by the holder of a number of shares of Common Stock issuable upon conversion of shares of Series B Preferred Stock immediately prior to such reclassification, change, consolidation, merger, combination, sale or conveyance assuming such holder of Common Stock did not exercise such holder's rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance (provided that, if the kind or amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("non-electing share"), then for the

purposes of this Section 10(d) the kind and amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance for each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares);

(y) in the case of any such successor or purchasing Person, such Person shall execute with each Holder a written agreement providing that upon such consolidation, merger, combination, sale or conveyance such successor or purchasing Person shall be jointly and severally liable with the Corporation for the performance of all of the Corporation 's obligations under this Certificate of Determination and the other Transaction Documents; and

(z) if registration or qualification is required under the 1933 Act or applicable state law for the public resale by the Holder of such shares of stock and other securities so issuable upon conversion of shares of Series B Preferred Stock, such registration or qualification shall be completed prior to such reclassification, change, consolidation, merger, combination or sale.

Such amendment shall provide for, among other things, adjustments in the conversion rights of the Holders which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 10. If, in the case of any such reclassification, change, consolidation, merger, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of shares of Common Stock includes shares of stock or other securities and assets of a corporation or other entity other than the successor or purchasing corporation or other entity, as the case may be, in such reclassification, change, consolidation, merger, combination, sale or conveyance, then such other corporation or other entity shall also so amend its certificate of incorporation or comparable instrument and enter into such written agreement with each Holder. The certificate(s) of incorporation or comparable instruments so amended and such written agreement(s) of each such corporation or other entity shall also contain such additional provisions to protect the interests of the Holders as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the redemption rights set forth in Section 11.

(2) The provisions of this Section 10(d) shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances.

(3) If this Section 10(d) applies to any event or occurrence, Section 10(c) shall not apply.

(E) RESERVATION OF SHARES; SHARES TO BE FULLY PAID;
LISTING OF COMMON STOCK.

(1) The Corporation shall reserve and keep available, free from preemptive rights, out of its authorized but unissued shares of Common Stock or shares of Common Stock held in treasury, solely for issuance upon conversion of the Series B Preferred Stock, sufficient shares to provide for the conversion of the Series B Preferred Stock from time to time as shares of Series B Preferred Stock are converted.

(2) Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Series B Preferred Stock, the Corporation shall take all corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue shares of such Common Stock at such adjusted Conversion Price.

(3) The Corporation covenants that all shares of Common Stock issued upon conversion of the Series B Preferred Stock will be fully paid and non-assessable by the Corporation and free from all taxes, Liens and charges with respect to the issue thereof.

(4) The Corporation covenants that if any shares of Common Stock to be provided for the purpose of conversion of the Series B Preferred Stock require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Corporation will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be.

(5) The Corporation covenants that, so long as the Common Stock shall be listed on the AMEX, the NYSE or any other national securities exchange or Nasdaq, the Corporation shall obtain and, so long as the Common Stock shall be so listed on such market or exchange, maintain approval for listing thereon of all Common Stock issuable upon conversion of the Series B Preferred Stock.

(F) NOTICE TO HOLDERS PRIOR TO CERTAIN ACTIONS. In case on or after the Issuance Date:

(1) the Corporation shall declare a dividend (or any other distribution) on its Common Stock (other than in cash out of retained earnings); or

(2) the Corporation shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(3) the Board of Directors shall authorize any reclassification of the Common Stock (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or any consolidation or merger or other business combination transaction to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or the sale or transfer of all or substantially all of the assets of the Corporation; or

(4) there shall be pending the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation;

the Corporation shall give the Holders as promptly as possible but in any event at least ten Trading Days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, other business combination transaction, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record who shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, other business combination transaction, sale, transfer, dissolution, liquidation or winding-up shall be determined. Such notice shall not include any information which would be material non-public information for purposes of the 1934 Act. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. In the case of any such action of which the Corporation gives such notice to the Holders or is required to give such notice to the Holders, the Holders shall be entitled to give a Conversion Notice which is contingent on the completion of such action.

(G) 9.9% LIMITATION.

(1) Notwithstanding anything to the contrary contained herein, the number of shares of Common Stock that may be acquired at any time by a Holder upon conversion of shares of Series B Preferred Stock shall not exceed a number that, when added to the total number of shares of Common Stock deemed beneficially owned by such Holder (other than by virtue of the ownership of securities or rights to acquire securities (including the Warrants) that have limitations on the holder's right to convert, exercise or purchase similar to the limitation set forth herein (the "Excluded Shares")), together with all shares of Common Stock beneficially owned at such time (other than by virtue of the

ownership of Excluded Shares) by Persons whose beneficial ownership of Common Stock would be aggregated with the beneficial ownership by such Holder for purposes of determining whether a group exists or for purposes of determining the Holder's beneficial ownership (the "Aggregation Parties"), in either such case for purposes of Section 13(d) of the 1934 Act and Regulation 13D-G thereunder (including, without limitation, as the same is made applicable to Section 16 of the 1934 Act and the rules promulgated thereunder), would result in beneficial ownership by such Holder or such group of more than 9.9% of the shares of Common Stock for purposes of Section 13(d) or Section 16 of the 1934 Act and the rules promulgated thereunder (as the same may be modified by a particular Holder as provided herein, the "Restricted Ownership Percentage"). A Holder shall have the right (x) at any time and from time to time to reduce its Restricted Ownership Percentage immediately upon notice to the Corporation in the event and only to the extent that Section 16 of the 1934 Act or the rules promulgated thereunder (or any successor statute or rules) is changed to reduce the beneficial ownership percentage threshold thereunder to a percentage less than 9.9% and (y) at any time and from time to time, to increase its Restricted Ownership Percentage unless such Holder shall have, by written instrument delivered to the Company, irrevocably waived its rights to so increase its Restricted Ownership Percentage. If at any time the limits in this Section 10(g) make the shares of Series B Preferred Stock held by any Holder inconvertible in whole or in part, the Corporation shall not by reason thereof be relieved of its obligation to issue shares of Common Stock at any time or from time to time thereafter upon conversion of such shares of Series B Preferred Stock as and when shares of Common Stock may be issued in compliance with such restrictions.

(2) For purposes of this Section 10(g), in determining the number of outstanding shares of Common Stock at any time a Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Corporation's then most recent Form 10-Q, Form 10-K or other public filing with the SEC, as the case may be, (2) a public announcement by the Corporation that is later than any such filing referred to in the preceding clause (1) or (3) any other notice by the Corporation or its transfer agent setting forth the number shares of Common Stock outstanding and knowledge the Holder may have about the number of shares of Common Stock issued upon conversions or exercises of Series B Preferred Stock or other Common Stock Equivalents by any Person, including the such Holder, which are not reflected in the information referred to in the preceding clauses (1) through (3). Upon the written request of any Holder, the Corporation shall within three Business Days confirm in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of Common Stock Equivalents, including the shares of Series B Preferred Stock and the Warrants, by the Holder or its affiliates, in each such case subsequent to, the date as of which such number of outstanding shares of Common Stock was reported.

SECTION 11. REDEMPTION UPON OPTIONAL REDEMPTION EVENT.

(A) REDEMPTION RIGHT UPON OPTIONAL REDEMPTION EVENT. If an Optional Redemption Event shall occur at any time when any shares of Series B Preferred Stock are outstanding, then, in addition to any other rights of the Holders, each Holder shall have the right, at such Holder's option, to require the Corporation to redeem all of such Holder's shares of Series B Preferred Stock, or any portion thereof, on the date that is five Business Days after the date such Holder gives a Holder Notice with respect to such Optional Redemption Event. Each share of Series B Preferred Stock required to be so redeemed shall be redeemed at a price equal to the Optional Redemption Price.

(B) NOTICES; METHOD OF EXERCISING OPTIONAL REDEMPTION RIGHTS, ETC. (1) On or before the sixth Business Day after the occurrence of an Optional Redemption Event, the Corporation shall give to each Holder a Corporation Notice of the occurrence of such Optional Redemption Event and of the redemption right set forth herein arising as a result thereof. The Corporation Notice shall set forth:

(i) the date by which the optional redemption right must be exercised, and

(ii) a description of the procedure (set forth below) which each such Holder must follow to exercise such Holder's optional redemption right,

and shall be accompanied by a Corporation Certificate to the effect set forth in Section 3(b), with the information and computation set forth therein being provided as of a date not more than five Business Days prior to the date the Corporation gives such Corporation Notice. No failure of the Corporation to give a Corporation Notice or defect therein shall limit the right of any Holder to exercise the optional redemption right or affect the validity of the proceedings for the redemption of such Holder's shares of Series B Preferred Stock.

(2) To exercise its optional redemption right, a Holder shall deliver to the Corporation on or before the 30th day after a Corporation Notice is given to such Holder (or if no Corporation Notice has been given to such Holder, within 40 days after such Holder first learns of the Optional Redemption Event) a Holder Notice to the Corporation setting forth the name of such Holder and the number of such Holder's shares of Series B Preferred Stock to be redeemed. A Holder Notice may be revoked in whole or in part by the Holder who has given such Holder Notice by giving notice of such revocation to the Corporation at any time prior to the time the Corporation pays the applicable Optional Redemption Price to such Holder.

(3) If a Holder shall have given a Holder Notice, then on the

applicable Optional Redemption Date (or such later date as such Holder surrenders such Holder's certificates for the shares of Series B Preferred Stock redeemed) the Corporation shall make payment in immediately available funds of the applicable Optional Redemption Price to such account as specified by such Holder in writing to the Corporation at least one Business Day prior to the applicable Optional Redemption Date. If all of the shares of Series B Preferred Stock evidenced by a particular certificate are to be redeemed under this Section 11(b), the Holder of such shares of Series B Preferred Stock shall not be entitled to payment of the Optional Redemption Price of such shares of Series B Preferred Stock until such Holder shall have surrendered the certificate(s) for such shares of Series B Preferred Stock to the Corporation or, in the case of the loss, theft or destruction of any such certificate, given indemnity in accordance with Section 15(b).

(C) OTHER. (1) A Holder Notice given by a Holder shall be deemed for all purposes to be in proper form unless the Corporation notifies such Holder in writing within three Business Days after such Holder Notice has been given (which notice shall specify all defects in such Holder Notice), and any Holder Notice containing any such defect shall nonetheless be effective on the date given if such Holder promptly undertakes to correct all such defects. Notwithstanding the absence of any such undertaking from such Holder, no such claim of error shall limit or delay performance of the Corporation's obligation to redeem all shares of Series B Preferred Stock not in dispute.

(2) If the Corporation fails to redeem on the applicable redemption date of any share of Series B Preferred Stock as to which the redemption right of a Holder has been properly exercised pursuant to this Section 11, then the Optional Redemption Price for such share shall bear interest to the extent not prohibited by applicable law from the applicable redemption date until paid at the Default Rate.

(3) If on or before a particular Optional Redemption Date the Corporation shall have failed to pay in full the Optional Redemption Price for all shares of Series B Preferred Stock to be redeemed to the Holder entitled thereto or to deposit the same with an Eligible Bank in accordance with Section 15(c), then without in any way relieving the Corporation of its obligation to pay such amount in accordance herewith (except to the extent expressly provided in this Section 11(d)(3)), the Holder of any such share of Series B Preferred Stock shall continue to have the right to convert such share of Series B Preferred Stock into Common Stock in accordance with Section 10(a) at any time prior to the date on which the Corporation pays the Optional Redemption Price of such share of Series B Preferred Stock to such Holder (together with any amount due to such holder pursuant to Section 15(d)) or so deposits the same (together with any amount due to such Holder pursuant to Section 15(d)) and gives notice to such Holder of such deposit; provided, however, that the shares of Common Stock received by such Holder upon any such conversion in certain circumstances may be subject to restrictions on resale by such

Holder arising under applicable securities laws to the extent not registered for resale by such Holder pursuant to the Registration Statement. If a Holder converts all or any portion of such Holder's shares of Series B Preferred Stock as permitted by this Section 11(d)(3), the amount of the Optional Redemption Price due to such Holder with respect to the number of shares of Series B Preferred Stock so converted shall be reduced by \$1,000 for each share of Series B Preferred Stock so converted.

(4) If a portion of the shares of Series B Preferred Stock represented by a particular certificate are to be redeemed, upon surrender of such certificate to the Corporation in accordance with the terms of this Section 11, the Corporation shall execute and deliver to the Holder of such certificate, without service charge, a new certificate of certificates, in such denomination or denominations as requested by such Holder.

SECTION 12. VOTING RIGHTS; CERTAIN RESTRICTIONS AND COVENANTS.

(A) VOTING RIGHTS. The Holder of each share of Series B Preferred Stock shall be entitled to a number of votes per share at any time equal to (1) in any case in which the Series B Preferred Stock votes together with the Common Stock or any other class or series of stock of the Corporation, the product of (x) 0.875 times the number of shares of Common Stock issuable upon conversion of such share of Series B Preferred Stock at such time (determined without regard to the shares of Common Stock so issuable upon such conversion in respect of accrued and unpaid dividends or accrued and unpaid Arrearage Interest on such share of Series B Preferred Stock) and (2) in any case not covered by the immediately preceding clause (1), one vote per share of Series B Preferred Stock. Each Holder shall be entitled to notice of any shareholders' meeting in accordance with the bylaws of the Corporation and shall vote with holders of Common Stock upon the election of directors and upon any other matter submitted to a vote of shareholders, except those matters required by law to be submitted to a vote of holders of Preferred Stock or Series B Preferred Stock voting separately as a class or series, and except as provided in this Certificate of Determination. Fractional votes shall not, however, be permitted.

(B) CERTIFICATE OF INCORPORATION; CERTAIN STOCK. The affirmative vote or written consent of the Majority Holders, voting separately as a class, will be required for (1) any amendment, alteration, or repeal, whether by merger or consolidation or otherwise, of the Corporation's Articles of Incorporation if the amendment, alteration, or repeal materially and adversely affects the powers, preferences, or special rights of the Series B Preferred Stock, or (2) the creation or issuance of any Senior Dividend Stock, Senior Liquidation Stock, Parity Dividend Stock or Parity Liquidation Stock; provided, however, that any increase in the authorized Preferred Stock of the Corporation or the creation and issuance of any

stock which is both Junior Dividend Stock and Junior Liquidation Stock shall not be deemed to affect materially and adversely such powers, preferences, or special rights and any such increase or creation and issuance may be made without any such vote by the Holders except as otherwise required by law; and provided further, however, that no such amendment, alteration or repeal shall (i) reduce the Optional Redemption Price, the Redemption Price or the amount payable to a Holder pursuant to Section 5(a) or 5(b), (ii) change the definition of Majority Holders, (iii) change the method of calculating the Conversion Price in a manner adverse to the Holders or reduce the number of shares of Common Stock issuable upon any conversion of shares of Series B Preferred Stock (other than any reduction in the number of shares of Common Stock so issuable pursuant to an amendment of the Articles of Incorporation which effects a combination of the outstanding shares of Common Stock and results in an adjustment in the Conversion Price pursuant to Section 10(c)(3)), or (iv) amend, modify or repeal any provision of this Section 12(b), unless in each such case referred to in the preceding clauses (i) through (iv) such amendment, modification or repeal has been approved by the affirmative vote or written consent of all Holders, voting separately as a class.

(C) REPURCHASES OF SERIES B PREFERRED STOCK. The Corporation shall not repurchase or otherwise acquire any shares of Series B Preferred Stock (other than pursuant to Section 5(c) of the Subscription Agreement or Section 9(a) or Section 11) unless the Corporation offers to repurchase or otherwise acquire simultaneously a pro rata portion (based on the ratio of the number of shares of Series B Preferred Stock held by such Holder to the total number of shares of Series B Preferred Stock outstanding) of each Holder's shares of Series B Preferred Stock for cash at the same price per share.

(D) OTHER. So long as any shares of Series B Preferred Stock are outstanding the Corporation shall comply with the following unless otherwise agreed in writing by the Majority Holders.

(1) LIMITATION ON INDEBTEDNESS. The Corporation will not itself, and will not permit any Subsidiary to, create, assume, incur, in any manner become liable in respect of, including, without limitation, by reason of any business combination transaction, or suffer to exist (all of which are referred to herein as "incur" or "incurring"), any Indebtedness other than Permitted Indebtedness.

(2) NET CASH, CASH EQUIVALENT AND ELIGIBLE INVESTMENT BALANCES CERTIFICATE. Within 90 days after the end of each fiscal year of the Corporation but in no event later than the earlier of (x) the date on which the Company is required to file with the SEC an annual report on Form 10-K under the 1934 Act and (y) the first date in the fiscal year on which the Company issues a press release or any other public statement containing information on the financial statements of the Company, the Corporation shall furnish to each Holder a

Corporation Certificate setting forth (1) the amount of the Corporation's Net Cash, Cash Equivalent and Eligible Investment Balances, (2) the number of outstanding shares of Series B Preferred Stock and (3) the amount that is 50% of the aggregate Stated Value of all outstanding shares of Series B Preferred Stock, in each case as of the end of such calendar quarter, but which Corporation Certificate shall not contain any information which would be material, non-public information concerning the Corporation for the purposes of the 1934 Act.

(3) PAYMENT OF OBLIGATIONS. The Corporation will pay and discharge, and will cause each Subsidiary to pay and discharge, all their respective material obligations and liabilities, including, without limitation, tax liabilities, in the ordinary course consistent with the Corporation's practices prior to the filing of this Certificate of Determination with the Secretary of State of the State of California, except where the same may be contested in good faith by appropriate proceedings.

(4) MAINTENANCE OF PROPERTY; INSURANCE. (A) The Corporation will keep, and will cause each Subsidiary to keep, all property which, in the reasonable business judgment of the Corporation, is useful and necessary in their respective businesses in good working order and condition, ordinary wear and tear excepted.

(B) The Corporation will maintain, and will cause each Subsidiary to maintain, with financially sound and responsible insurance companies, insurance in at least such amounts and against such risks as are usually insured against in the same geographic region by companies of comparable size that are engaged in the same or a similar business, subject to customary deductibles.

(5) CONDUCT OF BUSINESS AND MAINTENANCE OF EXISTENCE. The Corporation will continue, and will cause each Subsidiary to continue, to engage in business of the same general type as now conducted by the Corporation, and will preserve, renew and keep in full force and effect, and will cause each Subsidiary to preserve, renew and keep in full force and effect their respective corporate existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business except, in the case of any such matter other than maintenance of the Corporation's corporate existence, where the failure to do so would not have a material adverse effect on (i) the business, properties, operations, condition (financial or other), results of operation or prospects of the Corporation and the Subsidiaries, taken as a whole, or (ii) the ability of the Corporation to pay and perform its obligations under the Transaction Documents.

(6) COMPLIANCE WITH LAWS. The Corporation will comply, and will cause each Subsidiary to comply, in all material respects, with all applicable laws, ordinances, rules, regulations, decisions, orders and requirements of governmental

authorities and courts (including, without limitation, environmental laws) except (i) where compliance therewith is contested in good faith by appropriate proceedings or (ii) where non-compliance therewith could not reasonably be expected to have a material adverse effect on the business, condition (financial or otherwise), operations, performance, properties or prospects of the Corporation and the Subsidiaries taken as a whole.

(7) INVESTMENT COMPANY ACT. The Corporation will not be or become an open-end investment trust, unit investment trust or face-amount certificate company that is or is required to be registered under Section 8 of the Investment Company Act of 1940, as amended, or any successor provision.

(8) LIMITATIONS ON LIENS. The Corporation will not itself, and will not permit any Subsidiary to, create, assume or suffer to exist any Lien upon all or any part of its property or assets of any character, whether owned on the Issuance Date hereof or thereafter acquired, except Permitted Liens.

(9) LIMITATIONS ON ASSET SALES, LIQUIDATIONS, ETC.; CERTAIN MATTERS. The Corporation shall not, and shall not permit any Subsidiary to, take any of the following actions unless approved in writing by the Majority Holders:

(a) sell, convey or otherwise dispose of all or substantially all of its assets as an entirety or substantially as an entirety in a single transaction or in a series of related transactions; or

(b) liquidate, dissolve or otherwise wind up its affairs.

For purposes of the preceding clause (b), a consolidation or merger of the Corporation or any Subsidiary in and of itself shall not be considered a liquidation, dissolution or winding up of the Corporation or such Subsidiary.

(10) LISTING ELIGIBILITY REPORTING. The Corporation shall notify the Holders from time to time within five days after the Corporation first learns that it does not meet any of the applicable requirements for the continued listing of the Common Stock on the Principal Market on which the Common Stock is listed from time to time.

(11) TRANSACTIONS WITH AFFILIATES. The Corporation will not, and will not permit any Subsidiary, directly or indirectly, to pay any funds to or for the account of, make any investment (whether by acquisition of stock or Indebtedness, by loan, advance, transfer of property, guarantee or other agreement to pay, purchase or service, directly or indirectly, any Indebtedness, or otherwise) in, lease, sell, transfer or otherwise dispose of any assets, tangible or intangible, to, or participate in, or effect any transaction in connection with, any joint enterprise or

other joint arrangement with, any Affiliate of the Corporation, except, on terms to the Corporation or such Subsidiary no less favorable than terms that could be obtained by the Corporation or such Subsidiary from a Person that is not an Affiliate of the Corporation, as determined in good faith by the Board of Directors.

(12) RULE 144A INFORMATION REQUIREMENT. Within the period prior to the expiration of the holding period applicable to sales of shares of Series B Preferred Stock under Rule 144(k) under the 1933 Act (or any successor provision), the Corporation shall, during any period in which it is not subject to Section 13 or 15(d) under the 1934 Act, make available to the Holders or any holder of shares of Common Stock issued upon conversion of shares of Series B Preferred Stock which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of Series B Preferred Stock from any Holder, the information required pursuant to Rule 144A(d)(4) under the 1933 Act upon the request of such Holder and it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell the shares of Series B Preferred Stock held by it without registration under the 1933 Act within the limitation of the exemption provided by Rule 144A, as Rule 144A may be amended from time to time. Upon the request of any Holder, the Corporation will deliver to such Holder a written statement as to whether it has complied with such requirements.

(13) LIMITATION ON CERTAIN ISSUANCES. (A) The Corporation shall not (i) offer, sell or issue or enter into any agreement, arrangement or understanding to offer, sell or issue any Common Stock Equivalent for which the price at which the holder of such Common Stock Equivalent is entitled to acquire shares of Common Stock varies based on the market or trading price of the Common Stock, (ii) offer, sell or issue, or enter into any agreement, arrangement or understanding to offer sell or issue any Common Stock or Common Stock Equivalent on terms which provide for adjustment or repricing of the purchase price or number of shares or other units of such Common Stock or Common Stock Equivalents (other than terms of Common Stock Equivalents that are no more favorable to the holders of such Common Stock Equivalents than the provisions of Sections 10(c)(1), (2), (3), (4), (5), and (6) and 12(d)(13)(B)) or (iii) enter into any agreement, arrangement or understanding under which the Corporation has the right or obligation to sell shares of Common Stock or Common Stock Equivalents at any time or from time to time at a price or prices based on the market or trading price of the Common Stock (including, without limitation any agreement, arrangement or understanding that is commonly known as an "equity line of credit" or "equity line").

(B) The Corporation shall not, at any time on or after the Issuance Date, issue shares of Common Stock or Common Stock Equivalents (collectively, the "Newly Issued Shares"), at a price below the Current Fair Market Value of the

Common Stock at the time of such issuance, unless otherwise agreed in writing by the Majority Holders. Nothing in this Section 12(d)(13)(B) shall prohibit the following:

(i) the issuance by the Corporation of shares of Common Stock pro rata to all holders of the Common Stock so long as (x) any adjustment to the Conversion Price that is required by Section 10(c)(1) is made and (y) the Corporation shall have given notice of such issuance thereof to the Holders pursuant to Section 10(f);

(ii) the issuance by the Corporation of Newly Issued Shares in an offering for cash for the account of the Corporation that is underwritten on a firm commitment basis and is registered under the 1933 Act;

(iii) the issuance by the Corporation for cash of Newly Issued Shares in connection with a strategic alliance, collaboration, joint venture, partnership or similar arrangement of the Corporation with another Person which strategic alliance, collaboration, joint venture, partnership or similar arrangement relates to the Corporation's business as conducted immediately prior thereto and which Person is engaged in a business similar or related to the business of the Corporation so long as (x) the price per Newly Issued Share is not less than 85 percent of the Current Fair Market Value of the Common Stock on the date of issuance of such Newly Issued Shares and (y) the consideration other than cash which the Corporation receives in connection with such strategic alliance, collaboration, joint venture, partnership or similar arrangement has a value, as determined by the Board of Directors in its reasonable judgment and set forth in a Board Resolution, at least equal to the amount by which (i) the product of the number of Newly Issued Shares so issued times the Current Fair Market Value of the Common Stock on the date such Newly Issued Shares are issued exceeds (ii) the aggregate cash consideration received by the Corporation for such Newly Issued Shares at the time of issuance thereof;

(iv) the issuance by the Corporation of Newly Issued Shares (A) to commercial banks or other institutional lenders incidental to the incurrence of Indebtedness to such banks or institutional lenders by the Corporation or any Subsidiary and which Indebtedness constitutes Permitted Indebtedness and (B) to equipment vendors or commercial leasing companies incidental to the leasing of equipment by the Corporation or any Subsidiary from such vendors or commercial leasing companies for use in the Corporation's or such Subsidiary's business and which lease constitutes Permitted Indebtedness;

(v) the issuance by the Corporation of Newly Issued Shares as all or part of the consideration payable by the Corporation in any acquisition of (x)

the business of another Person who, immediately prior to such acquisition, is principally engaged in a business similar to or related to the business of the Corporation and the Subsidiaries or (y) of any pharmaceutical product or the rights to manufacture, market, and sell any pharmaceutical product, in each such case in the preceding clauses (x) and (y) so long as such issuance and acquisition have been duly approved by the Board of Directors as set forth in a Board Resolution;

(vi) the issuance by the Corporation of shares of Common Stock upon conversion of the Series B Preferred Stock in accordance with the terms hereof or upon exercise of the Warrants in accordance with the terms thereof;

(vii) the issuance by the Corporation of shares of Common Stock upon conversion, exercise or exchange of Common Stock Equivalents outstanding as of the Issuance Date in accordance with their terms in effect on the Issuance Date;

(viii) the issuance by the Corporation of Newly Issued Shares upon grant or exercise of options for employees, directors and consultants under the ESPP, the Corporation's Amended 1992 Stock Option Plan, the Corporation's Non-Employee Directors Equity Incentive Plan or any compensatory and stock purchase plans that have been approved by the Board of Directors and the stockholders of the Corporation; and

(ix) the issuance by the Corporation of Newly Issued Shares in an amount and at a price which would not, when taken together with all prior issuances of Newly Issued Shares issued by the Corporation in reliance on this clause (ix), result in an Aggregate Diluted Price Percentage that is greater than four percent.

In case at any time on or after the Issuance Date the Corporation shall issue shares of Common Stock or Common Stock Equivalents to any Subsidiary, this Section 12(d)(13)(b) shall apply to such issuance. In case at any time on or after the Issuance Date any Subsidiary shall sell any shares of Common Stock or Common Stock Equivalents owned by such Subsidiary to any Person other than the Corporation, such sale shall be deemed for purposes of this Section 12(d)(13)(B) to be the issuance of such shares of Common Stock or Common Stock Equivalents by the Corporation and shall be subject to the limitations provided herein.

(14) CONCERNING THE BOARD OF DIRECTORS. The Board of Directors shall not permit the Corporation or any Subsidiary to take any action or engage in any transaction which, in the absence of such approval, would be a Fundamental Change but for the requirement in the definition of Fundamental Change that the Board of Directors shall have approved such action or transaction.

SECTION 13. OUTSTANDING SHARES. For purposes of this Certificate of Determination, all shares of Series B Preferred Stock shall be deemed outstanding except (i) from the date a Conversion Notice is given by a Holder, all shares of Series B Preferred Stock converted into Common Stock (so long as the Corporation shall issue the shares of Common Stock issuable upon such conversion as and when required by this Certificate of Determination); (ii) from the date of registration of transfer, all shares of Series B Preferred Stock held of record by the Corporation or any Subsidiary or Affiliate of the Corporation (other than any original holder of shares of Series B Preferred Stock) and (iii) from the applicable Optional Redemption Date or Redemption Date, all shares of Series B Preferred Stock which are redeemed, so long as in each case the Optional Redemption Price or Redemption Price, as the case may be, of such shares of Series B Preferred Stock shall have been paid by the Corporation as and when due hereunder or deposited in accordance with Section 15(c).

SECTION 14. FORMS OF NOTICES. The forms of certain of the notices required or permitted under this Certificate of Determination shall be as provided in this Section 14 or as otherwise agreed in writing by the Corporation and the Majority Holders.

(A) FORM OF NOTICE OF CONVERSION OF SERIES B CONVERTIBLE PREFERRED STOCK.

NOTICE OF CONVERSION
OF
SERIES B CONVERTIBLE PREFERRED STOCK
OF
QUESTCOR PHARMACEUTICALS, INC.

TO: Questcor Pharmaceuticals, Inc. 3260 Whipple Road Union City, California 94587 Attention: Chief Financial Officer Facsimile No.: (510) 400-0715	OR Computershare Trust Company, Inc., as Conversion Agent 350 Indiana Street Suite 800 Golden, Colorado 80401 Attention: Kellie Gwinn Facsimile No.: (303) 262-0604
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(1) Pursuant to the terms of the Series B Convertible Preferred Stock (the "Preferred Stock"), of Questcor Pharmaceuticals, Inc., a California corporation (the "Corporation"), the undersigned (the "Holder") hereby elects to convert _____ shares of the Preferred Stock, including \$ _____ of accrued

and unpaid dividends thereon (and \$_____ of Arrearage Interest, if any, thereon) into shares of Common Stock, no par value (the "Common Stock"), of the Corporation, at a Conversion Price per share of Common Stock of \$_____, or such other securities and other property, if any, into which the Preferred Stock is currently convertible. Capitalized terms used in this Notice and not otherwise defined herein have the respective meanings provided in the Certificate of Determination of Series B Convertible Preferred Stock.

(2) The number of shares of Common Stock issuable upon the conversion of the shares of Preferred Stock to which this Notice relates is _____.

(3) Please issue certificates for the number of shares of Common Stock or other securities and deliver such other property, if any, into which such number of shares of Preferred Stock is convertible in the name(s) specified immediately below or, if additional space is necessary, on an attachment hereto:

_____	_____
Name	Name
_____	_____
Address	Address
_____	_____
SS or Tax ID Number	SS or Tax ID Number

Delivery Instructions
for Common Stock: _____

(4) If the shares of Common Stock issuable upon conversion of the Preferred Stock have not been registered for resale under the 1933 Act and this Notice is given when the shares of Common Stock issuable upon the conversion to which this Notice relates are not eligible for resale under Rule 144(k) under the 1933 Act, the Holder represents and warrants that (i) the shares of Common Stock not so registered are being acquired for the account of the Holder for investment, and not with a view to, or for resale in connection with, the public distribution thereof other than pursuant to registration under the 1933 Act or an exemption from registration under the 1933 Act, and that the Holder has no present intention of distributing or reselling the shares of Common Stock not so registered other than

pursuant to registration under the 1933 Act or an exemption from registration under the 1933 Act and (ii) the Holder is an "accredited investor" as defined in Regulation D under the 1933 Act. If the provisions of Rule 144(k) under the 1933 Act are inapplicable to the Holder with respect to the Conversion Shares to which this Notice relates, the Holder further agrees that (A) the shares of Common Stock not so registered shall not be sold or transferred unless either (i) such shares first shall have been registered under the 1933 Act or (ii) the Corporation first shall have been furnished with an opinion of legal counsel reasonably satisfactory to the Corporation to the effect that such sale or transfer is exempt from the registration requirements of the 1933 Act and (B) until such shares are registered for resale under the 1933 Act, the Corporation may place a legend on the certificate(s) for the shares of Common Stock not so registered to that effect and place a stop-transfer restriction in its records relating to the shares of Common Stock not so registered, all in accordance with the Subscription Agreement by which the Holder is bound.

Date _____
Signature of Holder _____
(Must be signed exactly as name
appears on the Preferred Stock Certificate.)

(B) FORM OF REDEMPTION NOTICE.

REDEMPTION NOTICE
(SECTION 9(a) OF CERTIFICATE OF DETERMINATION OF
SERIES B CONVERTIBLE PREFERRED STOCK)

TO: _____
(Name of Holder)

(1) Pursuant to the terms of the Series B Convertible Preferred Stock (the "Preferred Stock"), Questcor Pharmaceuticals, Inc., a California corporation (the "Corporation"), hereby notifies the above-named holder (the "Holder") that the Corporation is exercising its right to redeem _____ shares of Preferred Stock held by the Holder in accordance with Section 9(a) of the Certificate of Determination of the Series B Convertible Preferred Stock (the "Certificate of Determination").

(2) The Redemption Date is _____.

(3) The Redemption Price per share of Preferred Stock is _____.

\$_____.

(4) Upon surrender to the Corporation of the certificate(s) for the shares of Preferred Stock to be redeemed (but in no event earlier than the Redemption Date), the Corporation will make payment of the applicable Redemption Price in accordance with the Certificate of Determination.

(5) Capitalized terms used herein and not otherwise defined herein have the respective meanings provided in the Certificate of Determination.

Date: _____

QUESTCOR PHARMACEUTICALS,
INC.

By: _____
Title:

(C) FORM OF CORPORATION NOTICE.

CORPORATION NOTICE
(SECTION 11(b)(1) OF CERTIFICATE OF DETERMINATION OF
SERIES B CONVERTIBLE PREFERRED STOCK)

TO: _____
(Name of Holder)

(1) An Optional Redemption Event described in the Certificate of Determination of Series B Convertible Preferred Stock (the "Certificate of Determination") of Questcor Pharmaceuticals, Inc., a California corporation (the "Corporation"), occurred on _____. As a result of such Optional Redemption Event, the above-named holder (the "Holder") is entitled to exercise its optional redemption rights with respect to the Holder's shares of Series B Convertible Preferred Stock, no par value, of the Corporation (the "Preferred Stock") pursuant to Section 11(b)(2) of the Certificate of Determination.

(2) The Holder's optional redemption rights must be exercised on or before _____, 200_.

(3) In order to exercise such redemption rights, on or before the date set forth in the preceding paragraph (2), the Holder must deliver to the Corporation a Holder Notice, in the form set forth in Section 14(d) of the Certificate of Determination.

(4) In order to receive payment of the Optional Redemption Price of the shares of Preferred Stock to be redeemed, the Holder must deliver to the Corporation the certificates for the shares of Preferred Stock to be redeemed, duly endorsed for transfer to the Corporation of the shares to be redeemed.

(5) The Corporation Certificate required by Section 11(b) of the Certificate of Determination accompanies this Notice.

(6) Capitalized terms used herein and not otherwise defined herein have the respective meanings provided in the Certificate of Determination.

Date _____

QUESTCOR PHARMACEUTICALS, INC.

By: _____
Title:

(D) FORM OF HOLDER NOTICE.

HOLDER NOTICE
(SECTION 11(b)(2) OF CERTIFICATE OF DETERMINATION OF
SERIES B CONVERTIBLE PREFERRED STOCK)

TO: QUESTCOR PHARMACEUTICALS, INC.

(1) Pursuant to the terms of the Series B Convertible Preferred Stock (the "Preferred Stock") of Questcor Pharmaceuticals, Inc., a California corporation (the "Corporation"), the undersigned holder (the "Holder") hereby elects to exercise its right to require redemption by the Corporation pursuant to Sections 11(a) and 11(b) of the Certificate of Determination of Series B Convertible Preferred Stock (the "Certificate of Determination") of _____ shares of Preferred Stock at an Optional Redemption Price per share in cash equal to the sum of (a) the product obtained by multiplying (i) the Stated Value times (ii) the Optional Redemption Percentage plus (b) an amount equal to \$ _____ of accrued and unpaid dividends on each share of Preferred Stock to be redeemed to the Optional Redemption Date plus (c) an amount equal to accrued and unpaid Arrearage Interest, if any, on dividends on such share of Preferred Stock to the Optional Redemption Date.

(2) The aggregate Optional Redemption Price of all shares of Preferred Stock to be redeemed from the Holder pursuant to this Notice is \$ _____.

(3) Capitalized terms used herein and not otherwise defined herein have the respective meanings provided in the Certificate of Determination.

Date: _____

NAME OF HOLDER:

By _____

Signature of Registered Holder
(Must be signed exactly as name
appears on the stock certificate.)

SECTION 15. MISCELLANEOUS.

(A) NOTICES. Any notices required or permitted to be given under the terms of this Certificate of Determination shall be in writing and shall be delivered by telephone line facsimile transmission or if no telephone line facsimile transmission number shall have been provided for such purpose, shall be delivered personally or by courier or by mail and shall be deemed given upon receipt, if delivered by telephone line facsimile transmission, personally or by courier or five days after being placed in the mail (certified mail, return receipt requested, in the case of any such notice to a Person at an address in the United States of America), if mailed (a) in the case of the Corporation, addressed to the Corporation at 3260 Whipple Road, Union City, California 94587, Attention: Chief Financial Officer (telephone line facsimile transmission number (510) 400-0715), or, (b) in the case of any Holder, at such Holder's address or telephone line facsimile transmission number or address shown on the stock books maintained by the Corporation with respect to the Series B Preferred Stock or such other telephone line facsimile transmission number or address as the Corporation shall have provided by notice to the Holders in accordance with this Section 15(a) or any Holder shall have provided to the Corporation in accordance with this Section 15(a).

(B) REPLACEMENT OF CERTIFICATES. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the ownership of and the loss, theft, destruction or mutilation of any certificate for shares of Series B Preferred Stock and (1) in the case of loss, theft or destruction, of indemnity from the Holder of the certificate for such shares of Series B Preferred Stock reasonably satisfactory in form to the Corporation (and without the requirement to post any bond or other security) or (2) in the case of mutilation, upon surrender and cancellation of the certificate for such shares of Series B Preferred Stock, the Corporation will execute and deliver to such Holder a new certificate for such shares of Series B Preferred Stock without charge to such Holder.

(C) PAYMENT ON REDEMPTION; DEPOSIT OF REDEMPTION PRICE. If any share of Series B Preferred Stock is to be redeemed as provided in Section 9(a) or 11 and any notice required in connection therewith shall have been timely given as provided therein, the applicable redemption price of such share of Series B Preferred Stock to be so redeemed and with respect to which any such notice has been given shall become due and payable on the applicable redemption date. On and after such redemption date, provided that the Corporation shall have paid such redemption price to the respective Holders who are entitled thereto on or prior to the applicable redemption date or shall have deposited with an Eligible Bank on or prior to such redemption date, to be held in trust for the respective Holders entitled thereto, an amount sufficient to pay the applicable redemption price, then on such redemption date the dividends on such share of Series B Preferred Stock shall cease to accrue, and such share of Series B Preferred Stock shall be deemed not to be outstanding and the Holder thereof shall not be entitled to any rights of a Holder except to receive payment of the applicable redemption price and all other rights hereunder with respect to such share of Series B Preferred Stock shall cease. So long as the Corporation shall have so paid or deposited the full amount of the applicable redemption price on a timely basis, no Holder shall be entitled to interest on the amount so held by such Eligible Bank and, so long as the Corporation shall be in compliance in all material respects with its obligations to the Holders (including, without limitation, its obligations under the Transaction Documents), the Corporation shall be entitled to any interest paid by such Eligible Bank on the funds so deposited, subject to applicable abandoned property and escheat laws. On presentation and surrender of the certificate for such share of Series B Preferred Stock, such share shall be redeemed at the applicable redemption price.

(D) OVERDUE AMOUNTS. If the Corporation fails to pay when due or to deposit with an Eligible Bank in accordance with Section 15(c) the full amount of the Optional Redemption Price or the Redemption Price on or before the respective Optional Redemption Date or Redemption Date, in each such case for the number of shares of Series B Preferred Stock to be redeemed on such date or to pay any other amount to any Holder when due, then the amount thereof shall bear interest at the Default Rate from such date until paid or so deposited in full or until such share of Series B Preferred Stock is converted in accordance with this Certificate of Determination (in which case such interest shall remain due and payable).

(E) CERTAIN CHANGES IN LAW. To the extent that the 1933 Act or the 1934 Act or any statutes, rules or regulations promulgated thereunder relating to the registration for public sale of securities and/or the registration of issuers thereof are superseded, replaced or repealed, the requirements of this Certificate of Determination relating to such statutes, rules and regulations shall be applied as nearly as practicable with respect to such successor statutes, rules or regulations, if any, to achieve the purposes intended hereby.

The undersigned, Charles J. Casamento and Timothy E. Morris, the Chairman, President and Chief Executive Officer and Chief Financial Officer, respectively, of Questcor Pharmaceuticals, Inc., further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

Executed at Union City, California on the 29th day of December, 2002.

/s/ CHARLES J. CASAMENTO

Charles J. Casamento
Chairman, President and Chief
Executive Officer of Questcor
Pharmaceuticals, Inc.

/s/ TIMOTHY E. MORRIS

Timothy E. Morris
Chief Financial Officer of
Questcor Pharmaceuticals, Inc.

1. DEFINITIONS.

(a) As used in this Warrant, the term "Holder" shall have the meaning assigned to such term in the first paragraph of this Warrant.

(b) All the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof and of this Warrant.

(c) The following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Aggregate Diluted Price Percentage" means, at any time of determination, the aggregate Diluted Price Percentages for all issuances of Newly Issued Shares issued in reliance on Section (8)(i) at or prior to such time of determination.

"Aggregate Purchase Price" means at any time an amount equal to the product obtained by multiplying (x) the Purchase Price times (y) the number of shares of Common Stock for which this Warrant may be exercised at such time.

"Aggregation Parties" shall have the meaning provided in Section 2(c).

"AMEX" means the American Stock Exchange, Inc.

"Board of Directors" means the Board of Directors of the Company.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Corporation to have been duly adopted by the Board of Directors, or duly authorized committee thereof (to the extent permitted by applicable law), and to be in full force and effect on the date of such certification, and delivered to the Holder.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to remain closed.

"Certificate of Determination" shall have the meaning provided in the Subscription Agreement.

"Common Stock" includes the Company's Common Stock, no par value per share, (and any purchase rights issued with respect to the Common Stock in the future) as authorized on the date hereof, and any other securities into which or for which the Common Stock (and any such rights issued with respect to the Common Stock) may be converted or exchanged pursuant to a plan of recapitalization, reorganization, merger, sale of assets or otherwise and any stock (other than Common Stock) and other securities of the Company or any other Person which the Holder at any time shall be entitled to receive, or shall have received, on the exercise of this Warrant, in lieu of or in addition to Common Stock.

"Common Stock Equivalents" means any warrant, option, subscription or purchase right with respect to shares of Common Stock, any security convertible into, exchangeable for, or otherwise entitling the holder thereof to acquire, shares of Common Stock or any warrant, option, subscription or purchase right with respect to any such convertible, exchangeable or other security.

"Company" shall include Questcor Pharmaceuticals, Inc., a California corporation, and any corporation that shall succeed to or assume the obligations of Questcor Pharmaceuticals, Inc. hereunder in accordance with the terms hereof.

"Current Fair Market Value" means, when used with respect to the Common Stock as of a specified date:

(i) if the Common Stock is then listed for trading on a national securities exchange or through the Nasdaq or the Nasdaq SmallCap, (A) the average of the daily volume-weighted average prices of the Common Stock on the principal national securities exchange or the Nasdaq or the Nasdaq SmallCap, as the case may be, on which the Common Stock is so listed for each Trading Day in the period of five consecutive Trading Days ending on and including such date, as reported by Bloomberg Financial, L.P.;

(ii) if on the date as of which Current Fair Market Value is to be determined the Common Stock is not so

listed, the average of the highest bid and lowest asked prices of the Common Stock quoted in the Nasdaq OTC Bulletin Board or the over-the-counter-market, for each Trading Day in the period of five consecutive Trading Days ending on and including such date; or

(iii) if on the date for which Current Fair Market Value is to be determined the Common Stock is not listed on any national securities exchange, the Nasdaq or the Nasdaq SmallCap or quoted in the Nasdaq System or the over-the-counter market, the Current Fair Market Value of Common Stock shall be the highest price per share which the Company could then obtain from a willing buyer (not an employee or director of the Company at the time of determination), under no compulsion to buy, in an arms'-length transaction for shares of Common Stock sold by the Company, from authorized but unissued shares, as determined in good faith by the Board of Directors.

"Diluted Price Percentage" means, with respect to any issuance of Newly Issued Shares issued in reliance on Section 8(i), the Diluted Price Percentage computed in accordance with the following formula:

$$DPP = \frac{((O + (C / FMV)) \times PP)}{PP} - ((O + N))$$

where,

- C = aggregate consideration received by the Company for the Newly Issued Shares
- N = number of Newly Issued Shares
- O = number of shares of Common Stock outstanding (calculated on a fully-diluted basis assuming the conversion of all options, warrants, purchase rights or convertible securities which are exercisable at the time of the issuance of the Newly Issued Shares) immediately prior to the issuance of the Newly Issued Shares
- FMV = Current Fair Market Value of the Common

Stock at the time of issuance of the Newly Issued Shares

PP = Purchase Price immediately prior to the issuance of the Newly Issued Shares

DPP = Diluted Price Percentage for such issuance of Newly Issued Shares

"DTC" means The Depository Trust Company.

"ESPP" means the Company's 2000 Employee Stock Purchase Plan.

"Excluded Shares" shall have the meaning provided in the Certificate of Determination.

"Expiration Date" means January 15, 2007.

"FAST" means the First Automated Securities Transfer program of DTC.

"Issuance Date" means the date of original issuance of this Warrant or its predecessor instrument.

"Majority Holders" shall have the meaning provided in the Certificate of Determination; provided, however, that if at the time the Majority Holders is being determined no Series B Shares are outstanding then "Majority Holders" shall mean registered holders of this Warrant and the Other Warrants who hold in the aggregate this Warrant and Other Warrants which entitle the holders to purchase a majority of the shares of Common Stock (or Other Securities) issuable at the time of determination upon exercise of the unexercised portions of this Warrant and all the Other Warrants (in each case determined without regard to the limitations on exercise contained in Section 2(c) of this Warrant and the Other Warrants).

"Nasdaq" means the Nasdaq National Market.

"Nasdaq SmallCap" means the Nasdaq SmallCap Market.

"Newly Issued Shares" shall have the meaning provided in Section 8.

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

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

"NYSE" means the New York Stock Exchange, Inc.

"Other Securities" means any stock (other than Common Stock) and other securities of the Company or any other Person which the Holder at any time shall be entitled to receive, or shall have received, on the exercise of this Warrant, in lieu of or in addition to Common Stock, or which at any time shall be issuable or shall have been issued in exchange for or in replacement of Common Stock or Other Securities pursuant to Section 4.

"Other Subscription Agreements" means the several Subscription Agreements, dated as of the date of the Subscription Agreement, by and between the Company and the several buyers named therein.

"Other Warrants" means the Common Stock Purchase Warrants (other than this Warrant) issued or issuable by the Company pursuant to the Subscription Agreement and the Other Subscription Agreements.

"Permitted Indebtedness" shall have the meaning provided in the Certificate of Determination.

"Person" means an individual, partnership, corporation, limited liability company, trust or unincorporated organization, or a government or a governmental agency or political subdivision.

"Purchase Price" means \$1.0824, subject to adjustment as provided in this Warrant.

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

"Registration Statement" shall have the meaning provided in the Subscription Agreement.

"Restricted Ownership Percentage" shall have the meaning provided in Section 2(c).

"Restricted Securities" means securities that are not eligible for resale pursuant to Rule 144(k) under the 1933 Act (or any successor provision).

"Reorganization Event" means the occurrence of any one or more of the following events:

(i) any consolidation, merger or similar transaction of the Company or any Subsidiary with or into another entity (other than a merger or consolidation or similar transaction of a Subsidiary into the Company or a wholly-owned Subsidiary); or the sale or transfer of all or substantially all of the assets of the Company and the Subsidiaries in a single transaction or a series of related transactions; or

(ii) the occurrence of any transaction or event in connection with which all or substantially all the Common Stock shall be exchanged for, converted into, acquired for or constitute the right to receive securities of any other Person (whether by means of a Tender Offer, liquidation, consolidation, merger, share exchange, combination, reclassification, recapitalization, or otherwise); or

(iii) the acquisition by a Person or group of Persons acting in concert as a partnership, limited partnership, syndicate or group, as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise, of beneficial ownership of securities of the Company representing 50% or more of the combined voting power of the outstanding voting securities of the Company ordinarily (and apart from rights accruing in special circumstances) having the right to vote in the election of directors.

"Rule 144A" means Rule 144A as promulgated under the 1933 Act.

"SEC" means the Securities and Exchange Commission.

"Series B Shares" means the shares of Series B Preferred Stock, no par value per share, of the Company issued pursuant to the Subscription Agreement and the Other Subscription Agreements.

"Subscription Agreement" means the Subscription Agreement, dated as of December 29, 2002, by and between the Company and the original Holder of this Warrant.

"Subsidiary" means any corporation or other entity of which a majority of the capital stock 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 Company.

"Tender Offer" means a tender offer, exchange offer or other offer by the Company to repurchase outstanding shares of its capital stock.

"Trading Day" means a day on which AMEX, or if the Company's Common Stock ceases to be traded on AMEX, whichever of the national securities exchange, the Nasdaq or the Nasdaq SmallCap which then constitutes the principal securities market for the Common Stock, is open for general trading.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of this Warrant.

2. EXERCISE OF WARRANT.

(A) EXERCISE. This Warrant may be exercised by the Holder in whole at any time or in part from time to time on or before the Expiration Date by (x) surrendering this Warrant to the Company, (y) giving a subscription form in the form of EXHIBIT 1 to this Warrant (duly executed by the Holder) to the Company, and (z) making payment, in cash or by certified or official bank check payable to the order of the Company, or by wire transfer of funds to the account of the Company, in any such case, in the amount obtained by multiplying (a) the number of shares of Common Stock designated by the Holder in the subscription form by (b) the Purchase Price then in effect. On any partial exercise the Company will forthwith issue and deliver to or upon the order of the Holder a new Warrant or Warrants of like tenor, in the name of the Holder or as the Holder (upon payment by the Holder of any applicable transfer taxes) may request, providing in the aggregate on the face or faces thereof for the purchase of the number of shares of Common Stock for which such Warrant or Warrants may still be exercised. The subscription form may be surrendered by telephone line facsimile transmission to such telephone number for the Company

as shall have been specified in writing to the Holder by the Company; provided, however, that if the subscription form is given to the Company by telephone line facsimile transmission the Holder shall send an original of such subscription form to the Company within ten Business Days after such subscription form is so given to the Company; provided further, however, that any failure or delay on the part of the Holder in giving such original of any subscription form shall not affect the validity or the date on which such subscription form is so given by telephone line facsimile transmission.

(B) NET EXERCISE. Notwithstanding anything to the contrary contained in Section 2(a), the Holder may elect to exercise this Warrant, in whole at any time or in part from time to time, by receiving shares of Common Stock equal to the net issuance value (as determined below) of this Warrant, or any part hereof, upon surrender of the subscription form annexed hereto (duly executed by the Holder) to the Company (followed by surrender of this Warrant to the Company within three Trading Days after surrender of such subscription form), in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:

$$X = Y \times \frac{(A - B)}{A}$$

where,

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

Y = the number of shares of Common Stock as to which this Warrant is to be exercised

A = the Current Fair Market Value of one share of Common Stock calculated as of the last Trading Day immediately preceding the exercise of this Warrant

B = the Purchase Price

(C) 9.9% LIMITATION.

(1) Notwithstanding anything to the contrary contained herein, the number of shares of Common Stock that may be acquired by the Holder upon exercise pursuant to the terms hereof at any time shall not exceed a number that, when added to

the total number of shares of Common Stock deemed beneficially owned by the Holder (other than by virtue of the ownership of securities or rights to acquire securities (including Series B Shares) that have limitations on the Holder's right to convert, exercise or purchase similar to the limitation set forth herein (the "Excluded Shares"), together with all shares of Common Stock deemed beneficially owned at such time (other than by virtue of the ownership of the Excluded Shares) by Persons whose beneficial ownership of Common Stock would be aggregated with the beneficial ownership by the Holder for purposes of determining whether a group exists or for purposes of determining the Holder's beneficial ownership (the "Aggregation Parties"), in either such case for purposes of Section 13(d) of the 1934 Act and Regulation 13D-G thereunder (including, without limitation, as the same is made applicable to Section 16 of the 1934 Act and the rules promulgated thereunder), would result in beneficial ownership by the Holder or such group of more than 9.9% of the shares of Common Stock for purposes of Section 13(d) or Section 16 of the 1934 Act and the rules promulgated thereunder (as the same may be modified by the Holder as provided herein, the "Restricted Ownership Percentage"). The Holder shall have the right (x) at any time and from time to time to reduce its Restricted Ownership Percentage immediately upon notice to the Company in the event and only to the extent that Section 16 of the 1934 Act or the rules promulgated thereunder (or any successor statute or rules) is changed to reduce the beneficial ownership percentage threshold thereunder to a percentage less than 9.9% and (y) at any time and from time to time, to increase its Restricted Ownership Percentage unless the Holder shall have, by written instrument delivered to the Company, irrevocably waived its rights to so increase its Restricted Ownership Percentage. If at any time the limits in this Section 2(c) make this Warrant unexercisable in whole or in part, the Company shall not by reason thereof be relieved of its obligation to issue shares of Common Stock at any time or from time to time thereafter upon exercise of this Warrant as and when shares of Common Stock may be issued in compliance with such restrictions.

(2) For purposes of this Section 2(c), in determining the number of outstanding shares of Common Stock at any time the Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's then most recent Form 10-Q, Form 10-K or other public filing with the SEC, as the case may be, (2) a public announcement by the Company that is later than any such filing referred to in the preceding clause (1) or (3) any other notice by the Company or its transfer agent

setting forth the number shares of Common Stock outstanding and knowledge the Holder may have about the number of shares of Common Stock issued upon conversion or exercise of Series B Shares or other Common Stock Equivalents by any Person, including the Holder, which are not reflected in the preceding clauses (1) through (3). Upon the written request of the Holder, the Company shall within three Business Days confirm in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of Common Stock Equivalents, including the Series B Shares and the Warrants, by the Holder or its affiliates, in each such case subsequent to, the date as of which such number of outstanding shares of Common Stock was reported.

3. DELIVERY OF STOCK CERTIFICATES, ETC., ON EXERCISE. (a) As soon as practicable after the exercise of this Warrant and in any event within three Trading Days thereafter, upon the terms and subject to the conditions of this Warrant, the Company at its expense (including the payment by it of any applicable issue or stamp taxes) will cause to be issued in the name of and delivered to the Holder, or as the Holder (upon payment by the Holder of any applicable transfer taxes) may direct, a certificate or certificates for the number of fully paid and nonassessable shares of Common Stock (or Other Securities) to which the Holder shall be entitled on such exercise, in such denominations as may be requested by the Holder, plus, in lieu of any fractional share to which the Holder would otherwise be entitled, cash equal to such fraction multiplied by the then Current Fair Market Value of one full share of Common Stock, together with any other stock or Other Securities or any property (including cash, where applicable) to which the Holder is entitled upon such exercise pursuant to Section 2 or otherwise. In lieu of delivering physical certificates for the shares of Common Stock or (Other Securities) issuable upon any exercise of this Warrant, provided the Company's transfer agent is participating in the DTC's FAST program, upon request of the Holder, the Company shall use commercially reasonable efforts to cause its transfer agent electronically to transmit such shares of Common Stock (or Other Securities) issuable upon conversion to the Holder (or its designee), by crediting the account of the Holder's (or such designee's) broker with DTC through its Deposit Withdrawal Agent Commission system (provided that the same time periods herein as for stock certificates shall apply). The Company shall pay any taxes and other governmental charges that may be imposed under

the laws of the United States of America or any political subdivision or taxing authority thereof or therein in respect of the issue or delivery of shares of Common Stock (or Other Securities) or payment of cash upon exercise of this Warrant (other than income taxes imposed on the Holder). The Company shall not be required, however, to pay any tax or other charge imposed in connection with any transfer involved in the issue of any certificate for shares of Common Stock (or Other Securities) issuable upon exercise of this Warrant or payment of cash to any Person other than the Holder, and in case of such transfer or payment the Company shall not be required to deliver any certificate for shares of Common Stock (or Other Securities) upon such exercise or pay any cash until such tax or charge has been paid or it has been established to the Company's reasonable satisfaction that no such tax or charge is due. Upon exercise of this Warrant as provided herein, the Company's obligation to issue and deliver the certificates for Common Stock shall be absolute and unconditional, irrespective of the absence of any action by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, any failure or delay in the enforcement of any other obligation of the Company to the Holder, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with such exercise.

(b) If in any case the Company shall fail to issue and deliver the shares of Common Stock to the Holder in connection with a particular exercise of this Warrant within five Trading Days after the Holder gives the subscription form and pays the Purchase Price, if any, for such exercise, in addition to any other liabilities the Company may have hereunder and under applicable law (A) the Company shall pay or reimburse the Holder on demand for all out-of-pocket expenses, including, without limitation, reasonable fees and expenses of legal counsel, incurred by the Holder as a result of such failure, (B) if as a result of such failure the Holder shall suffer any direct damages or liabilities from such failure (including, without limitation, margin interest and the cost of purchasing securities to cover a sale (whether by the Holder or the Holder's securities broker) or borrowing of shares of Common Stock by the Holder for purposes of settling any trade involving a sale of shares of Common Stock made by the Holder during the

period beginning on the Issuance Date and ending on the date the Company delivers or causes to be delivered to the Holder such shares of Common Stock), then the Company shall upon demand of the Holder pay to the Holder an amount equal to the actual direct, out-of-pocket damages and liabilities suffered by the Holder by reason thereof which the Holder documents to the reasonable satisfaction of the Company, and (C) the Holder may by written notice (which may be given by mail, courier, personal service or telephone line facsimile transmission) or oral notice (promptly confirmed in writing), given at any time prior to delivery to the Holder of the shares of Common Stock issuable in connection with such exercise of the Holder's right, rescind such exercise and the subscription form relating thereto, in which case the Holder shall thereafter be entitled to exercise that portion of this Warrant as to which such exercise is so rescinded and to exercise its other rights and remedies with respect to such failure by the Company. Notwithstanding the foregoing the Company shall not be liable to the Holder under clauses (A) or (B) of the immediately preceding sentence to the extent the failure of the Company to deliver or to cause to be delivered such shares of Common Stock results from fire, flood, storm, earthquake, shipwreck, strike, war, acts of terrorism, crash involving facilities of a common carrier, acts of God, or any similar event outside the control of the Company (it being understood that the action or failure to act of the Company's transfer agent shall not be deemed an event outside the control of the Company except to the extent resulting from fire, flood, storm, earthquake, shipwreck, strike, war, acts of terrorism, crash involving facilities of a common carrier, acts of God, or any similar event outside the control of such transfer agent or the bankruptcy, liquidation, or reorganization of such transfer agent under any bankruptcy, insolvency or other similar law). The Holder shall notify the Company in writing (or by telephone conversation, confirmed in writing) as promptly as practicable following the third Trading Day after the Holder exercises this Warrant if the Holder becomes aware that such shares of Common Stock so issuable have not been received as provided herein, but any failure so to give such notice shall not affect the Holder's rights under this Warrant or otherwise.

4. ADJUSTMENT FOR DIVIDENDS IN OTHER STOCK, PROPERTY, ETC.; RECLASSIFICATION, ETC. In case at any time or from time to time on or after the Issuance Date, all the holders of Common Stock (or Other Securities) shall have received, or (on or after the record date fixed for the determination of stockholders eligible to receive) shall have become entitled to receive, without payment therefor,

(a) other or additional stock, rights, warrants or other securities or property (other than cash) by way of dividend, or

(b) any cash (excluding cash dividends payable solely out of earnings or earned surplus of the Company), or

(c) other or additional stock, rights, warrants or other securities or property (including cash) by way of spin-off, split-up, reclassification, recapitalization, combination of shares or similar corporate rearrangement,

other than (i) additional shares of Common Stock (or Other Securities) issued as a stock dividend or in a stock-split (adjustments in respect of which are provided for in Section 6) and (ii) rights or warrants to subscribe for Common Stock at less than the Current Fair Market Value (adjustments in respect of which are provided in Section 7), then and in each such case the Holder, on the exercise hereof as provided in Section 2, shall be entitled to receive the amount of stock, rights, warrants and Other Securities and property (including cash in the cases referred to in subdivisions (b) and (c) of this Section 4) which the Holder would hold on the date of such exercise if on the date of such action specified in the preceding clauses (a) through (c) (or the record date therefor) the Holder had been the holder of record of the number of shares of Common Stock called for on the face of this Warrant and had thereafter, during the period from the date thereof to and including the date of such exercise, retained such shares and all such other or additional stock, rights, warrants and Other Securities and property (including cash in the case referred to in subdivisions (b) and (c) of this Section 4) receivable by the Holder as aforesaid during such period, giving effect to all adjustments called for during such period by Section 5.

5. EXERCISE UPON A REORGANIZATION EVENT. In case of any Reorganization Event the Company shall, as a condition precedent to the consummation of the transactions constituting, or announced as, such Reorganization Event, cause effective provisions to be made so that the Holder shall have the right thereafter, by exercising this Warrant (in lieu of the shares of Common Stock of the Company and Other Securities or property purchasable and receivable upon exercise of the rights represented hereby immediately prior to such Reorganization Event) to purchase the kind and amount of shares of stock and Other Securities and property (including cash) receivable upon

such Reorganization Event by a holder of the number of shares of Common Stock that might have been received upon exercise of this Warrant immediately prior to such Reorganization Event. Any such provision shall include provisions for adjustments in respect of such shares of stock and Other Securities and property that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. The provisions of this Section 5 shall apply to successive Reorganization Events.

6. ADJUSTMENT FOR CERTAIN EXTRAORDINARY EVENTS. If on or after the Issuance Date the Company shall (i) issue additional shares of the Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) subdivide or reclassify its outstanding shares of Common Stock, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, then, in each such event, the Purchase Price shall, simultaneously with the happening of such event, be adjusted by multiplying the Purchase Price in effect immediately prior to such event by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event, and the product so obtained shall thereafter be the Purchase Price then in effect. The Purchase Price, as so adjusted, shall be readjusted in the same manner upon the happening of any successive event or events described herein in this Section 6. The Holder shall thereafter, on the exercise hereof as provided in Section 2, be entitled to receive that number of shares of Common Stock determined by multiplying the number of shares of Common Stock which would be issuable on such exercise immediately prior to such issuance, subdivision or combination, as the case may be, by a fraction of which (i) the numerator is the Purchase Price in effect immediately prior to such issuance and (ii) the denominator is the Purchase Price in effect on the date of such exercise.

7. ISSUANCE OF RIGHTS OR WARRANTS TO COMMON STOCKHOLDERS AT LESS THAN CURRENT FAIR MARKET VALUE. If the Company shall on or after the Issuance Date issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the Current Fair Market Value on the record date fixed for the determination of stockholders entitled to receive such rights or warrants, then

(a) the Purchase Price shall be adjusted so that the same shall equal the price determined by multiplying the Purchase Price in effect at the opening of business on the day after such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on such record date plus the number of shares which the aggregate offering price of the total number of shares so offered would purchase at such Current Fair Market Value, and the denominator shall be the number of shares of Common Stock outstanding on the close of business on such record date plus the total number of additional shares of Common Stock so offered for subscription or purchase; and

(b) the number of shares of Common Stock which the Holder may thereafter purchase upon exercise of this Warrant at the opening of business on the day after such record date shall be increased to a number equal to the quotient obtained by dividing (x) the Aggregate Purchase Price in effect immediately prior to such adjustment in the Purchase Price pursuant to clause (a) of this Section 7 by (y) the Purchase Price in effect immediately after such adjustment in the Purchase Price pursuant to clause (a) of this Section 7.

Such adjustment shall become effective immediately after the opening of business on the day following the record date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants, the Purchase Price shall be readjusted to the Purchase Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered and the number of shares of Common Stock for which this Warrant may thereafter be exercised shall be readjusted (subject to proportionate adjustment for any intervening exercises of this Warrant) to the number which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so issued, the Purchase Price shall again be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed and the number of shares of Common Stock for which this Warrant may thereafter be exercised shall again be adjusted

(subject to proportionate adjustment for any intervening exercises of this Warrant) to be the number which would then be in effect if such record date had not been fixed. In determining whether any rights or warrants entitle the holder to subscribe for or purchase shares of Common Stock at less than such Current Fair Market Value, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

8. LIMITATION ON ISSUANCE AT LESS THAN CURRENT FAIR MARKET VALUE.

The Company shall not, at any time on or after the Issuance Date, issue shares of Common Stock or Common Stock Equivalents (collectively, the "Newly Issued Shares"), at a price below the Current Fair Market Value of the Common Stock at the time of such issuance, unless otherwise agreed in writing by the Majority Holders. Nothing in this Section 8 shall prohibit the following:

(a) the issuance by the Company of shares of Common Stock or Common Stock Equivalents pro rata to all holders of the outstanding Common Stock of the kind and in the circumstances for which adjustments are provided in Section 6 or 7, so long as (i) any adjustment required by Section 6 or 7, as the case may be, is made and (ii) the Company shall have given notice thereof to the Holder pursuant to Section 14;

(b) the issuance by the Company of Newly Issued Shares in an offering for cash for the account of the Company that is underwritten on a firm commitment basis and is registered under the 1933 Act;

(c) the issuance by the Company of the Series B Shares or the Other Warrants or shares of Common Stock upon conversion of the Series B Shares in accordance with the terms thereof or upon exercise of this Warrant or the Other Warrants in accordance with the terms hereof and thereof;

(d) the issuance by the Company of shares of Common Stock upon conversion, exercise or exchange of Common Stock Equivalents outstanding as of the Issuance Date in accordance with their terms in effect on the Issuance Date;

(e) the issuance by the Company of Newly Issued Shares upon grant or exercise of options for employees, directors and consultants under the ESPP, the Company's Amended

1992 Stock Option Plan, the Company's Non-Employee Directors Equity Incentive Plan or any other stock compensation plan that has been duly adopted by the Board of Directors and duly approved by the Company's stockholders;

(f) the issuance by the Company for cash of Newly Issued Shares in connection with a strategic alliance, collaboration, joint venture, partnership or similar arrangement of the Company with another Person which strategic alliance, collaboration, joint venture, partnership or similar arrangement relates to the Company's business as conducted immediately prior thereto and which Person is engaged in a business similar or related to the business of the Company so long as (x) the price per Newly Issued Share is not less than 85 percent of the Current Fair Market Value of the common stock on the date of issuance of such Newly Issued Shares and (y) the consideration other than cash which the Company receives in connection with such strategic alliance, collaboration, joint venture, partnership or similar arrangement has a value, as determined by the Board of directors in its reasonable judgment and set forth in a Board Resolution, at least equal to the amount by which (i) the product of the Newly Issued Shares so issued times the Current Fair Market Value of the Common Stock on the date such Newly issued Shares are issued exceeds (ii) the aggregate cash consideration received by the Company for such Newly Issued Shares at the time of issuance thereof;

(g) the issuance by the Company of Common Stock Purchase Warrants (A) to commercial banks or other institutional lenders incidental to the incurrence of indebtedness to such banks or institutional lenders by the Company or any Subsidiary which indebtedness constitutes Permitted Indebtedness and (B) to equipment vendors or commercial leasing companies incidental to the leasing of equipment by the Company or any Subsidiary from such vendors or commercial leasing companies for use in the Company's or such Subsidiary's business;

(h) the issuance by the Company of Newly Issued Shares as all or part of the consideration payable by the Company in any acquisition of (x) the business of another Person who, immediately prior to such acquisition, is principally engaged in a business similar to or related to the business of the Company and the Subsidiaries or (y) of any pharmaceutical product or the rights to manufacture, market, and sell any pharmaceutical product and related assets, in each such case in the preceding clauses (x) and (y) so long as such issuance and

acquisition have been duly approved by the Board of Directors as set forth in a Board Resolution; and

(i) the issuance by the Company of Newly Issued Shares in an amount and at a price which would not, when taken together with all prior issuances of Newly Issued Shares issued by the Company in reliance on this clause (i), result in an Aggregate Diluted Price Percentage that is greater than four percent.

In case at any time on or after the Issuance Date the Company shall issue shares of Common Stock or Common Stock Equivalents to any Subsidiary, this Section 8 shall apply to such issuance. In case at any time on or after the Issuance Date any Subsidiary shall sell any shares of Common Stock or Common Stock Equivalents owned by such Subsidiary to any Person other than the Company, such sale shall be deemed for purposes of this Section 8 to be the issuance of such shares of Common Stock or Common Stock Equivalents by the Company and shall be subject to the limitations provided herein.

9. EFFECT OF RECLASSIFICATION, CONSOLIDATION, MERGER OR SALE. (a) If any of the following events occur, namely (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any consolidation, merger statutory exchange or combination of the Company with another corporation as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of the properties and assets of the Company as, or substantially as, an entirety to any other Person as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing Person, as the case may be, shall execute with the Holder a written agreement providing that (x) this Warrant shall thereafter entitle the Holder to purchase the kind and amount of shares of stock and Other Securities or property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, statutory exchange, combination, sale or conveyance by the holder of a number of shares of Common Stock issuable upon exercise of this Warrant (assuming, for such purposes, a sufficient number of authorized shares of Common Stock available to exercise this

Warrant) immediately prior to such reclassification, change, consolidation, merger, statutory exchange, combination, sale or conveyance assuming such holder of Common Stock did not exercise such holder's rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, combination, sale or conveyance (provided that, if the kind or amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("non-electing share"), then for the purposes of this Section 9 the kind and amount of securities, cash or other property receivable upon such consolidation, merger, statutory exchange, sale or conveyance for each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares), (y) in the case of any such successor or purchasing Person, upon such consolidation, merger, statutory exchange, combination, sale or conveyance such successor or purchasing Person shall be jointly and severally liable with the Company for the performance of all of the Company's obligations under this Warrant and the Subscription Agreement and (z) if registration or qualification is required under the 1933 Act or applicable state law for the public resale by the Holder of such shares of stock and Other Securities so issuable upon exercise of this Warrant, such registration or qualification shall be completed prior to such reclassification, change, consolidation, merger, statutory exchange, combination or sale. Such written agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. If, in the case of any such reclassification, change, consolidation, merger, statutory exchange, combination, sale or conveyance, the stock or other securities or other property or assets receivable thereupon by a holder of shares of Common Stock includes shares of stock, other securities, other property or assets of a Person other than the Company or any such successor or purchasing Person, as the case may be, in such reclassification, change, consolidation, merger, statutory exchange, combination, sale or conveyance, then such written agreement shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holder as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) The above provisions of this Section 9 shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances.

(c) If this Section 9 applies to any event or occurrence, Section 5 shall not apply to such event or occurrence.

10. TAX ADJUSTMENTS. The Company may make such reductions in the Purchase Price, in addition to those required by Sections 4, 5, 6 and 7, as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

11. MINIMUM ADJUSTMENT. (a) No adjustment in the Purchase Price (and no related adjustment in the number of shares of Common Stock which may thereafter be purchased upon exercise of this Warrant) shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; provided, however, that any adjustments which by reason of this Section 11 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All such calculations under this Warrant shall be made by the Company and shall be made to the nearest cent or to the nearest one hundredth of a share, as the case may be.

(b) No adjustment need be made for a change in the par value of the Common Stock or from par value to no par value or from no par value to par value.

12. NOTICE OF ADJUSTMENTS. Whenever the Purchase Price is adjusted as herein provided, the Company shall promptly, but in no event later than ten Trading Days thereafter, give a notice to the Holder setting forth the Purchase Price and number of shares of Common Stock which may be purchased upon exercise of this Warrant after such adjustment and setting forth a brief statement of the facts requiring such adjustment but which such statement shall not include any information which would be material non-public information for purposes of the 1934 Act. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

13. FURTHER ASSURANCES. The Company will take all action that may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of stock, free from all taxes, liens and

charges with respect to the issue thereof, on the exercise of all or any portion of this Warrant from time to time outstanding.

14. NOTICE TO HOLDER PRIOR TO CERTAIN ACTIONS. In case on or after the Issuance Date:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock (other than in cash out of retained earnings); or

(b) the Company shall authorize the granting to the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) the Board of Directors shall authorize any reclassification of the Common Stock (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or any consolidation or merger or other business combination transaction to which the Company is a party and for which approval of any stockholders of the Company is required, or the sale or transfer of all or substantially all of the assets of the Company; or

(d) there shall be pending the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

the Company shall give the Holder, as promptly as possible but in any event at least ten Trading Days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, other business combination transaction, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record who shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, other business combination transaction, sale, transfer, dissolution, liquidation or winding-up shall be determined. Such notice shall

not include any information which would be material non-public information for purposes of the 1934 Act. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. In the case of any such action of which the Company gives such notice to the Holder or is required to give such notice to the Holder, the Holder shall be entitled to give a subscription form to exercise this Warrant in whole or in part that is contingent on the completion of such action.

15. RESERVATION OF STOCK, ETC., ISSUABLE ON EXERCISE OF WARRANTS.

The Company will at all times reserve and keep available out of its authorized but unissued shares of capital stock, solely for issuance and delivery on the exercise of this Warrant, a sufficient number of shares of Common Stock (or Other Securities) to effect the full exercise of this Warrant and the exercise, conversion or exchange of any other warrant or security of the Company exercisable for, convertible into, exchangeable for or otherwise entitling the holder to acquire shares of Common Stock (or Other Securities), and if at any time the number of authorized but unissued shares of Common Stock (or Other Securities) shall not be sufficient to effect such exercise, conversion or exchange, the Company shall take such action as may be necessary to increase its authorized but unissued shares of Common Stock (or Other Securities) to such number as shall be sufficient for such purposes.

16. TRANSFER OF WARRANT. This Warrant shall inure to the benefit of

the successors to and assigns of the Holder. This Warrant and all rights hereunder, in whole or in part, are registrable at the office or agency of the Company referred to below by the Holder in person or by his duly authorized attorney, upon surrender of this Warrant properly endorsed accompanied by an assignment form in the form attached to this Warrant, or other customary form, duly executed by the transferring Holder.

17. REGISTER OF WARRANTS. The Company shall maintain, at the

principal office of the Company (or such other office as it may designate by notice to the Holder), a register in which the Company shall record the name and address of the Person in whose name this Warrant has been issued, as well as the name and address of each successor and prior owner of such Warrant. The Company shall be entitled to treat the Person in whose name this Warrant is so registered as the sole and absolute owner of this Warrant for all purposes.

18. EXCHANGE OF WARRANT. This Warrant is exchangeable, upon the surrender hereof by the Holder at the office or agency of the Company referred to in Section 16, for one or more new Warrants of like tenor representing in the aggregate the right to subscribe for and purchase the number of shares of Common Stock which may be subscribed for and purchased hereunder, each of such new Warrants to represent the right to subscribe for and purchase such number of shares as shall be designated by the Holder at the time of such surrender.

19. REPLACEMENT OF WARRANT. On receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of this Warrant and (a) in the case of loss, theft or destruction, of indemnity from the Holder reasonably satisfactory in form to the Company (and without the requirement to post any bond or other security), or (b) in the case of mutilation, upon surrender and cancellation of this Warrant, the Company will execute and deliver to the Holder a new Warrant of like tenor without charge to the Holder.

20. WARRANT AGENT. The Company may, by written notice to the Holder, appoint the transfer agent and registrar for the Common Stock as the Company's agent for the purpose of issuing Common Stock (or Other Securities) on the exercise of this Warrant pursuant to Section 2, and the Company may, by written notice to the Holder, appoint an agent having an office in the United States of America for the purpose of exchanging this Warrant pursuant to Section 18, and replacing this Warrant pursuant to Section 19, or any of the foregoing, and thereafter any such exchange or replacement, as the case may be, shall be made at such office by such agent.

21. REMEDIES. The Company stipulates that the remedies at law of the Holder in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate, and that such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

22. NO RIGHTS OR LIABILITIES AS A STOCKHOLDER. This Warrant shall not entitle the Holder to any voting rights or other rights as a stockholder of the Company. Nothing contained in this Warrant shall be construed as conferring upon the Holder

the right to vote or to consent or to receive notice as a stockholder of the Company on any matters or with respect to any rights whatsoever as a stockholder of the Company. No dividends or interest shall be payable or accrued in respect of this Warrant or the interest represented hereby or the Common Stock (or Other Securities) purchasable hereunder until, and only to the extent that, this Warrant shall have been exercised in accordance with its terms.

23. NOTICES, ETC. All notices and other communications from the Company to the Holder shall be in writing and delivered personally, by confirmed facsimile, by a nationally recognized overnight courier service or mailed by first class certified mail, postage prepaid, at such facsimile telephone number or address as may have been furnished to the Company in writing by the Holder or at the address shown for the Holder on the register of Warrants referred to in Section 17.

24. TRANSFER RESTRICTIONS. This Warrant has not been and is not being registered under the provisions of the 1933 Act or any state securities laws and this Warrant may not be transferred prior to the end of the holding period applicable to sales hereof under Rule 144(k) under the 1933 Act unless (1) the transferee is an "accredited investor" (as defined in Regulation D under the 1933 Act) or a QIB in a transfer that meets the requirements of Rule 144A and (2) the Holder shall have delivered to the Company an opinion of counsel, reasonably satisfactory in form, scope and substance to the Company, to the effect that this Warrant may be sold or transferred without registration under the 1933 Act. Prior to any such transfer, such transferee shall have represented in writing to the Company that such transferee has requested and received from the Company all information relating to the business, properties, operations, condition (financial or other), results of operations or prospects of the Company deemed relevant by such transferee; that such transferee has been afforded the opportunity to ask questions of the Company concerning the foregoing and has had the opportunity to obtain and review the Registration Statement and the prospectus related thereto, each as amended or supplemented to the date of transfer to such transferee, and the reports and other information concerning the Company which at the time of such transfer have been filed by the Company with the SEC pursuant to the 1934 Act and which are incorporated by reference in such prospectus as of the date of such transfer. If such transfer is intended to assign the rights and obligations of the Holder under the Subscription

Agreement, such transfer shall otherwise be made in compliance with Section 10(j) of the Subscription Agreement.

25. RULE 144A INFORMATION REQUIREMENT. Within the period prior to the expiration of the holding period applicable to sales hereof under Rule 144(k) under the 1933 Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the 1934 Act, make available to the Holder and the holder of any shares of Common Stock issued upon exercise of this Warrant which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of this Warrant from the Holder, the information required pursuant to Rule 144A(d)(4) under the 1933 Act upon the request of the Holder and it will take such further action as the Holder may reasonably request, all to the extent required from time to time to enable the Holder to sell this Warrant and the shares of Common Stock issued upon exercise of this Warrant without registration under the 1933 Act within the limitation of the exemption provided by Rule 144A, as Rule 144A may be amended from time to time. Upon the request of the Holder, the Company will deliver to the Holder a written statement as to whether it has complied with such requirements.

26. LEGEND. Unless theretofore registered for resale under the 1933 Act, each certificate for shares issued upon exercise of this Warrant shall bear the following legend:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the "1933 Act"). The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the 1933 Act, or an opinion of counsel that registration is not required under the 1933 Act.

27. AMENDMENT; WAIVER. This Warrant and any terms hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

28. MISCELLANEOUS. This Warrant shall be construed and enforced in accordance with and governed by the internal laws of the State of New York. The headings, captions and footers in this Warrant are for purposes of reference only, and

shall not limit or otherwise affect any of the terms hereof. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

29. ATTORNEYS' FEES. In any litigation, arbitration or court proceeding between the Company and the Holder relating hereto, the prevailing party shall be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing or interpreting the terms of this Warrant.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed on its behalf by one of its officers thereunto duly authorized.

Dated: QUESTCOR PHARMACEUTICALS, INC.

By: _____
Name:
Title:

ASSIGNMENT

For value _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or other Taxpayer Identification Number of assignee: _____) the attached original, executed Warrant to purchase _____ share of Common Stock of Questcor Pharmaceuticals, Inc., a California corporation (the "Company"), and hereby irrevocably constitutes and appoints _____ attorney to transfer the Warrant on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the Warrant within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the 1933 Act (or any successor provision) (other than any transfer pursuant to a registration statement that has been declared effective under the 1933 Act), the undersigned confirms that such Warrant is being transferred:

- To the Company or a subsidiary thereof; or
- To a QIB pursuant to and in compliance with Rule 144A; or
- To an "accredited investor" (as defined in Regulation D under the 1933 Act) pursuant to and in compliance with the 1933 Act; or
- Pursuant to and in compliance with Rule 144 under the 1933 Act;

and unless the box below is checked, the undersigned confirms that, to the knowledge of the undersigned, such Warrant is not being transferred to an "affiliate" (as defined in Rule 144 under the 1933 Act) of the Company.

- The transferee is an affiliate of the Company.

Capitalized terms used in this Assignment and not defined in this Assignment shall have the respective meanings provided in the Warrant.

Dated: -----

NAME: -----

Signature(s)

FORM OF SUBSCRIPTION

QUESTCOR PHARMACEUTICALS, INC.

(To be signed only on exercise of Warrant)

TO: Questcor Pharmaceuticals, Inc.
3260 Whipple Road
Union City, California 94587

Attention: Chief Financial Officer

Facsimile No.: (510) 400-0715

1. The undersigned Holder of the attached original, executed Warrant hereby elects to exercise its purchase right under such Warrant with respect to shares (the "Exercise Shares") of Common Stock, as defined in the Warrant, of Questcor Pharmaceuticals, Inc., a California corporation (the "Company").

2. The undersigned Holder (check one):

- (a) elects to pay the Aggregate Purchase Price for such shares of Common Stock (i) in lawful money of the United States or by the enclosed certified or official bank check payable in United States dollars to the order of the Company in the amount of \$, or (ii) by wire transfer of United States funds to the account of the Company in the amount of \$, which transfer has been made before or simultaneously with the delivery of this Form of Subscription pursuant to the instructions of the Company;

or

- (b) elects to receive shares of Common Stock having a value equal to the value of the Warrant calculated in accordance with Section 2(b) of the Warrant.

3. Please issue a stock certificate or certificates representing the appropriate number of shares of Common Stock in the name of the undersigned or in such other name(s) as is specified below:

Name: -----

Address: -----

Social Security or Tax Identification Number (if any):

Dated: -----

(Signature must conform to name of Holder as
specified on the face of the Warrant)

(Address)

SUBSCRIPTION AGREEMENT

DATED AS OF DECEMBER 29, 2002

BY AND BETWEEN

QUESTCOR PHARMACEUTICALS, INC.

AND

[INVESTOR]

SERIES B CONVERTIBLE PREFERRED STOCK

AND

COMMON STOCK PURCHASE WARRANTS

QUESTCOR PHARMACEUTICALS, INC.
SUBSCRIPTION AGREEMENT
SERIES B CONVERTIBLE PREFERRED STOCK
AND
COMMON STOCK PURCHASE WARRANTS
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SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT, dated as of December 29, 2002 (this "Agreement"), by and between QUESTCOR PHARMACEUTICALS, INC., a California corporation (the "Company"), with headquarters located at 3260 Whipple Road, Union City, California 94587, and [INVESTOR] (the "Buyer").

W I T N E S S E T H:

WHEREAS, the Company wishes to sell, and the Buyer wishes to purchase, upon the terms and subject to the conditions of this Agreement, shares of voting Series B Convertible Preferred Stock of the Company which will be convertible into shares of Common Stock (such capitalized term and all other capitalized terms used in this Agreement having the respective meanings provided in Section 1); and

WHEREAS, in connection with the issuance of the Preferred Shares, the Company is issuing to the Buyer the Warrant to purchase Common Stock on the terms provided herein;

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 parties agree as follows:

1. DEFINITIONS.

(a) As used in this Agreement, the terms "Agreement," "Buyer" and "Company" shall have the respective meanings assigned to such terms in the introductory paragraph of this Agreement.

(b) All the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof and of this Agreement.

(c) The following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Additional Dividend Event" shall have the meaning to be provided or provided in the Certificate of Determination.

"AMEX" means the American Stock Exchange, Inc.

"Approved Market" means the AMEX, the Nasdaq National Market or the New York Stock Exchange, Inc.

"Arrearage Interest" shall have the meaning to be provided or provided in the Certificate of Determination.

"Blackout Period" means the period of up to an aggregate of 30 Trading Days in any period of 365 consecutive days, in each case commencing on the day immediately after the date the Company notifies the Investors that they are required, pursuant to Section 8(c)(4), to suspend offers and sales of Registrable Securities pursuant to the Registration Statement as a result of an event or circumstance described in Section 8(b)(5)(A), during which period, by reason of Section 8(b)(5)(B), the Company is not required to amend the Registration Statement or to supplement the Prospectus; provided, however, that (1) no Blackout Period may exceed ten consecutive Trading Days in any period of 120 consecutive days and (2) no Blackout Period may commence sooner than 60 days after the end of a prior Blackout Period.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law or executive order to remain closed.

"Certificate of Determination" means the Certificate of Determination of Series B Convertible Preferred Stock in the form of ANNEX I to this Agreement, as the same is filed with the Secretary of State of the State of California.

"CGCL" means the California General Corporation Law.

"Claims" means any losses, claims, damages, liabilities or expenses, including, without limitation, reasonable fees and expenses of legal counsel (joint or several), incurred by a Person.

"Closing Date" means 12:00 noon, New York City time, on January 3, 2003 or such other time as is mutually agreed between the Company and the Buyer.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder and published interpretations thereof.

"Common Shares" means the Conversion Shares and the Warrant Shares.

"Common Stock" means the Common Stock, no par value, of the Company.

"Common Stock Equivalent" means any warrant, option, subscription or purchase right with respect to shares of Common Stock, any security convertible into, exchangeable for, or otherwise entitling the holder thereof to acquire, shares of Common Stock or any warrant, option, subscription or purchase right with respect to any such convertible, exchangeable or other security.

"Company Redemption Date" means the Business Day on which the Preferred Shares are to be redeemed pursuant to Section 5(c), determined in accordance with Section 5(c).

"Company Redemption Price" means an amount in cash equal to the sum of (A) the product obtained by multiplying (i) the Stated Value times (ii) 110% plus (B) an amount equal to the accrued and unpaid dividends on the Preferred Share to be redeemed to the Company Redemption Date plus (C) an amount equal to accrued and unpaid Arrearage Interest, if any, on dividends on such Preferred Share to the Company Redemption Date.

"Conversion Agent Instruction" means the Conversion Agent Instruction from the Company to the Transfer Agent for the benefit of, among others, the Buyer and the Other Buyers, in the form of ANNEX II to this Agreement.

"Conversion Notice" means the Notice of Conversion of Series B Convertible Preferred Stock substantially in the form of Section 14(a) of the Certificate of Determination.

"Conversion Price" shall have the meaning to be provided or provided in the Certificate of Determination.

"Conversion Shares" means the shares of Common Stock issued or issuable upon conversion of the Preferred Shares.

"Default Rate" shall have the meaning to be provided or provided in the Certificate of Determination.

"Eligible Bank" shall have the meaning to be provided or provided in the Certificate of Determination.

"Encumbrances" means all mortgages, deeds of trust, claims, security interests, liens, pledges, leases, subleases, charges, escrows, options, proxies, rights of occupancy, rights of first refusal, preemptive rights, covenants, conditional limitations, hypothecations, prior assignments, easements, title retention agreements, indentures, security agreements or any other encumbrances of any kind.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder and published interpretations thereof.

"ESPP" means the Company's Employee Stock Purchase Plan as in effect on the date of this Agreement.

"Event Period" means (x) an Optional Redemption Event shall have occurred with respect to which the Buyer shall be entitled to exercise redemption rights under Section 11 of the Certificate of Determination or with respect to which the Buyer shall have exercised such rights and the Company shall not have paid, or deposited in accordance with Section 15(c) of the Certificate of Determination, the Optional Redemption Price or (y) an Additional Dividend Event, or an event which, with notice or passage of time, or both, would become an Additional Dividend Event, shall have occurred and be continuing.

"Finder" means Brighton Capital, Ltd.

"GAAP" means United States generally accepted accounting principles.

"Indebtedness" shall have the meaning to be provided or provided in the Certificate of Determination.

"Indemnified Party" means the Company, each of its directors, each of its officers who signs the Registration Statement, each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act, any underwriter and any other stockholder offering or selling securities pursuant to the Registration Statement or any of its directors or officers or any Person who controls such underwriter or stockholder within the meaning of the 1933 Act or the 1934 Act.

"Indemnified Person" means the Buyer and each other Investor who beneficially owns or holds Registrable Securities included in the Registration Statement and each other Investor

who offers or sells Registrable Securities included in the Registration Statement in the manner permitted under this Agreement, the directors, if any, of the Buyer or such Investor, the officers (or persons performing similar functions), if any, of the Buyer and any such Investor, each Person, if any, who controls the Buyer or any such Investor within the meaning of the 1933 Act or the 1934 Act, any underwriter (as defined in the 1933 Act) acting on behalf of an Investor who participates in the offering of Registrable Securities of such Investor in accordance with the plan of distribution contained in the Prospectus, the directors, if any, of such underwriter and the officers, if any, of such underwriter, and each Person, if any, who controls any such underwriter within the meaning of the 1933 Act or the 1934 Act.

"Inspector" means any attorney, accountant or other agent retained by an Investor for the purposes provided in Section 8(b)(9).

"Intellectual Property" means all franchises, patents, trademarks, service marks, tradenames (whether registered or unregistered), copyrights, corporate names, licenses, trade secrets, proprietary software or hardware, proprietary technology, technical information, discoveries, designs and other proprietary rights, whether or not patentable, and confidential information (including, without limitation, know-how, processes and technology) used in the conduct of the business of the Company or any Subsidiary, or in which the Company or any Subsidiary has an interest.

"Investor" means the Buyer and any permitted transferee or assignee who agrees to become bound by the provisions of Sections 5(a), 5(b), 5(c), 8, 9, and 10.

"Letter Agreement" means the letter agreement, dated as of the date of this Agreement, between the Company and the Buyer and the Other Buyers.

"Majority Holders" shall have the meaning to be provided or provided in the Certificate of Determination.

"Margin Stock" shall have the meaning provided in Regulation G of the Board of Governors of the Federal Reserve System (12 C.F.R. Part 207).

"1934 Act" means the Securities Exchange Act of 1934, as amended, or any successor statute.

"1933 Act" means the Securities Act of 1933, as amended, or any successor statute.

"Optional Redemption Event" shall have the meaning to be provided or provided in the Certificate of Determination.

"Optional Redemption Price" shall have the meaning to be provided or provided in the Certificate of Determination.

"Other Buyers" means each of the several Persons who have agreed to purchase shares of Preferred Stock pursuant to the Other Subscription Agreements.

"Other Preferred Shares" means the shares of Preferred Stock to be purchased or purchased by the Other Buyers pursuant to the Other Subscription Agreements.

"Other Subscription Agreements" means the several Subscription Agreements, dated as of the date hereof, by and between the Company and the several buyers named therein relating to the sale and purchase of shares of Preferred Stock.

"Other Warrants" means the Common Stock Purchase Warrants of the Company to be purchased or purchased by the Other Buyers pursuant to the Other Subscription Agreements.

"Permitted Indebtedness" shall have the meaning to be provided or provided in the Certificate of Determination.

"Person" means any natural person, corporation, partnership, limited liability company, trust, incorporated organization, unincorporated association, or similar entity or any government, governmental agency or political subdivision.

"Preferred Shares" means the shares of Preferred Stock to be purchased by the Buyer pursuant to this Agreement, as set forth on the signature page of this Agreement.

"Preferred Stock" shall mean the Series B Convertible Preferred Stock, no par value, of the Company.

"Prospectus" means the prospectus forming part of the Registration Statement at the time the Registration Statement is declared effective and any amendment or supplement thereto, including any documents or information incorporated therein by reference.

"Purchase Price" means the aggregate purchase price for the Preferred Shares set forth on the signature page of this Agreement.

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

"Questionnaire" means the Selling Security Holder Questionnaire in the form attached hereto as EXHIBIT VII and completed by the Buyer and furnished to the Company in connection with this Agreement.

"Record" shall mean all pertinent financial and other records, pertinent corporate documents and properties of the Company and its Subsidiaries subject to inspection for the purposes provided in Section 8(b)(9).

"register," "registered," and "registration" refer to a registration effected by preparing and filing with the SEC of a Registration Statement or Statements in compliance with the 1933 Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement by the SEC.

"Registrable Securities" means (1) the Common Shares, (2) if the Common Stock is changed, converted or exchanged by the Company or its successor, as the case may be, into any other stock or other securities on or after the date the Certificate of Determination is filed with the Secretary of State of the State of California, such other stock or other securities which are issued or issuable in respect of or in lieu of the Common Shares and (3) if any other securities are issued to holders of the Common Stock (or such other shares or other securities into which or for which the Common Stock is so changed, converted or exchanged as described in the immediately preceding clause (2)) upon any reclassification, share combination, share subdivision, share dividend, merger, consolidation or similar transaction or event, such other securities which are issued or issuable in respect of or in lieu of the Common Shares.

"Registration Default Date" means the date which is 90 days following the Closing Date; provided, however, if the Registration Statement is subject to review by the SEC staff the Registration Default Date shall be the date which is 120 days following the Closing Date.

"Registration Default Period" means the period following the Registration Default Date during which any Registration Event occurs and is continuing.

"Registration Event" means the occurrence of any of the following events:

(i) the Company fails to file with the SEC the Registration Statement on or before the date by which the Company is required to file the Registration Statement pursuant to Section 8(a)(1),

(ii) the Registration Statement covering Registrable Securities is not declared effective by the SEC within 90 days following the Closing Date; provided, however, that if the Registration Statement is subject to review by the SEC staff, such effective date shall be within 120 days following the Closing Date,

(iii) after the SEC Effective Date, sales cannot be made pursuant to the Registration Statement for any reason (including without limitation by reason of a stop order, or the Company's failure to update the Registration Statement) but except as excused pursuant to Section 8(b)(5),

(iv) the Common Stock generally or the Registrable Securities specifically are not listed or included for quotation on an Approved Market, or trading of the Common Stock is suspended or halted on the Approved Market which at the time constitutes the principal market for the Common Stock, or

(v) the Company fails, refuses or is otherwise unable timely to issue Common Shares upon conversion of the Preferred Shares or Warrant Shares upon exercise of the Warrant in accordance with the terms of the Preferred Shares and the Warrant, or certificates therefor as required under the Transaction Documents or the Company fails, refuses or is otherwise unable timely to transfer any Common Shares as and when required by the Transaction Documents.

"Registration Period" means the period from the SEC Effective Date to the earliest of

(i) the date which is four years after the Closing Date,

(ii) if the Warrant has been fully exercised, such date after which each Investor may sell all of its Registrable Securities without registration under the 1933 Act pursuant to Rule 144, free of any limitation on the volume of such securities which may be sold in any period or on the manner of sale, and

(iii) the date on which the Investors no longer own or have any right to acquire any Registrable Securities.

"Registration Statement" means a registration statement on Form S-3 of the Company under the 1933 Act, including any amendment thereto, which names the Investors as selling stockholders (including any documents or information incorporated therein by reference, whether before or after the SEC Effective Date).

"Regulation D" means Regulation D under the 1933 Act.

"Required Information" means, with respect to any Investor, all information regarding such Investor, the Registrable Securities held by such Investor or which such Investor has the right to acquire and the intended method of disposition of the Registrable Securities held by such Investor or which such Investor has the right to acquire as shall be required by the 1933 Act to effect the registration of the resale by such Investor of such Registrable Securities.

"Rule 415" means Rule 415 under the 1933 Act or any successor rule providing for offering securities on a delayed or continuous basis.

"Rule 144" means Rule 144 under the 1933 Act or any other similar rule or regulation of the SEC that may at any time provide a "safe harbor" exemption from registration under the 1933 Act so as to permit a holder of securities to sell such securities to the public without registration under the 1933 Act.

"Rule 144A" means Rule 144A under the 1933 Act or any successor rule thereto.

"SEC" means the Securities and Exchange Commission.

"SEC Effective Date" means the date the Registration Statement is declared effective by the SEC.

"SEC Filing Date" means the date the Registration Statement is first filed with the SEC pursuant to Section 8.

"SEC Reports" means the Company's (1) Annual Report on Form 10-K for the fiscal year ended December 31, 2001, (2) Quarterly Reports on Form 10-Q for the quarters ended March 31, 2002, June 30, 2002 and September 30, 2002 and (3) the Company's definitive proxy statement for its 2002 Annual Meeting of Stockholders, in each case as filed with the SEC and including the information and documents (other than exhibits) incorporated therein by reference.

"Securities" means the Shares and the Warrant.

"Series A Preferred Stock" means the Series A Preferred Stock, no par value, of the Company.

"Shares" means the Preferred Shares and the Common Shares.

"Short Sale" shall have the meaning provided in Rule 3b-3 under the 1934 Act, as in effect on the date of this Agreement.

"Stated Value" shall have the meaning to be provided or provided in the Certificate of Determination.

"Subscription Form" means the Subscription Form relating to the Warrant.

"Subsidiary" means any corporation or other entity of which a majority of the capital stock 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 Company.

"Trading Day" shall have the meaning to be provided or provided in the Certificate of Determination.

"Transaction Documents" means, individually or collectively, this Agreement, the Securities, the Certificate of Determination, the Conversion Agent Instruction, the Letter

Agreement and the other agreements, instruments and documents contemplated hereby and thereby.

"Transfer Agent" means Computershare Trust Company, Inc., or any successor thereof selected by the Company and reasonably acceptable to the Majority Holders, serving as transfer agent and registrar for the Common Stock, conversion agent for the Preferred Stock and exercise agent for the Warrant.

"2001 10-K" means the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001.

"Violation" means

(i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any post-effective amendment thereof or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading,

(ii) any untrue statement or alleged untrue statement of a material fact contained in the 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,

(iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any state securities law or any rule or regulation under the 1933 Act, the 1934 Act or any state securities law, or

(iv) any breach or alleged breach by any Person other than the Buyer of any representation, warranty, covenant, agreement or other term of any of the Transaction Documents.

"Warrant" means the Common Stock Purchase Warrant in the form of ANNEX III to this Agreement.

"Warrant Shares" means the shares of Common Stock issuable or issued upon exercise of the Warrant.

2. AGREEMENT TO SUBSCRIBE; PURCHASE PRICE.

(A) SUBSCRIPTION. Upon the terms and subject to the conditions of this Agreement, the Buyer hereby agrees to purchase from the Company, and the Company hereby agrees to sell to the Buyer, on the Closing Date, the number of Preferred Shares set forth on the signature page of this Agreement, having the terms and conditions as set forth in the Certificate of Determination in the form of ANNEX I to this Agreement, at the price per share and for the Purchase Price set forth on the signature page of this Agreement. The Purchase Price shall be payable in United States Dollars. In connection with the purchase and sale of the Preferred Shares, the Company will issue to the Buyer the Warrant initially entitling the holder to purchase the number of shares of Common Stock set forth on the signature page of this Agreement.

(B) FORM OF PAYMENT. Payment by the Buyer of the Purchase Price to the Company on the Closing Date shall be made by wire transfer of immediately available funds to:

Cupertino National Bank
3 Palo Alto Square, Suite 150
Palo Alto, California 94306

ABA No.: 121141152

For credit to account No.: 3086712
For credit to the account of Questcor Pharmaceuticals, Inc.

Reference: [Investor]

(C) CLOSING. The issuance and sale of the Preferred Shares and the issuance of the Warrant shall occur on the Closing Date at the Law Offices of Brian W Pusch, Penthouse Suite, 29 West 57th Street, New York, New York. At the closing, upon the terms and subject to the conditions of this Agreement, (1) the Company shall issue and deliver to the Buyer the Preferred Shares and the Warrant, registered in the name of the Buyer or its nominee, against payment by the Buyer to the Company of an amount equal to the Purchase Price, and (2) the Buyer shall pay to the Company an amount equal to the Purchase Price, against delivery by the Company to the Buyer of the Preferred Shares and the Warrant.

3. REPRESENTATIONS, WARRANTIES, COVENANTS, ETC. OF THE BUYER.

The Buyer represents and warrants to, and covenants and agrees with, the Company as follows:

(A) ACQUISITION FOR INVESTMENT. The Buyer is purchasing the Preferred Shares and acquiring the Warrant and will acquire the Common Shares issued upon conversion of the Preferred Shares prior to the second anniversary of the Closing Date or issued upon each exercise of the Warrant prior to the second anniversary of the Closing Date or acquired upon exercise of the Warrant by payment for the Warrant Shares in cash at any time for its own account for investment and not with a view towards the public sale or distribution thereof within the meaning of the 1933 Act; the Buyer will acquire any Common Shares issued to the Buyer prior to the SEC Effective Date for its own account for investment and not with a view towards the public sale or distribution thereof within the meaning of the 1933 Act prior to the SEC Effective Date.

(B) ACCREDITED INVESTOR. The Buyer is an "accredited investor" as that term is defined in Rule 501 of Regulation D by reason of Rule 501(a)(3) thereof;

(C) REOFFERS AND RESALES.

The Buyer will not, directly or indirectly, offer, sell, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire) any of the Securities unless registered under the 1933 Act, pursuant to an exemption from registration under the 1933 Act or in a transaction not requiring registration under the 1933 Act;

(D) COMPANY RELIANCE. The Buyer understands that (1) the Preferred Shares are being offered and sold to the Buyer, (2) the Warrant is being offered and issued to the Buyer, (3) upon conversion of the Preferred Shares prior to the second anniversary of the Closing Date, the Conversion Shares issued upon such conversion will be issued to the Buyer and (4) upon exercise of the Warrant at any time prior to the second anniversary of the Closing Date or upon cash exercise of the Warrant, the Warrant Shares issued upon such exercise will be issued to the Buyer, in each such case in reliance on one or more exemptions from the registration requirements of the 1933 Act, including, without limitation, Regulation D, and exemptions from state securities laws and that the Company is relying upon the truth and accuracy of, and the Buyer's compliance with, the

representations, warranties, agreements, acknowledgments and understandings of the Buyer set forth herein, in order to determine the availability of such exemptions and the eligibility of the Buyer to acquire or receive an offer to acquire the Securities;

(E) INFORMATION PROVIDED. The Buyer and its advisors, if any, have requested, received and considered all information relating to the business, properties, operations, condition (financial or other), results of operations and prospects of the Company and the Subsidiaries and information relating to the offer and sale of the Preferred Shares and issuance of the Warrant, and the offer of the Common Shares deemed relevant by them (assuming the accuracy and completeness of the SEC Reports and of the Company's responses to the Buyer's requests); the Buyer and its advisors, if any, have been afforded the opportunity to ask questions of the Company concerning the terms of the offering of the Securities and the business, properties, operations, condition (financial or other), results of operations and prospects of the Company and the Subsidiaries and have received satisfactory answers to any such inquiries (assuming the accuracy and completeness of the SEC Reports and the Company's responses to the Buyer's requests); without limiting the generality of the foregoing, the Buyer has had the opportunity to obtain and to review the SEC Reports; in connection with its decision to purchase the Preferred Shares and to acquire the Warrant, the Buyer has relied solely upon the SEC Reports, the representations, warranties, covenants and agreements of the Company set forth in this Agreement and to be contained in the other Transaction Documents, as well as the due diligence investigation of the Company and the Subsidiaries completed by the Buyer and its advisors, if any; the Buyer understands that its investment in the Securities involves a high degree of risk; and the Buyer understands that the offering of the Preferred Shares and the Warrant is being made to the Buyer as part of an offering without any minimum or maximum amount of the offering (subject, however, to the right of the Company at any time prior to execution and delivery of this Agreement by the Company, in its sole discretion, to accept or reject an offer by the Buyer to purchase the Preferred Shares and to acquire the Warrant);

(F) ABSENCE OF APPROVALS. The Buyer understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities;

(G) SUBSCRIPTION AGREEMENT. The Buyer has all requisite power and authority, corporate or otherwise, to execute, deliver and perform its obligations under this Agreement and the other agreements executed or to be executed by the Buyer in connection herewith and to consummate the transactions contemplated hereby and thereby; and this Agreement has been duly and validly authorized, duly executed and delivered on behalf of the Buyer and, assuming due execution and delivery by the Company, is a valid and binding agreement of the Buyer enforceable in accordance with its terms, except as the enforceability hereof may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to or affecting creditors' rights generally and general principles of equity, regardless of whether enforcement is considered in a proceeding in equity or at law;

(H) BUYER STATUS. The Buyer is not a "broker" or "dealer" as those terms are defined in the 1934 Act which is required to be registered with the SEC pursuant to Section 15 of the 1934 Act; and

(I) ABSENCE OF RELIANCE. The Buyer acknowledges that, other than as expressly set forth in this Agreement and the other Transaction Documents, neither the Company nor the Finder has made, and the Buyer has not relied upon, any representation or warranty as to the merits of an investment in the Preferred Shares or the income tax consequences to the Buyer of the transactions contemplated by this Agreement.

4. REPRESENTATIONS, WARRANTIES, COVENANTS, ETC. OF THE COMPANY.

The Company represents and warrants to, and covenants and agrees with, the Buyer that:

(A) ORGANIZATION AND AUTHORITY. The Company and each Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and (i) the Company and each Subsidiary has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as described in the SEC Reports and as currently conducted, and (ii) the Company has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and the other Transaction Documents being executed and delivered by the Company in connection herewith, and to

consummate the transactions contemplated hereby and thereby. The Company has no Subsidiaries other than as listed on Schedule 4(a).

(B) QUALIFICATIONS. The Company and each Subsidiary is duly qualified to do business as a foreign corporation and is in good standing in all jurisdictions where such qualification is necessary and where failure so to qualify could have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole.

(C) CAPITALIZATION. (1) The authorized capital stock of the Company consists of (a) 75,000,000 shares of Common Stock, of which 38,676,592 shares were outstanding at the close of business on December 27, 2002 and (b) 7,500,000 shares of preferred stock, no par value, of which 2,155,715 shares were issued and outstanding at the close of business on December 27, 2002 and designated Series A Preferred Stock and of which 10,000 shares will be designated as Preferred Stock and issued pursuant to this Agreement and the Other Subscription Agreements; from December 27, 2002 to the Closing Date there will be (x) no increase in the number of shares of Common Stock outstanding (except for shares of Common Stock issued upon exercise of options and warrants outstanding on the date hereof and disclosed in the SEC Reports and shares issued under the ESPP and except for shares of Common Stock issued upon conversion or exercise of Common Stock Equivalents outstanding as of the date hereof and disclosed on Schedule 4(c)) and (y) no issuance of preferred stock of the Company or securities convertible into, exchangeable for, or otherwise entitling the holder to acquire, shares of Common Stock (except for securities issued pursuant to the Other Subscription Agreements). The 2001 10-K discloses as of December 31, 2001 all outstanding options or warrants for the purchase of, or other rights to purchase or subscribe for, or securities convertible into, exchangeable for, or otherwise entitling the holder to acquire, Common Stock or other capital stock of the Company, or any contracts or commitments to issue or sell Common Stock or other capital stock of the Company or any such options, warrants, rights or other securities; and from December 31, 2001 to the date hereof there has been, and to the Closing Date there will be, no change in the amount or terms of any of the foregoing except as disclosed in the SEC Reports and except for the grant of options to purchase shares of Common Stock pursuant to the Company's stock option plans in effect on the date of this Agreement or issuance of Common Stock under the ESPP.

(2) The Company has duly reserved from its authorized and unissued shares of Common Stock the full number of shares required for (A) all options, warrants, convertible securities, exchangeable securities and other rights to acquire shares of Common Stock which are outstanding and (B) all shares of Common Stock and options and other rights to acquire shares of Common Stock which may be issued or granted under the stock option and similar plans which have been adopted by the Company or any Subsidiary; and, immediately following the closing on the Closing Date, after giving effect to any antidilution or similar adjustment arising by reason of the issuance of the Preferred Shares and the Other Preferred Shares and the other transactions contemplated by this Agreement and the Other Subscription Agreements, the total number of shares of Common Stock reserved and required to be reserved from the authorized and unissued shares of Common Stock for purposes of all such options, warrants, convertible securities, exchangeable securities, other rights and stock option and similar plans (excluding the Preferred Stock, the Warrant and the Other Warrants) will be 22,298,766. Each outstanding class or series of securities for which any such antidilution adjustment will occur is identified on Schedule 4(c) to this Agreement, together with the amount of such antidilution adjustment for each such class or series. The outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and nonassessable and all of such options, warrants and other rights have been duly authorized by the Company. None of the holders of such outstanding shares of capital stock is subject to personal liability solely by reason of being such a holder. None of the outstanding shares of capital stock or options, warrants, or rights or other securities entitling the holders to acquire Common Stock has been issued in violation of the preemptive rights of any security holder of the Company. The offers and sales of the outstanding shares of capital stock of the Company and such options, warrants, rights and other securities to acquire Common Stock were at all relevant times either registered under the 1933 Act and applicable state securities laws or exempt from such requirements. Except as described on Schedule 4(c), no holder of any of the Company's securities has any rights, "demand," "piggy-back" or otherwise, to have such securities registered by reason of the intention to file, filing or effectiveness of the Registration Statement.

(D) CONCERNING THE SHARES AND THE COMMON STOCK. The Shares have been duly authorized and the Preferred Shares, when issued and paid for in accordance with this Agreement, and the

Conversion Shares, when issued upon conversion of the Preferred Shares, and the Warrant Shares, when issued upon exercise of the Warrant, in each such case will be duly and validly issued, fully paid and non-assessable and will not subject the holder thereof to personal liability solely by reason of being such holder. There are no preemptive or similar rights of any stockholder of the Company or any other Person to acquire any of the Securities. The Company has duly reserved 10,624,732 shares of Common Stock for issuance upon conversion of the shares of Preferred Stock and 3,399,910 shares of Common Stock for issuance upon exercise of the Warrant and the common stock purchase warrants issuable pursuant to the Other Subscription Agreements, and such shares shall remain so reserved, and the Company shall from time to time reserve such additional shares of Common Stock as shall be required to be reserved pursuant to the Certificate of Determination and the Warrant, so long as the Preferred Stock may be converted or the Warrant may be exercised, as the case may be. The Common Stock is listed for trading on the AMEX and, except as described on Schedule 4(d), (1) the Company and the Common Stock meet the criteria for continued listing and trading on the AMEX; (2) the Company has not been notified since September 30, 2001 by the AMEX of any failure or potential failure to meet the criteria for continued listing and trading on the AMEX and (3) no suspension of trading in the Common Stock is in effect. Except as described on Schedule 4(d), the Company knows of no reason that the Common Shares will not be eligible for listing on the AMEX.

(E) CORPORATE AUTHORIZATION. This Agreement and the other Transaction Documents have been duly and validly authorized by the Company. This Agreement has been duly executed and delivered by the Company and, assuming due execution and delivery by the Buyer, this Agreement is, and the Certificate of Determination, when executed by the Company and filed with the Secretary of State of the State of California, will be, and the Warrant and the Conversion Agent Instruction, when executed and delivered by the Company, will be, valid and binding obligations of the Company enforceable in accordance with their respective terms, except as the enforceability hereof and thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting creditors' rights generally and general principles of equity, regardless of whether enforcement is considered in a proceeding in equity or at law.

(F) NON-CONTRAVENTION. The execution and delivery of the Transaction Documents by the Company, the issuance of the Securities as contemplated by the Transaction Documents and the completion by the Company of the other transactions contemplated by the Transaction Documents do not and will not, with or without the giving of notice or the lapse of time, or both, (i) result in any violation of any provision of the articles of incorporation or by-laws or similar instruments of the Company or any Subsidiary, (ii) conflict with or result in a breach by the Company or any Subsidiary of any of the terms or provisions of, or constitute a default under, or result in the modification of, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any Subsidiary pursuant to, any indenture, mortgage, deed of trust or other agreement or instrument to which the Company or any Subsidiary is a party or by which the Company or any Subsidiary or any of their respective properties or assets are bound or affected, in any such case which would have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole, or the validity or enforceability of, or the ability of the Company to perform its obligations under, the Transaction Documents, (iii) violate or contravene any applicable law, rule or regulation or any applicable decree, judgment or order of any court, United States federal or state regulatory body, administrative agency or other governmental body having jurisdiction over the Company or any Subsidiary or any of their respective properties or assets which would have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole, or the validity or enforceability of, or the ability of the Company to perform its obligations under, the Transaction Documents, or (iv) have any material adverse effect on any permit, certification, registration, approval, consent, license or franchise necessary for the Company or any Subsidiary to own or lease and operate any of its properties and to conduct any of its business or the ability of the Company or any Subsidiary to make use thereof.

(G) APPROVALS, FILINGS, ETC. No authorization, approval or consent of, or filing with, any court, governmental body, regulatory agency, self-regulatory organization, or stock exchange or market or the stockholders of the Company is required to be obtained or made by the Company or any Subsidiary for (1) the execution, delivery and performance by the Company

of the Transaction Documents, (2) the issuance and sale of the Securities as contemplated by the Transaction Documents, and (3) the performance by the Company of its other obligations under the Transaction Documents, other than (A) approval by AMEX for the listing of the Common Shares on the AMEX, (B) registration of the resale of the Common Shares under the 1933 Act as contemplated by Section 8, (C) as may be required under applicable state securities or "blue sky" laws, and (D) filing of one or more Forms D with respect to the Securities as required under Regulation D.

(H) INFORMATION PROVIDED. The written information provided by or on behalf of the Company to the Buyer in connection with the transactions contemplated by this Agreement, including, without limitation, the information referred to in Section 3(e), does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading, it being understood that for purposes of this Section 4(h), any statement contained in such information shall be deemed to be modified or superseded for purposes of this Section 4(h) to the extent that a statement in any document included in such information which was prepared and furnished to the Buyer on a later date or filed with the SEC on a later date modifies or replaces such statement, whether or not such later prepared and furnished or filed statement so states.

(I) CONDUCT OF BUSINESS. Except as set forth in the SEC Reports or on Schedule 4(i), since December 31, 2001, neither the Company nor any Subsidiary has (i) incurred any material obligation or liability (absolute or contingent) other than in the ordinary course of business; (ii) canceled, without payment in full, any material notes, loans or other obligations receivable or other debts or claims held by it other than in the ordinary course of business; (iii) sold, assigned, transferred, abandoned, mortgaged, pledged or subjected to lien any of its material properties, tangible or intangible, or rights under any material contract, permit, license, franchise or other agreement; (iv) conducted its business in a manner materially different from its business as conducted on December 31, 2001; (v) declared, made or paid or set aside for payment any cash or non-cash distribution on any shares of its capital stock; or (vi) consummated, or entered into any agreement with respect to, any transaction or event which would constitute an Optional Redemption Event. Except as disclosed in the SEC Reports or on Schedule 4(i), the Company and each Subsidiary owns, possesses

or has obtained all governmental, administrative and third party licenses, permits, certificates, registrations, approvals, consents and other authorizations necessary to own or lease (as the case may be) and operate its properties, whether tangible or intangible, and to conduct its business and operations as currently conducted, except such licenses, permits, certificates, registrations, approvals, consents and authorizations the failure of which to obtain would not have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole.

(J) SEC FILINGS. The Company has timely filed all reports required to be filed under the 1934 Act and any other material reports or documents required to be filed with the SEC since December 31, 2001. All of such reports and documents complied, when filed, in all material respects, with all applicable requirements of the 1933 Act and the 1934 Act. The Company meets the requirements for the use of Form S-3 for the registration of the resale of the Registrable Securities. Except for the Company's Current Report on Form 8-K dated August 14, 2002, the Company has not filed any reports with the SEC under the 1934 Act since December 31, 2001 other than the SEC Reports.

(K) ABSENCE OF CERTAIN PROCEEDINGS. Except as disclosed in the SEC Reports, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board or body, or governmental agency pending or, to the knowledge of the Company or any Subsidiary, threatened against or affecting the Company or any Subsidiary, in any such case wherein an unfavorable decision, ruling or finding would have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole, or the transactions contemplated by the Transaction Documents or which could adversely affect the validity or enforceability of, or the authority or ability of the Company to perform its obligations under, the Transaction Documents; the Company does not have pending before the SEC any request for confidential treatment of information and, to the best of the Company's knowledge, no such request will be made by the Company prior to the SEC Effective Date; and to the best of the Company's knowledge there is not pending or contemplated any, and there has been no, investigation by the SEC involving the Company or any current or former director or officer of the Company.

(L) LIABILITIES. The consolidated financial statements included in the 2001 10-K present fairly the consolidated financial position, consolidated results of operations and consolidated cash flows of the Company and the Subsidiaries, at the dates and for the periods covered thereby, have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby. Except as set forth on Schedule 4(i) and as and to the extent disclosed, reflected or reserved against in the financial statements of the Company and the notes thereto included in the SEC Reports, neither the Company nor any Subsidiary (1) has any liability, debt or obligation, whether accrued, absolute, contingent or otherwise, and whether due or to become due which, individually or in the aggregate, are material to the Company and the Subsidiaries, taken as a whole, or (2) has incurred any liability, debt or obligation of any nature whatsoever subsequent to December 31, 2001 which is, individually or in the aggregate, material to the Company and the Subsidiaries, taken as a whole, other than those incurred in the ordinary course of their respective businesses. A description of the type and a statement of the amount of each item of Indebtedness of the Company or any Subsidiary that will be outstanding on the Closing Date and that will constitute Permitted Indebtedness for purposes of clause (1) of the definition of the term Permitted Indebtedness appear on Schedule 4(l) attached hereto.

(M) MATERIAL LOSSES. Since December 31, 2001, neither the Company nor any Subsidiary has sustained any loss or interference with its business or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, which loss or interference could be material to the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole, except as disclosed in the SEC Reports.

(N) ABSENCE OF CERTAIN CHANGES. Since December 31, 2001, there has been no material adverse change and no material adverse development in the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole, except as disclosed in the SEC Reports.

(O) INTELLECTUAL PROPERTY. Except as set forth on Schedule 4(o) to this Agreement: (1) to the knowledge of the

Company, the Company holds all Intellectual Property, free and clear of all Encumbrances and restrictions on use or transfer, whether or not recorded, and has sole title to and ownership of or has the full, exclusive right to use, for the life of the proprietary right all Intellectual Property; (2) the use of the Intellectual Property by the Company or any Subsidiary does not, to the knowledge of the Company, violate or infringe on the rights of any other Person; (3) neither the Company nor any Subsidiary has received any notice of any conflict between the asserted rights of others and the Company or any Subsidiary with respect to any Intellectual Property; (4) to the knowledge of the Company all filings and other actions necessary to acquire, maintain, register, renew and perfect the rights of the Company and the Subsidiaries to all Intellectual Property used by the Company or any Subsidiary in its business or in which it has an interest have been duly made in all jurisdictions where such rights are used by it; (5) to the knowledge of the Company, the Company and the Subsidiaries are in compliance with all material terms and conditions of their agreements relating to the Intellectual Property; (6) neither the Company nor any Subsidiary is or has been a defendant in any action, suit, investigation or proceeding relating to infringement or misappropriation by the Company or any Subsidiary of any Intellectual Property; (7) neither the Company nor any Subsidiary has been notified of any alleged claim of infringement or misappropriation by the Company or any Subsidiary of any Intellectual Property; (8) the Company has no knowledge of any claim of infringement or misappropriation by the Company or any Subsidiary of any Intellectual Property; (9) to the knowledge of the Company, none of the products the Company and the Subsidiaries are researching, developing, make, have made, use, or sell, infringes or misappropriates any Intellectual Property right of any third party; (10) none of the trademarks and service marks used by the Company or any Subsidiary, to the knowledge of the Company, infringes the trademark or service mark rights of any third party; (11) to the knowledge of the Company none of the material processes and formulae, research and development results and other know-how relating to the Company's or the Subsidiaries' respective businesses, the value of which to the Company or the Subsidiaries is contingent upon maintenance of the confidentiality thereof, has been disclosed to any Person other than Persons bound by written confidentiality agreements; and (12) to the knowledge of the Company, the Company owns directly, or possesses adequate rights to use, all Intellectual Property used in or relating to the business of the Company, and none of

such Intellectual Property is owned, claimed or used by, or subject to any Encumbrance of or by, any Subsidiary.

(P) INTERNAL ACCOUNTING CONTROLS. The Company maintains a system of internal accounting controls for the Company and the Subsidiaries which meets the requirements of Section 13(b)(2) of the 1934 Act in all material respects.

(Q) COMPLIANCE WITH LAW. Neither the Company nor any Subsidiary is in violation of or has any liability under any statute, law, rule, regulation, ordinance, decision or order of any governmental agency or body or any court, domestic or foreign, including, without limitation, those relating to the use, operation, handling, transportation, disposal or release of hazardous or toxic substances or wastes or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances or wastes, except where such violation or liability would not individually or in the aggregate have a material adverse effect on the business, properties, operations, condition (financial or other), results of operations or prospects of the Company and the Subsidiaries, taken as a whole; and to the knowledge of the Company there is no pending investigation which would reasonably be expected to lead to such a claim.

(R) PROPERTIES. The Company and each Subsidiary has good title to all property, real and personal (tangible and intangible), and other assets owned by it which are individually or in the aggregate material to the Company and the Subsidiaries, taken as a whole, free and clear of all security interests, charges, mortgages, liens or other encumbrances, except such as are described in Schedule 4(r) or in the SEC Reports or such as do not materially interfere with the use of such property made, or proposed to be made, by the Company or any Subsidiary. The leases, licenses or other contracts or instruments under which the Company and each Subsidiary leases, holds or is entitled to use any property, real or personal, which individually or in the aggregate are material to the Company and the Subsidiaries, taken as a whole, are valid, subsisting and enforceable with only such exceptions as do not materially interfere with the use of such property made, or proposed to be made by the Company or any Subsidiary. Neither the Company nor any Subsidiary has received notice of any material violation of any applicable law, ordinance, regulation, order or requirement relating to its owned or leased properties. Neither the Company nor any Subsidiary has any mortgage, lien, pledge, security interest or other charge or encumbrance on any

of its assets or properties except as listed in Schedule 4(r) attached hereto.

(S) LABOR RELATION. No material labor problem exists or, to the knowledge of the Company or any Subsidiary, is imminent with respect to any of the employees of the Company or any Subsidiary.

(T) INSURANCE. The Company and each Subsidiary maintains insurance against loss or damage by fire or other casualty and such other insurance, including but not limited to, product liability insurance, in such amounts and covering such risks as the Company reasonably believes is adequate for the conduct of its business and the value of its properties.

(U) TAX MATTERS. The Company and each Subsidiary has filed all federal, state and local income and franchise tax returns required to be filed and has paid all taxes shown by such returns to be due, and no tax deficiency has been determined adversely to the Company or any Subsidiary which has had (nor does the Company or any Subsidiary have any knowledge of any tax deficiency which, if determined adversely to the Company or any Subsidiary, might have) a material adverse effect on the business, properties, operations, condition (financial or other), results of operations, or prospects of the Company and the Subsidiaries, taken as a whole.

(V) INVESTMENT COMPANY. Neither the Company nor any Subsidiary is an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder.

(W) ABSENCE OF BROKERS, FINDERS, ETC. No broker, finder, or similar Person is entitled to any commission, fee, or other compensation by reason of the transactions contemplated by this Agreement other than the Finder, and the Company shall pay, and indemnify and hold harmless the Buyer from, any claim made against the Buyer by the Finder or any other Person for any such commission, fee or other compensation.

(X) NO SOLICITATION. No form of general solicitation or general advertising was used by the Company or, to the best of its knowledge, any other Person acting on behalf of the Company, in respect of the Securities or in connection with the offer and sale of the Securities. Neither the Company nor, to its knowledge, any Person acting on behalf of the Company has, either directly or indirectly, sold or offered for sale to any

Person any of the Securities or, within the six months prior to the date hereof, any other similar security of the Company except as contemplated by this Agreement and the Other Subscription Agreements, and neither the Company nor any Person authorized to act on its behalf will sell or offer for sale any such security to, or solicit any offers to buy any such security from, or otherwise approach or negotiate in respect thereof with, any Person so as thereby to cause the issuance or sale of any of the Securities to be in violation of Section 5 of the 1933 Act.

(Y) ERISA COMPLIANCE. The Company and each Subsidiary is in compliance in all material respects with all presently applicable provisions of ERISA; no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company or any Subsidiary would have any liability; neither the Company nor any Subsidiary has incurred or expects to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Code; and each "pension plan" for which the Company or any Subsidiary would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(Z) ABSENCE OF RIGHTS AGREEMENT. The Company has not adopted a shareholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

(AA) DISTRIBUTIONS TO SHAREHOLDERS. For purposes of Section 500(b) of the CGCL (1) as of September 30, 2002, the sum of the assets of the Company (exclusive of goodwill, capitalized research and development expenses and deferred charges) were 155% of the Company's liabilities (not including deferred taxes, deferred income and other deferred credits), and (2) as of September 30, 2002 the current assets of the Company were 191% of the current liabilities of the Company, in each case in the preceding clauses (1) and (2) computed on a pro forma basis assuming: (A) the sale of 10,000 shares of Preferred Stock pursuant to this Agreement and the Other Subscription Agreements for an aggregate sale price of \$10,000,000.00, (B) the use of an amount equal to the amount set forth in the Letter Agreement from the proceeds of the sale of shares of Preferred Stock to repurchase shares of Series A Preferred Stock, and (C) the

redemption of 10,000 shares of Preferred Stock at a redemption price equal to \$1,030.00 per share. As of November 30, 2002, there had been no material adverse change to the pro forma ratios set forth in clause (1) and (2) of the immediately preceding sentence and the Company has no reason to believe there has been any such material adverse change since November 30, 2002. As of November 30, 2002, the Company is permitted to make a "distribution to the Corporation's shareholders" for purposes of Section 500 of the CGCL, determined on a pro forma basis as stated above in this Section 4(aa), in the amount of at least \$10,300,000.

5. CERTAIN COVENANTS AND ACKNOWLEDGMENTS.

(A) TRANSFER RESTRICTIONS. The Buyer acknowledges and agrees that (1) the Preferred Shares and the Warrant have not been and are not being registered under the provisions of the 1933 Act or any state securities laws and, except as provided in Section 8, the Common Shares have not been and are not being registered under the 1933 Act or any state securities laws, and that the Preferred Shares, the Warrant and the Common Shares may not be transferred without such registration unless the Buyer shall have delivered to the Company an opinion of counsel, reasonably satisfactory in form, scope and substance to the Company, to the effect that the Preferred Shares, the Warrant or the Common Shares to be transferred may be transferred without such registration or unless transferred in accordance with Rule 144A to a QIB; (2) no sale, assignment or other transfer of the Preferred Shares, the Warrant or the Common Shares or any interest therein may be made except in accordance with the terms thereof; (3) the Common Shares are not transferable in the absence of registration under the 1933 Act and applicable state securities laws, or applicable exemptions therefrom; (4) any sale of the Common Shares under the Registration Statement shall be made only in compliance with the terms of this Section 5(a) and Section 8 (including, without limitation, Section 8(c)(5)); (5) any sale of the Shares made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if the exemption provided by Rule 144 is not available, any resale of the Shares under circumstances in which the seller, or the Person through whom the sale is made, may be deemed to be an underwriter, as that term is used in the 1933 Act, may require compliance with some other exemption under the 1933 Act or the rules and regulations of the SEC thereunder; and (6) the Company is under no obligation to register the Shares (other than registration of the resale of the Common Shares in accordance with Section 8)

under the 1933 Act or, except as provided in Sections 5(e) and 8, to comply with the terms and conditions of any exemption thereunder. Prior to the time particular Common Shares are eligible for resale under Rule 144(k), the Buyer may not transfer such Common Shares in a transaction which does not constitute a transfer thereof pursuant to the Registration Statement in accordance with the plan of distribution set forth therein or in any supplement to the Prospectus unless the Buyer shall have delivered to the Company an opinion of counsel, reasonably satisfactory in form, scope and substance to the Company, that such Common Shares may be transferred without registration under the 1933 Act. Nothing in any of the Transaction Documents shall limit the right of a holder of the Securities to make a bona fide pledge thereof to an institutional lender and the Company agrees to cooperate with any Investor who seeks to effect any such pledge by providing such information and making such confirmations as reasonably requested.

(B) RESTRICTIVE LEGENDS. (1) The Buyer acknowledges and agrees that the certificates for the Preferred Shares shall bear restrictive legends in substantially the following form (and a stop-transfer order may be placed against transfer of the Preferred Shares):

These securities have not been registered under the Securities Act of 1933, as amended (the "Act"). The issuance to the holder of these securities of the shares of common stock issuable upon conversion of these securities is not covered by a registration statement under the Act. These securities have been acquired, and such shares of common stock must be acquired, for investment and may not be sold, transferred or assigned unless (1) their resale is registered under the Act, (2) the Company has received an opinion of counsel reasonably satisfactory in form, scope and substance to the Company that such registration is not required or (3) sold, transferred or assigned to a QIB pursuant to Rule 144A.

(2) The Buyer further acknowledges and agrees that the Warrant shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against the Warrant):

This Warrant has not been registered under the Securities Act of 1933, as amended (the "Act"), and may not be sold, transferred or assigned unless (1) the resale hereof is

registered under the Act, (2) the Company has received an opinion of counsel reasonably satisfactory in form, scope and substance to the Company that such registration is not required or (3) sold, transferred or assigned to a QIB pursuant to Rule 144A.

(3) The Buyer further acknowledges and agrees that until such time as the Common Shares have been registered for resale under the 1933 Act as contemplated by Section 8 or are eligible for resale under Rule 144(k) under the 1933 Act, the certificates for the Common Shares may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for the Common Shares):

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the "Act"). The securities have been acquired for investment and may not be resold, transferred or assigned in the absence of an effective registration statement for the securities under the Act, or an opinion of counsel reasonably satisfactory in form, scope and substance to the Company that registration is not required under the Act.

(4) Once the Registration Statement has been declared effective, or particular Common Shares are eligible for resale pursuant to Rule 144(k) under the 1933 Act, thereafter (A) upon request of the Buyer the Company will substitute certificates without restrictive legend for certificates for any Common Shares issued prior to the SEC Effective Date or prior to the time of such eligibility, as the case may be, which bear such restrictive legend and remove any stop transfer restriction relating thereto promptly, but in no event later than five Trading Days after surrender of such certificates by the Buyer and (B) the Company shall not place any restrictive legend on certificates for Common Shares subsequently issued or impose any stop transfer restriction thereon.

(C) ACCOUNTING TREATMENT. (1) The Buyer acknowledges that the Company seeks to account for the Preferred Stock as permanent equity to be included in the stockholders equity portion of its balance sheet for financial reporting purposes in accordance with GAAP, and not as redeemable preferred stock which is considered outside permanent equity under GAAP. The Company acknowledges that the optional redemption rights afforded to the Buyer under Section 11 of the Certificate of Determination are a material inducement to purchase the Preferred Shares and that the Buyer would not have entered into this Agreement and would not purchase the

Preferred Shares without the protection of such optional redemption rights. The Company believes that the terms of the Preferred Stock as set forth in the Certificate of Determination meet the requirements for classifying the Preferred Stock as permanent equity to be included in the stockholders equity portion of the Company's balance sheet in accordance with GAAP and not as redeemable preferred stock under GAAP, and the Buyer concurs in such determination. If, notwithstanding such determination and concurrence, in connection with any review or examination of the Company's financial statements the accounting staff of the SEC questions or comments on the classification of the Preferred Stock under GAAP, the Company shall (A) promptly notify the Buyer that the accounting staff of the SEC has raised such questions or made such comments, which notice shall be accompanied by a copy of the correspondence, if any, from the SEC staff setting forth such questions or comments or a reasonably detailed written statement thereof prepared by the Company, if such questions are raised or such comments are made orally, and (B) promptly address the questions raised and comments made by the accounting staff of the SEC and use its best efforts to persuade the accounting staff of the SEC that the Preferred Stock should be classified as permanent equity. The Company shall give additional such notices to the Buyer with respect to any additional such questions raised or comments made by the accounting staff of the SEC.

(2) If, at any time on or before May 31, 2003, notwithstanding the Company's responding to the accounting staff of the SEC and use of best efforts to persuade the accounting staff of the SEC as to the classification of the Preferred Stock for financial reporting purposes, the Company is unsuccessful in such efforts and the accounting staff of the SEC shall advise the Company that it has determined that the Preferred Stock must be classified as redeemable preferred stock and not as permanent equity to be included within the stockholders equity portion of the Company's balance sheet pursuant to GAAP, the Company shall notify the Buyer of such fact within five Business Days after such determination, which notice shall be accompanied by (A) copies of all correspondence, if any, from the SEC staff setting forth such determination or a reasonably detailed written statement thereof prepared by the Company, if such determination has been orally communicated to the Company, and (B) the text of changes to the terms of the Preferred Stock which the Company proposes be made in order to obtain the concurrence of the accounting staff of the SEC with the classification of the

Preferred Shares as permanent equity to be included in the stockholders equity portion of the Company's balance sheet in accordance with GAAP. During the period of ten days after the Company gives such notice to the Buyer, the Company and the Buyer shall negotiate in good faith regarding amendments to the Transaction Documents to address such determination of the accounting staff of the SEC, so that the Company shall be able to classify the Preferred Stock as permanent equity to be included in the stockholders equity portion of its balance sheet in accordance with GAAP. The Buyer shall not be obligated to agree to any such amendment. If the Buyer and the Company are unable to agree on such amendment to the Transaction Documents by the end of such ten-day period, the Company shall have the right, exercisable by notice given to the Buyer not less than 30 or more than 45 Business Days prior to the Company Redemption Date, to redeem the Preferred Shares at the Company Redemption Price on the Company Redemption Date. Such redemption shall otherwise be made in accordance with Sections 9, 15(c) and 15(d) of the Certificate of Determination, which provisions and any related definitions of terms used therein are incorporated herein by this reference as if set forth in full at this place.

(3) If any Preferred Share is to be redeemed as provided in this Section 5(c) and any notice required in connection herewith shall have been timely given as provided herein, the Company Redemption Price of such Preferred Share to be so redeemed and with respect to which any such notice has been given shall become due and payable on the Company Redemption Date. On and after the Company Redemption Date, provided that the Company shall have paid the Company Redemption Price to the Buyer on or prior to the Company Redemption Date or shall have deposited with an Eligible Bank on or prior to the Company Redemption Date, to be held in trust for the Buyer, an amount sufficient to pay the Company Redemption Price, then on the Company Redemption Date the dividends on such Preferred Share shall cease to accrue, and such Preferred Share shall be deemed not to be outstanding and the holder thereof shall not be entitled to any rights of a holder except to receive payment of the Company Redemption Price and all other rights with respect to such Preferred Share shall cease. So long as the Company shall have so paid or deposited the full amount of the Company Redemption Price on a timely basis, the Buyer shall not be entitled to interest on the amount so held by such Eligible Bank and, so long as the Company shall be in compliance in all material respects with its obligations to the Buyer (including, without limitation, its obligations under the Transaction Documents), the Company shall be entitled to any interest paid

by such Eligible Bank on the funds so deposited, subject to applicable abandoned property and escheat laws. On presentation and surrender of the certificate for such Preferred Share, such share shall be redeemed at the Company Redemption Price.

(4) If the Company fails to pay when due or to deposit with an Eligible Bank in accordance with Section 5(c)(3) the full amount of the Company Redemption Price on or before the Company Redemption Date, for the number of Preferred Shares to be redeemed on such date, then the amount thereof shall bear interest at the Default Rate from such date until paid or so deposited in full or until such Preferred Share is converted in accordance with the Certificate of Determination (in which case such interest shall remain due and payable).

(D) CONVERSION AGENT INSTRUCTION. At such time as agreed by the Majority Holders, but in any event within 30 days after the Closing Date, the Company shall (1) execute and deliver to the Transfer Agent the Conversion Agent Instruction in the form of ANNEX II to this Agreement (or in such other form as shall have been approved in advance in writing by the Majority Holders) and pursuant thereto irrevocably instruct the Transfer Agent to issue certificates for the Common Shares from time to time upon conversion of the Preferred Shares and exercise of the Warrant in such amounts as specified from time to time to the Transfer Agent (x) in the Conversion Notices surrendered in connection with such conversions and (y) upon exercise of the Warrant in such amounts as specified from time to time to the Transfer Agent in the Form of Subscription to be attached to the Warrants and surrendered in connection with such exercises, and (2) appoint the Transfer Agent the conversion agent for the Preferred Stock and the exercise agent for the Warrant. The certificates for the Common Shares may bear the restrictive legend specified in Section 5(b) of this Agreement prior to registration of the resale of the Common Shares under the 1933 Act. The Common Shares shall be registered in the name of the Buyer or its nominee or designee and in such denominations to be specified by the Buyer in connection with each conversion of Preferred Shares or exercise of the Warrant, as the case may be. The Company warrants that, except as otherwise expressly permitted by the Conversion Agent Instruction, no instruction other than (x) such instructions referred to in this Section 5(d), (y) stop transfer instructions to give effect to Section 5(a) hereof prior to registration of the resale of the Common Shares under the 1933 Act and (z) the instructions required by Section 8(b)(12) hereof will be given by the Company to the Transfer Agent and that the Common Shares

shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement. Nothing in this Section 5(d) shall limit in any way the Buyer's obligations and agreement to comply with the registration requirements of the 1933 Act or an exemption therefrom upon resale of the Shares. If the Buyer provides the Company with an opinion of counsel reasonably satisfactory in form, scope and substance to the Company that registration of a resale by the Buyer of any of the Shares in accordance with Section 5(a) of this Agreement is not required under the 1933 Act, the Company shall permit the transfer of such Shares and, in the case of the Common Shares, promptly, but in no event later than three Business Days after receipt of such opinion, instruct the Transfer Agent to issue upon transfer one or more share certificates in such name and in such denominations as specified by the Buyer. Nothing in this Section 5(d) shall limit the obligations of the Company under Section 8 of this Agreement.

(E) FORM D. The Company agrees to file with the SEC on a timely basis a Form D with respect to the Securities as required to claim the exemption provided by Rule 506 of Regulation D and to provide a copy thereof to the Buyer promptly after such filing.

(F) AMEX LISTING; REPORTING STATUS. Prior to the Closing Date, the Company shall file with the AMEX an application or other document required by the AMEX for the listing of the Common Shares with the AMEX and shall provide evidence of such filing to the Buyer. The Company shall use its best efforts to obtain the listing, subject to official notice of issuance, of the Common Shares on the AMEX prior to the Closing Date. So long as the Buyer beneficially owns any Preferred Shares, the Warrant or any Common Shares, the Company will use its best efforts to maintain the listing of the Common Stock on the AMEX or a registered national securities exchange. During the Registration Period, the Company shall timely file all reports required to be filed with the SEC pursuant to Section 13 or 15(d) of the 1934 Act, and the Company shall not terminate its status as an issuer required to file reports under the 1934 Act unless the 1934 Act or the rules and regulations thereunder would permit such termination.

(G) USE OF PROCEEDS. The Company represents and agrees that:
(1) it does not own or have any present intention of acquiring any Margin Stock;
(2) the proceeds of sale of the Preferred Shares and the Warrant Shares will be used for the repurchase of the Series A Preferred Stock at a price not in

excess of an amount per share set forth in the Letter Agreement and for general working capital purposes and in the operation of the Company's business; (3) none of such proceeds will be used, directly or indirectly (A) to make any loan to or investment in any other Person or (B) for the purpose, whether immediate, incidental or ultimate, of purchasing or carrying any Margin Stock or for the purpose of maintaining, reducing or retiring any indebtedness which was originally incurred to purchase or carry any stock that is currently a Margin Stock or for any other purpose which might constitute the transactions contemplated by this Agreement a "purpose credit" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System; and (4) neither the Company nor any agent acting on its behalf has taken or will take any action which might cause this Agreement or the transactions contemplated hereby to violate Regulation T, Regulation U or any other regulation of the Board of Governors of the Federal Reserve System or to violate the 1934 Act, in each case as in effect now or as the same may hereafter be in effect.

(H) STATE SECURITIES LAWS. On or before the Closing Date, the Company shall take such action as shall be necessary to qualify, or to obtain an exemption for, the offer and sale of the Securities to the Buyer as contemplated by the Transaction Documents under such of the securities laws of jurisdictions in the United States as shall be applicable thereto. In connection with the foregoing obligations of the Company in this Section 5(h), the Company shall not be required (1) to qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 5(h), (2) to subject itself to general taxation in any such jurisdiction, (3) to file a general consent to service of process in any such jurisdiction, (4) to provide any undertakings that cause more than nominal expense or burden to the Company, or (5) to make any change in its charter or by-laws which the Company determines to be contrary to the best interests of the Company and its stockholders. The Company shall furnish to the Buyer copies of all filings, applications, orders and grants or confirmations of exemptions relating to such securities laws on or prior to the Closing Date.

(I) LIMITATION ON CERTAIN ACTIONS. From the date of execution and delivery of this Agreement by the parties hereto to the date of issuance of the Preferred Shares and the Warrant, the Company (1) shall comply with Sections 5 and 12 of the Certificate of Determination as if the Preferred Shares were outstanding and (2) shall not take any action which, if the

Preferred Shares were outstanding, would constitute an Optional Redemption Event or, with the giving of notice or the passage of time or both, would constitute an Optional Redemption Event.

(J) BEST EFFORTS. Each of the parties shall use its best efforts timely to satisfy each of the conditions to the other party's obligations to sell and purchase the Preferred Shares and issue and acquire the Warrant set forth in Sections 6 or 7, as the case may be, of this Agreement on or before the Closing Date.

(K) SHORT SALES. The Buyer agrees that on and after the Closing Date until the Buyer no longer holds any Preferred Shares, the Buyer will not engage in any Short Sales except for those which do not result in the Buyer having a net short position; provided, however, that the limitations in this Section 5(k) shall not be applicable during an Event Period and any Short Sale made during an Event Period need not be "closed" or "covered" after such Event Period; and provided further, however, that (i) any sale of shares of Common Stock by the Buyer occurring on or within three Trading Days of any day on which the Buyer gives a Conversion Notice or a Subscription Form to the Company, of a number of shares of Common Stock equal to or less than the number of shares of Common Stock which the Buyer is entitled to receive by reason of giving such Conversion Notice or Subscription Form, shall not constitute a Short Sale, and (ii) the Buyer may engage in any Short Sale or other hedging transaction up to an aggregate number of shares of Common Stock at any one time equal to (x) the number of outstanding shares of Common Stock then held by the Buyer, plus (y) the number of shares of Common Stock then issuable upon conversion of the Preferred Shares, exercise of the Warrant and conversion or exercise of any Common Stock Equivalent held by the Buyer (determined without regard to the limitations on amounts of shares issuable upon conversion of the Preferred Shares and exercise of the Warrant based on the Buyer's beneficial ownership). Any Short Sale or hedging transaction permitted by one of clause (1) or clause (2) but not permitted by the other such clause shall be permissible hereunder.

6. CONDITIONS TO THE COMPANY'S OBLIGATIONS TO SELL AND ISSUE.

The Buyer understands that the Company's obligations to sell to the Buyer the Preferred Shares and to issue to the Buyer the Warrant on the Closing Date are conditioned upon satisfaction of the following conditions precedent on or before

the Closing Date (any or all of which may be waived by the Company in its sole discretion):

(a) On the Closing Date, no legal action, suit or proceeding shall be pending or threatened which seeks to restrain or prohibit the transactions contemplated by this Agreement; and

(b) The representations and warranties of the Buyer contained in this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct on the Closing Date as if made on and as of the Closing Date and on or before the Closing Date the Buyer shall have performed all covenants and agreements of the Buyer required to be performed by the Buyer on or before the Closing Date.

7. CONDITIONS TO THE BUYER'S OBLIGATIONS TO PURCHASE.

The Company understands that the Buyer's obligations to purchase the Preferred Shares and to acquire the Warrant from the Company on the Closing Date are conditioned upon satisfaction of the following conditions precedent on or before the Closing Date (any or all of which may be waived by the Buyer in its sole discretion):

(a) On the Closing Date, no legal action, suit or proceeding shall be pending or threatened which seeks to restrain or prohibit the transactions contemplated by this Agreement;

(b) The representations and warranties of the Company contained in this Agreement and each other agreement or instrument executed and delivered by the Company in connection with this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct on the Closing Date as if made on the Closing Date; and on or before the Closing Date the Company shall have performed all covenants and agreements of the Company contained herein or therein and required to be performed by the Company on or before the Closing Date;

(c) No event which, if the Preferred Shares were outstanding, would constitute an Optional Redemption Event or, with the giving of notice or the lapse of time, or both, would constitute an Optional Redemption Event shall have occurred and be continuing;

(d) The Company shall have delivered to the Buyer a certificate, dated the Closing Date, duly executed by its Chief Executive Officer or Chief Financial Officer to the effect set forth in subparagraphs (a), (b) and (c) of this Section 7;

(e) The Buyer shall have received satisfactory confirmation of the filing with the Secretary of State of the State of California of the Certificate of Determination, which shall continue to be filed and in full force and effect on the Closing Date;

(f) Common Shares shall have been approved for listing, subject to official notice of issuance, by the AMEX and the Buyer shall have received written evidence of such approval by the AMEX;

(g) The Buyer shall have received on the Closing Date an opinion of Latham & Watkins, counsel for the Company, dated the Closing Date, addressed to the Buyer, in form, scope and substance reasonably satisfactory to the Buyer, substantially in the form of ANNEX V to this Agreement;

(h) The Company shall have delivered to the Buyer a certificate, dated the Closing Date, of the Secretary or the Assistant Secretary of the Company certifying (1) the Articles of Incorporation and By-Laws of the Company as in effect on the Closing Date, and (2) all resolutions of the Board of Directors (and committees thereof) of the Company relating to the Transaction Documents and the transactions contemplated hereby and (3) such other matters as are customary and as reasonably requested by the Buyer; and

(i) On the Closing Date, (i) trading in securities on the New York Stock Exchange, Inc., the AMEX or Nasdaq shall not have been suspended or materially limited and (ii) a general moratorium on commercial banking activities in the State of New York shall not have been declared by either federal or state authorities.

8. REGISTRATION RIGHTS.

(A) MANDATORY REGISTRATION. (1) The Company shall prepare promptly and, on or prior to the date which is 30 days after the Closing Date, file with the SEC the Registration Statement for the resale by the Buyer of a number of Registrable Securities equal to (A) the number of shares of Common Stock

equal to at least the number of Common Shares issuable to the Buyer upon conversion of the Preferred Shares and one quarter-year of accrued and unpaid dividends on the Preferred Shares at the rate specified in the Certificate of Determination, determined at the Conversion Price which is applicable on the day the Registration Statement is filed with the SEC and (B) the number of Warrant Shares issuable upon exercise of the Warrant, and which Registration Statement (x) shall be the same registration statement as the registration statement filed by the Company pursuant to Section 8(a) of each of the Other Subscription Agreements, subject to Section 8(c)(1) of this Agreement and the Other Subscription Agreements, and (y) shall state that, in accordance with Rule 416 under the 1933 Act, such Registration Statement also covers such indeterminate number of additional shares of Common Stock as may become issuable upon conversion of the Preferred Shares and exercise of the Warrant to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Prior to the SEC Effective Date the Company will not, without the prior written consent of the Majority Holders, file or request the acceleration of any other registration statement filed with the SEC, and during any time subsequent to the SEC Effective Date when the Registration Statement for any reason is not available for use by any Investor for the resale of any Registrable Securities, the Company shall not, without the prior written consent of the Majority Holders, file any other registration statement or any amendment thereto with the SEC under the 1933 Act or request the acceleration of the effectiveness of any other registration statement previously filed with the SEC, other than (A) any registration statement on Form S-8 and (B) any registration statement or amendment which the Company is required to file or as to which the Company is required to request acceleration pursuant to any obligation in effect on the date of execution and delivery of this Agreement.

(3) If a Registration Event occurs, then the Company will make payments to the Buyer as partial liquidated damages for the minimum amount of damages to the Buyer by reason thereof, and not as a penalty, at the rate of 1.5% per month of the Purchase Price paid by the Buyer pursuant to this Agreement, for each calendar month of the Registration Default Period (pro rated for any period less than 30 days). Each such payment shall be due and payable within five (5) days after the end of each calendar month of the Registration Default Period until the termination of the Registration Default Period and within five (5) days after such termination. Such payments shall be in

partial compensation to the Buyer, and shall not constitute the Buyer's exclusive remedy for such events. The Registration Default Period shall terminate upon (u) the filing of the Registration Statement in the case of clause (i) of the definition of "Registration Event"; (v) the SEC Effective Date in the case of clause (ii) of the definition of "Registration Event"; (w) the ability of the Buyer to effect sales pursuant to the Registration Statement in the case of clause (iii) of the definition of "Registration Event"; (x) the listing or inclusion and/or trading of the Common Stock on an Approved Market, as the case may be, in the case of clause (iv) of the definition of "Registration Event"; (y) the delivery of such shares or certificates in the case of clause (v) of the definition of "Registration Event"; and (z) in the case of the events described in clauses (ii) and (iii) of the definition of "Registration Event", the earlier termination of the Registration Period. The amounts payable as partial liquidated damages pursuant to this paragraph shall be payable in lawful money of the United States. Amounts payable as partial liquidated damages hereunder shall cease when the Buyer no longer holds the Preferred Shares, the Warrant or Registrable Securities; provided, however, that in the case of amounts payable in respect of the event described in clause (ii) of the definition of the term Registration Event, the payment thereof shall be suspended for the period from and after the date on which the Company gives timely notice to the Buyer in accordance with Section 5(c) that the Company is redeeming the Preferred Shares pursuant to Section 5(c) and shall not be payable for such period if the Company makes payment of the Company Redemption Price of the Preferred Shares in accordance with Section 5(c) on the applicable Company Redemption Date but shall be payable for such period if the Company fails to make payment of the Company Redemption Price of the Preferred Shares in accordance with Section 5(c) on the applicable Company Redemption Date.

(B) OBLIGATIONS OF THE COMPANY. In connection with the registration of the Registrable Securities, the Company shall:

(1) use its best efforts to cause the Registration Statement to become effective as promptly as possible after the Closing Date and to keep the Registration Statement effective pursuant to Rule 415 at all times during the Registration Period. The Company shall submit to the SEC, within three Business Days after the Company learns that no review of the Registration Statement will be made by the staff of the SEC or

that the staff of the SEC has no further comments on the Registration Statement, as the case may be, a request for acceleration of effectiveness of the Registration Statement to a time and date not later than 48 hours after the submission of such request. The Company shall notify the Investors of the effectiveness of the Registration Statement on the SEC Effective Date. The Company represents and warrants to the Investors that (a) the Registration Statement (including any amendments or supplements thereto and prospectuses contained therein), at the time it is first filed with the SEC, at the time it is ordered effective by the SEC and at all times during which it is required to be effective hereunder (and each such amendment and supplement at the time it is filed with the SEC and at all times during which it is available for use in connection with the offer and sale of the Registrable Securities) 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 and (b) the Prospectus, at the time the Registration Statement is declared effective by the SEC and at all times that the Prospectus is required by this Agreement to be available for use by any Investor and, in accordance with Section 8(c)(4), any Investor is entitled to sell Registrable Securities pursuant to the Prospectus, 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, in light of the circumstances in which they were made, not misleading;

(2) subject to Section 8(b)(5), prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the Prospectus as may be necessary to keep the Registration Statement effective, and the Prospectus current, at all times during the Registration Period, and, during the Registration Period (other than during any Blackout Period during which the provisions of Section 8(b)(5)(B) are applicable), comply with the provisions of the 1933 Act applicable to the Company in order to permit the disposition by the Investors of all Registrable Securities covered by the Registration Statement;

(3) furnish to each Investor whose Registrable Securities are included in the Registration Statement and its legal counsel (A) promptly after the same is prepared and publicly distributed, filed with the SEC or received by the Company, (A) five copies of the Registration Statement and any amendment thereto and the Prospectus and each amendment or supplement thereto, (B) one copy of 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 relating to the Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment), each of which the Company hereby determines to be confidential information and which each Investor hereby agrees to keep confidential as a confidential Record in accordance with Section 8(b)(9) and (C) such number of copies of the Prospectus and all amendments and supplements thereto and such other documents, as such Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor;

(4) subject to Section 8(b)(5), use its commercially reasonable efforts (A) to register and qualify the Registrable Securities covered by the Registration Statement under the securities or blue sky laws of such jurisdictions as any Investor who owns or holds any Registrable Securities reasonably requests, (B) to prepare and to 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 at all times during the Registration Period and (C) to take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale by the Investors in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto (i) to qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 8(b)(4), (ii) to subject itself to general taxation in any such jurisdiction, (iii) to file a general consent to service of process in any such jurisdiction, (iv) to provide any undertakings that cause more than nominal expense or burden to the Company or (v) to make any change in its charter or by-laws which the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders;

(5) (A) as promptly as practicable after becoming aware of such event or circumstance, notify each Investor of the occurrence of an event or circumstance of which the Company has knowledge (x) as a result of which the Prospectus, 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, in light of the circumstances under which they were made, not misleading or (y) which requires the Company to amend or supplement the Registration Statement due to the receipt from an Investor or

any other Selling Stockholder named in the Prospectus of new or additional information about such Investor or selling stockholder or its intended plan of distribution of its Registrable Securities or other securities caused by the Registration Statement, as the case may be, so that the Prospectus does not include 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, in light of the circumstances under which they were made, not misleading, and use its best efforts promptly to prepare a supplement or amendment to the Registration Statement and Prospectus to correct such untrue statement or omission or to add any new or additional information, and deliver a number of copies of such supplement or amendment to each Investor as such Investor may reasonably request; and

(B) notwithstanding Section 8(b)(5)(A) above, if at any time the Company notifies the Investors as contemplated by Section 8(b)(5)(A) the Company also notifies the Investors that the event giving rise to such notice relates to a development involving the Company which occurred subsequent to the later of (x) the SEC Effective Date and (y) the latest date prior to such notice on which the Company has amended or supplemented the Registration Statement, then the Company shall not be required to use best efforts to make such amendment during a Blackout Period; provided, however, that (A) the aggregate number of Trading Days on which any Blackout Period is in effect may not exceed ten consecutive Trading Days in any period of 120 consecutive days or 30 Trading Days (whether or not consecutive) in any period of 365 consecutive days; (B) the Company shall not be able to avail itself of its rights under this Section 8(b)(5)(B) with respect to more than three Blackout Periods in any period of 365 consecutive days; and (C) no Blackout Period may commence sooner than 60 days after the end of an earlier Blackout Period;

(6) as promptly as practicable after becoming aware of such event, notify each Investor who holds Registrable Securities being offered or sold pursuant to the Registration Statement of the issuance by the SEC of any stop order or other suspension of effectiveness of the Registration Statement at the earliest possible time;

(7) permit the Investors who hold Registrable Securities being included in the Registration Statement and their legal counsel, at such Investors' sole cost and expense (except as otherwise specifically provided in Section 10(k)) to

review and have a reasonable opportunity to comment on the Registration Statement and all amendments and supplements thereto at least three Business Days prior to their filing with the SEC and shall not file any such document to which any Investor reasonably objects;

(8) make generally available to its security holders as soon as practical, but not later than 90 days after the close of the period covered thereby, an earning statement (in form complying with the provisions of Rule 158 under the 1933 Act) covering a 12-month period beginning not later than the first day of the Company's fiscal quarter next following the SEC Effective Date;

(9) make available for inspection by any Investor and any Inspector retained by such Investor, at such Investor's sole expense, all Records as shall be reasonably necessary to enable such Investor to exercise its due diligence responsibility, and cause the Company's and the Subsidiaries' officers, directors and employees to supply all information which such Investor or any Inspector may reasonably request for purposes of such due diligence; provided, however, that such Investor shall hold in confidence and shall not make any disclosure of any Record or other information which the Company determines in good faith to be confidential, and of which determination such Investor is so notified at the time such Investor receives such information, unless (i) the disclosure of such Record is necessary to avoid or correct a misstatement or omission in the Registration Statement and a reasonable time prior to such disclosure the Investor shall have informed the Company of the need to so correct such misstatement or omission and the Company shall have failed to correct such misstatement or omission, (ii) the release of such Record is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction or (iii) the information in such Record has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company shall not be required to disclose any confidential information in such Records to any Inspector until and unless such Inspector shall have entered into a confidentiality agreement with the Company with respect thereto, substantially in the form of this Section 8(b)(9), which agreement shall permit such Inspector to disclose Records to the Investor who has retained such Inspector. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's

expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. The Company shall hold in confidence and shall not make any disclosure of information concerning an Investor provided to the Company pursuant to this Agreement unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) disclosure of such information is necessary to avoid or correct a misstatement or omission in the Registration Statement, (iii) 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 an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Investor and allow such Investor, at such Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information;

(10) use its best efforts to cause all the Registrable Securities covered by the Registration Statement to be listed on the AMEX or such other principal securities market on which securities of the same class or series issued by the Company are then listed or traded;

(11) provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities at all times;

(12) cooperate with the Investors who hold Registrable Securities being offered pursuant to the Registration Statement to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to the Registration Statement and enable such certificates to be in such denominations or amounts as the Investors may reasonably request and registered in such names as the Investors may request; and, not later than the SEC Effective Date, deliver (i) to the Transfer Agent (with copies to the Investors whose Registrable Securities are included in the Registration Statement) an instruction substantially in the form of ANNEX IV to this Agreement, and (ii) cause legal counsel selected by the Company to deliver to the Investors whose Registrable Securities are included in the Registration Statement and, if required by

the Transfer Agent, to the Transfer Agent an opinion of counsel in the form of ANNEX VI to this Agreement;

(13) during the Registration Period, refrain from bidding for or purchasing any Common Stock or any right to purchase Common Stock or attempting to induce any Person to purchase any such security or right if such bid, purchase or attempt would in any way limit the right of the Investors to sell Registrable Securities by reason of the limitations set forth in Regulation M under the 1934 Act; and

(14) take all other reasonable actions necessary to expedite and facilitate disposition by the Investors of the Registrable Securities pursuant to the Registration Statement.

(C) OBLIGATIONS OF THE BUYER AND OTHER INVESTORS. In connection with the registration of the Registrable Securities, the Investors shall have the following obligations:

(1) It shall be a condition precedent to the obligations of the Company to complete the registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall furnish to the Company the Required Information and shall execute such documents in connection with such registration as the Company may reasonably request. Prior to the execution and delivery of this Agreement, the Buyer has completed and delivered to the Company the Questionnaire, which shall be deemed to provide all Required Information for purposes of the preparation and filing of the Registration Statement. Promptly after a request from the Company, the Investor will confirm or update the Required Information previously provided to the Company by the Investor;

(2) Each Investor by such Investor'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 the Registration Statement hereunder, unless such Investor has notified the Company of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statement;

(3) Each Investor agrees that it will not effect any disposition of the Registrable Securities except as contemplated in the Registration Statement or as shall otherwise be in compliance with the registration requirements of applicable securities laws and that it will promptly notify the Company of any material changes in the information set forth in the

Registration Statement regarding such Investor or its plan of distribution; each Investor agrees (a) to notify the Company in the event that such Investor enters into any material agreement with a broker or a dealer for the sale of the Registrable Securities through a block trade, special offering, exchange distribution or a purchase by a broker or dealer and (b) in connection with such agreement, to provide to the Company in writing the information necessary to prepare any supplemental prospectus pursuant to Rule 424(c) under the 1933 Act which is required with respect to such transaction;

(4) Each Investor acknowledges that there may occasionally be times as specified in Section 8(b)(5) or 8(b)(6) when the Company must suspend the use of the Prospectus until such time as an amendment to the Registration Statement has been filed by the Company and declared effective by the SEC, the Company has prepared a supplement to the Prospectus or the Company has filed an appropriate report with the SEC pursuant to the 1934 Act. Each Investor hereby covenants that it will not sell any Registrable Securities pursuant to the Prospectus during the period commencing at the time at which the Company gives such Investor notice of the suspension of the use of the Prospectus in accordance with Section 8(b)(5) or 8(b)(6) and ending at the time the Company gives such Investor notice that such Investor may thereafter effect sales pursuant to the Prospectus, or until the Company delivers to such Investor or files with the SEC an amended or supplemented Prospectus;

(5) In connection with any sale of Registrable Securities which is made by an Investor pursuant to the Registration Statement (A) if such sale is made through a broker, such Investor shall instruct such broker to deliver the Prospectus to the purchaser or purchasers (or the broker or brokers therefor) in connection with such sale and shall supply copies of the Prospectus to such broker or brokers, and (B) if such sale is made in a transaction directly with a purchaser and not through the facilities of any securities exchange or market, such Investor shall deliver, or cause to be delivered, the Prospectus to such purchaser; and

(6) Each Investor agrees to notify the Company promptly after the event of the completion of the sale by such Investor of all Registrable Securities to be sold by such Investor pursuant to the Registration Statement.

(D) RULE 144. With a view to making available to each Investor the benefits of Rule 144, the Company agrees:

(1) so long as any Investor owns or has the right to acquire Registrable Securities, promptly upon request of such Investor, to furnish to such Investor such information as may be necessary, and otherwise reasonably to cooperate with such Investor, to permit such Investor to sell its Registrable Securities pursuant to Rule 144 without registration; and

(2) if at any time the Company is not required to file such reports with the SEC under Sections 13 or 15(d) of the 1934 Act, to use its commercially reasonable efforts to, upon the request of an Investor, to make publicly available other information so long as is necessary to permit publication by brokers and dealers of quotations for the Common Stock and sales of the Registrable Securities in accordance with Rule 15c2-11 under the 1934 Act.

9. INDEMNIFICATION AND CONTRIBUTION.

(A) INDEMNIFICATION. (1) To the extent not prohibited by applicable law, the Company will indemnify and hold harmless each Indemnified Person against any Claims to which any of them may become subject under the 1933 Act, the 1934 Act or otherwise, insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon any Violation or any of the transactions contemplated by the Transaction Documents. Subject to the restrictions set forth in Section 9(a)(3) with respect to the number of legal counsel, the Company shall reimburse each 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, an Indemnified Person shall not be entitled to indemnification under this Section 9(a)(1) for: (I) a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information relating to such Indemnified Person furnished in writing to the Company by such Indemnified Person or an underwriter for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto if the Prospectus or such amendment or supplement thereto was timely made available by the Company pursuant to Section 8(b)(3); and (II) 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. Such

indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Persons and shall survive the transfer of the Registrable Securities by the Investors. The Company and the Buyer agree that the information set forth in the Questionnaire is the only information furnished by the Buyer in writing expressly for use in connection with the preparation of the Registration Statement on or prior to the date hereof.

(2) In connection with the Registration Statement, each Investor whose Registrable Securities are included in the Registration Statement agrees to indemnify and hold harmless, to the same extent and in the same manner set forth in Section 9(a)(1), each Indemnified Party against any Claim to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim arises out of or is based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in connection with the Registration Statement or any amendment thereof or supplement thereto; and such Investor will reimburse any legal or other expenses reasonably incurred by them in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 9(a)(2) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld; provided, further, however, that each Investor shall be liable under this Section 9(a)(2) for only that amount of all Claims in the aggregate as does not exceed the amount by which the proceeds to such Investor as a result of the sale of Registrable Securities pursuant to the Registration Statement exceeds the amount paid, directly or indirectly, by such Investor for such Registrable Securities. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 9(a)(2) with respect to any preliminary prospectus shall not inure to the benefit of any Indemnified Party 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.

(3) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 9(a) of notice of the commencement of any action (including any governmental action), such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 9(a), deliver to the indemnifying party a notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel reasonably satisfactory to the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the indemnifying party, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to actual or potential differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding; provided further, however, that no indemnifying person shall be responsible for the fees and expenses of more than one separate counsel for all Indemnified Persons or Indemnified Parties, as the case may be, hereunder and one separate counsel in each jurisdiction in which a Claim is pending or threatened. The failure to deliver notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 9(a), except to the extent that the indemnifying party is prejudiced in its ability to defend such action. The indemnification required by this Section 9(a) 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.

(B) CONTRIBUTION. To the extent any indemnification by an indemnifying party as set forth in Section 9(a) above is applicable by its terms but is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 9(a) to the fullest extent permitted by law. In determining the amount of contribution to which the respective parties are entitled, there shall be considered the relative fault of each party, the parties' relative knowledge of and access to information concerning the matter with respect to

which the Claim was asserted, the opportunity to correct and prevent any statement or omission and any other equitable considerations appropriate under the circumstances; provided, however, that (a) no contribution shall be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Section 9(a), (b) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any other Person who was not guilty of such fraudulent misrepresentation and (c) the contribution by any Investor in respect of all Claims in the aggregate shall be limited to the amount by which the proceeds received by such Investor from the sale of such Registrable Securities exceeds the amount paid, directly or indirectly, by such Investor for such Registrable Securities.

(C) OTHER RIGHTS. The indemnification and contribution provided in this Section shall be in addition to any other rights and remedies available at law or in equity.

10. MISCELLANEOUS.

(A) GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York.

(B) HEADINGS. The headings, captions and footers of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(C) SEVERABILITY. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement or the validity or enforceability of this Agreement in any other jurisdiction.

(D) NOTICES. Any notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be sent by mail, personal delivery, by telephone line facsimile transmission or courier and shall be effective five days after being placed in the mail, if mailed, or upon receipt, if delivered personally, by telephone line facsimile transmission or by courier, in each case addressed to a party at such party's address (or telephone line facsimile transmission number) shown in the introductory paragraph or on the signature page of this Agreement or such other address (or telephone line

facsimile transmission number) as a party shall have provided by notice to the other party in accordance with this provision. In the case of any notice to the Company, such notice shall be addressed to the Company at its address shown in the introductory paragraph of this Agreement, Attention: Chief Financial Officer (telephone line facsimile transmission number (510) 400-0799), and a copy shall also be given to: Latham & Watkins, 701 B Street, Suite 2100, San Diego, California 92101, Attention: David A. Hahn, Esq. (telephone line facsimile transmission number (619) 696-7419, and in the case of any notice to the Buyer, a copy shall be given to: Law Offices of Brian W Pusch, Penthouse Suite, 29 West 57th Street, New York, New York 10019 (telephone line facsimile transmission number (212) 980-7055. The Buyer hereby designates as its address for any notice required or permitted to be given to the Buyer pursuant to the Certificate of Determination the address shown on the signature page of this Agreement until the Buyer shall designate another address for such purpose.

(E) COUNTERPARTS. This Agreement may be executed in counterparts and by the parties hereto on separate counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A telephone line facsimile transmission of this Agreement bearing a signature on behalf of a party hereto shall be legal and binding on such party. Although this Agreement is dated as of the date first set forth above, the actual date of execution and delivery of this Agreement by each party is the date set forth below such party's signature on the signature page hereof. Any reference in this Agreement or in any of the documents executed and delivered by the parties hereto in connection herewith to (1) the date of execution and delivery of this Agreement by the Buyer shall be deemed a reference to the date set forth below the Buyer's signature on the signature page hereof, (2) the date of execution and delivery of this Agreement by the Company shall be deemed a reference to the date set forth below the Company's signature on the signature page hereof and (3) the date of execution and delivery of this Agreement, or the date of execution and delivery of this Agreement by the Buyer and the Company, shall be deemed a reference to the later of the dates set forth below the signatures of the parties on the signature page hereof.

(F) ENTIRE AGREEMENT; BENEFIT. This Agreement, including the Annexes and Schedules hereto, and the Letter Agreement constitute the entire agreement between the parties hereto with respect to the subject matter hereof. There are no

restrictions, promises, warranties, or undertakings, other than those set forth or referred to herein and therein. This Agreement, including the Annexes and Schedules hereto, and the Letter Agreement supersede all prior agreements and understandings, whether written or oral, between the parties hereto with respect to the subject matter hereof. This Agreement and the terms and provisions hereof are for the sole benefit of only the Company, the Buyer and their respective successors and permitted assigns.

(G) WAIVER. 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, or any course of dealing between the parties, shall not operate as a waiver thereof or an amendment hereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or exercise of any other right or power.

(H) AMENDMENT. (1) No amendment, modification, waiver, discharge or termination of any provision of this Agreement at or prior to the closing on the Closing Date nor consent to any departure by the Buyer or the Company therefrom at or prior to the closing on the Closing Date shall in any event be effective unless the same shall be in writing and signed by the party to be charged with enforcement, and then shall be effective only in the specific instance and for the purpose for which given.

(2) No amendment, modification, waiver, discharge or termination of any provision of this Agreement after the closing on the Closing Date nor consent to any departure by the Company therefrom after the closing on the Closing Date shall in any event be effective unless (A) the same shall be in writing and signed (x) by the Company, if the Company is to be charged with enforcement, or (y) by the Majority Holders, if the Buyer is to be charged with enforcement, and (B) a corresponding amendment, modification, waiver, discharge or termination is made to all of the Other Subscription Agreements, and in any such case shall be effective only in the specific instance and for the purpose for which given; provided, however, that no amendment, modification, waiver, discharge or termination of any provision of Section 8 or 9 which amendment, modification, waiver, discharge or termination adversely affects the Buyer shall be made unless the same shall be signed by the Buyer.

(I) FURTHER ASSURANCES. Each party to this Agreement will perform any and all acts and execute any and all documents as may be necessary and proper under the circumstances in order to accomplish the intents and purposes of this Agreement and to carry out its provisions.

(J) ASSIGNMENT OF CERTAIN RIGHTS AND OBLIGATIONS. The rights of an Investor under Sections 5(a), 5(b), 5(c), 8, 9, and 10 of this Agreement shall be automatically assigned by such Investor to any transferee of all or any portion of such Investor's Registrable Securities (or all or any portion of the Preferred Shares or any Warrant) who is an "accredited investor" as that term is defined in Regulation D under the 1933 Act, only if: (1) such Investor agrees in writing with such transferee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (2) the Company is, within a reasonable time after such assignment, furnished with notice of (A) the name and address of such transferee and (B) the Securities with respect to which such rights and obligations are being assigned, (3) immediately following such assignment the further disposition of Registrable Securities by such transferee is restricted under the 1933 Act and applicable state securities laws, and (4) at or before the time the Company received the notice contemplated by clause (2) of this sentence the transferee agrees in writing with the Company (x) to be bound by all of the provisions contained in Sections 5(a), 5(b), 5(c), 8, 9, and 10 hereof and (y) to complete and deliver to the Company promptly a Questionnaire. Upon any such assignment, the Company shall be obligated to such transferee to perform all of its covenants under Sections 5, 8, 9, and 10 of this Agreement as if such transferee were the Buyer; provided, however, that the Company shall remain obligated to such assigning investor notwithstanding such assignment. In connection with any such transfer the Company shall, at its sole cost and expense, promptly after such assignment, and subject to receipt of a completed Questionnaire from the transferee, take such actions as shall be reasonably acceptable to the transferring Investor and such transferee to assure that the Registration Statement relating to the Registrable Securities involved in such transfer and the Prospectus are available for use by such transferee for sales of the Registrable Securities in respect of which such rights and obligations have been so assigned.

(K) EXPENSES. The Company and the Buyer shall be responsible for their respective expenses (including, without limitation, their respective fees and expenses of their counsel)

incurred by them in connection with the negotiation and execution of, and closing under, this Agreement except that the Company shall be obligated to pay or reimburse the legal fees and expenses and out-of-pocket due diligence expenses of the Investors, not in excess of \$60,000, of which \$40,000 shall be payable in respect of the fees and costs of the Law Offices of Brian W Pusch, counsel for certain of the Persons who are a Buyer under this Agreement or Other Buyers under the Other Subscription Agreements, \$10,000 shall be payable in respect of the fees and expenses of Orrick, Herrington & Sutcliffe, counsel for certain of the Persons who are a Buyer under this Agreement or Other Buyers under the Other Subscription Agreements and up to \$10,000 shall be payable in respect of the fees and expenses of Thompson & Knight LLP, counsel for certain of the Persons who are a Buyer under this Agreement or Other Buyers under the Other Subscription Agreements. All reasonable expenses incurred in connection with registrations, filings or qualifications pursuant to this Agreement shall be paid by the Company, including, without limitation, all registration, listing and qualifications fees, printers fees, accounting fees, and the fees and disbursements of counsel for the Company but excluding (a) fees and expenses of investment bankers retained by any Investor, (b) brokerage commissions incurred by any Investor and (c) fees and expenses of counsel for the Investors to the extent the same of counsel to the Investors, together with amounts paid or reimbursed by the Company to the Investors pursuant to the first sentence of this Section 10(k) exceed \$60,000 (allocated as aforesaid). The Company shall pay on demand all expenses incurred by the Buyer, including reasonable fees and expenses of counsel, as a consequence of, or in connection with the negotiation, preparation or execution of any amendment, modification or waiver of the Transaction Documents initiated by the Company. The Company shall pay on demand the expenses incurred by the Buyer, including reasonable fees and expenses of counsel, as a consequence of, or in connection with (1) any default or breach of any of the Company's obligations set forth in the Transaction Documents and (2) the enforcement or restructuring of any right of, including the collection of any payments due, the Buyer under the Transaction Documents, including any action or proceeding relating to such enforcement or any order, injunction or other process seeking to restrain the Company from paying any amount due the Buyer, in any such case in the preceding clause (1) or (2) in an amount not to exceed 1% of the Purchase Price paid by the Buyer. Except as otherwise provided in this Section 10(k), each of the Company and the Buyer shall bear its own expenses in connection with this Agreement and the transactions contemplated hereby.

(L) TERMINATION. (1) The Buyer shall have the right to terminate this Agreement by giving notice to the Company at any time at or prior to the Closing Date if:

(A) the Company shall have failed, refused, or been unable at or prior to the date of such termination of this Agreement to perform any of its obligations hereunder;

(B) any other condition of the Buyer's obligations hereunder is not fulfilled; or

(C) the closing shall not have occurred on a Closing Date on or before January 31, 2003, other than solely by reason of a breach of this Agreement by the Buyer.

Any such termination shall be effective upon the giving of notice thereof by the Buyer. Upon such termination, the Buyer shall have no further obligation to the Company hereunder and the Company shall remain liable for any breach of this Agreement or the other documents contemplated hereby which occurred on or prior to the date of such termination.

(2) The Company shall have the right to terminate this Agreement by giving notice to the Company at any time at or prior to the Closing Date if:

(A) the Buyer shall have failed, refused, or been unable at or prior to the date of such termination of this Agreement to perform any of its obligations hereunder;

(B) any other condition of the Company's obligations hereunder is not fulfilled; or

(C) the closing shall not have occurred on a Closing Date on or before January 31, 2003, other than solely by reason of a breach of this Agreement by the Company;

so long as the Company is not in breach of this Agreement at the time it gives such notice. Any such termination shall be effective upon the giving of notice thereof by the Company. Upon such termination, neither the Company nor the Buyer shall have any further obligation to one another hereunder.

(M) SURVIVAL. The respective representations, warranties, covenants and agreements of the Company and the Buyer contained in this Agreement and the other Transaction

Documents shall survive the execution and delivery of this Agreement and the other Transaction Documents and the closing hereunder and the delivery of and payment for the Preferred Shares and the issuance of the Warrant and shall remain in full force and effect regardless of any investigation made by or on behalf of the Buyer or any Person controlling or acting on behalf of the Buyer or by the Company or any Person controlling or acting on behalf of the Company.

(N) PUBLIC STATEMENTS, PRESS RELEASES, ETC. (1) The Company and the Buyer shall have the right to approve before issuance any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Buyer, to make any press release or other public disclosure with respect to such transactions as is required by applicable law and regulations, including the 1933 Act and the rules and regulations promulgated thereunder (although the Buyer shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release and shall be provided with a copy thereof).

(2) The Company shall, on the Closing Date or on the next succeeding Business Day, issue a press release, in the form of ANNEX VIII hereto, concerning the transactions contemplated hereby and by the Other Subscription Agreements.

(3) Within two Business Days after the Closing Date, the Company will publicly report the issue and sale of the Preferred Shares and Warrant and the issuance and sale of securities pursuant to the Other Subscription Agreements by filing with the SEC a Current Report on Form 8-K under the 1934 Act which report shall describe the material terms, and include copies of, the Transaction Documents (or the forms thereof) as exhibits to such report.

(O) CONSTRUCTION. 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.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective officers or other representatives thereunto duly authorized as of the date first set forth above and on the dates set forth below their respective signatures.

Number of Preferred Shares:

Price Per Share: \$

Aggregate Purchase Price: \$

Warrant Shares Initially Issuable Upon Exercise of Warrant:

QUESTCOR PHARMACEUTICALS,
INC.

By: /s/ Timothy E. Morris

Name: Timothy E. Morris
Title: CFO

Date: December 29, 2002

[INVESTOR],

BY: _____

Address:

Date: December 29, 2002