UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 1
on
FORM 8-K/A

CURRENT REPORT

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

Date of Report (Date of Earliest Event Reported): November 26, 2001

XOMA LTD.

(Exact name of registrant as specified in its charter)

BERMUDA

(State or other jurisdiction of incorporation)

0-14710	52-2154066
(Commission File Number)	(IRS Employer Identification No.)
2910 Seventh Street, Berkeley, California	94710
(Address of principal executive offices)	(Zip code)

Registrant's telephone number, including area code (510) 644-1170

(Former name or former address, if changed since last report)

Item 5. Other Events

As previously announced on November 26, 2001, XOMA Ltd. has agreed with Millennium Pharmaceuticals, Inc. to collaborate to develop two of Millennium's biotherapeutic agents: CAB-2 and LDP-01, for certain vascular inflammation indications. A copy of the principal agreement governing this collaboration is attached hereto as Exhibit 2 and incorporated herein by reference.

Under an investment agreement, Millennium committed to purchase, at XOMA's option, up to $50 million worth of XOMA common shares over the next three years, through a combination of convertible debt and equity at then prevailing market prices. A copy of the investment agreement and related convertible note and registration rights agreement are attached hereto as Exhibit 3, Exhibit 4 and Exhibit 5, respectively, and incorporated herein by reference.

Item 7. Exhibits

1. Press Release dated November 26, 2001.*

2. Development and License Agreement dated as of November 26, 2001 by and among Millennium Pharmacueticals Inc., XOMA (US) LLC and XOMA Ireland Limited (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission).

3. Investment Agreement dated as of November 26, 2001 by and among XOMA Ltd., Millennium Pharmaceuticals, Inc. and mHoldings Trust (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission).

4. Registration Rights Agreement dated as of November 26, 2001 by and among XOMA Ltd., Millennium Pharmaceuticals, Inc. and mHoldings Trust (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission).

5. Convertible Subordinated Promissory Note dated November 26, 2001 (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission).

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* Previously filed

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.

Dated: December 13, 2001 XOMA LTD.

By: /s/ Christopher J. Margolin

Christopher J. Margolin
Vice President, General
Counsel and Secretary

EXHIBIT INDEX

Number Description

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DEVELOPMENT AND LICENSE AGREEMENT

By and Among

MILLENNIUM PHARMACEUTICALS, INC.,

XOMA (US) LLC,

and

XOMA IRELAND LIMITED

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Exhibits

The Exhibits referred to in this Agreement have been attached to this Agreement and shall have the following titles:

Exhibit A	MLNM Patent Rights for CAB-2
Exhibit B	MLNM Patent Rights for LDP-01
Exhibit C	In-Licenses for CAB-2 and LDP-01
Exhibit D	Arbitration of Certain Disputes
Exhibit E	Excluded Technology

Development Plans

The development plans referred to in this Agreement are being simultaneously delivered with the execution of this Agreement as separate documents and shall have the following titles:

Document I	Development Plan for CAB-2
Document II	Development Plan for LDP-01

DEVELOPMENT AND LICENSE AGREEMENT

This DEVELOPMENT AND LICENSE AGREEMENT ("Agreement"), dated as of the Effective Date, is entered into by and among MILLENNIUM PHARMACEUTICALS, INC. ("MLNM"), a Delaware corporation having a principal office at 75 Sidney Street, Cambridge, Massachusetts 02139 U.S.A., XOMA (US) LLC ("XOMA-US"), a Delaware limited liability company having an office located at 2910 Seventh Street, Berkeley, California 94710 U.S.A., and XOMA IRELAND LIMITED ("XOMA-Ireland"), an Irish company having an office located at Shannon Airport House, Shannon, County Clare, Ireland.

INTRODUCTION

1. MLNM is engaged in genomic research and drug discovery and development endeavors, with the objective of identifying, developing and marketing products that will serve a variety of human healthcare needs throughout the world.

2. XOMA-US is a biopharmaceutical company providing development and manufacturing services for disease targets that will serve a variety of human healthcare needs throughout the world.

3. MLNM and XOMA-US desire to collaborate to accelerate the commercialization of certain potential therapeutic products in MLNM's pipeline.

4. XOMA-US desires to obtain and MLNM is willing to grant rights and licenses in such potential therapeutic products for purposes of XOMA-US undertaking development activities for such compounds through early stages of development, with an opportunity for MLNM's participation in the further development and commercialization at MLNM's election based on the results obtained during the early stages of development.

5. XOMA-Ireland owns or controls the rights to certain intellectual property it is willing to license to MLNM, and MLNM desires to license such intellectual property, all on the terms and conditions set forth herein.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, MLNM, XOMA-US and XOMA-Ireland agree as follows:

ARTICLE I

DEFINITIONS

General. When used in this Agreement, each of the following terms, whether used in the singular or plural, shall have the meanings set forth in this Article I.

1.1. "Affiliate" means any corporation, company, partnership, joint venture and/or firm which controls, is controlled by, or is under common control with a Party. For purposes of the foregoing sentence, "control" shall mean (a) in the case of corporate entities, direct or indirect ownership of at least 50% of the stock or shares having the right to vote for the election of directors and (b) in the case of non-corporate entities, direct or indirect ownership of at least 50% of the equity interest with the power to direct the management and policies of such non-corporate entities.

1.2. "Agreement Year" means the period beginning on the Effective Date and ending on the one-year anniversary thereof ("Agreement Year 1") and each succeeding twelve-month period thereafter (such years being referred to herein as "Agreement Year 2," "Agreement Year 3" and so on).

1.3. "Allocable Overhead" means costs incurred by a Party or for its account which are attributable to a Party's supervisory services, occupancy costs, payroll, information systems, human relations or purchasing functions and

which are allocated to company departments based on space occupied or headcount or other activity-based method. Allocable Overhead shall not include any cost attributable to general corporate activities including, by way of example, executive management, investor relations, business development, legal affairs and finance.

1.4. "BLA" or "Biologics License Application" means with respect to CAB-2 or LDP-01, a United States FDA biologics license application or its equivalent, or any corresponding foreign application.

1.5. "Burdened Party" means the Development Party identified in accordance with Section 3.4(h)(ii).

1.6. "CAB-2" means the fusion protein known by MLNM as CAB-2 that functions as a complement inhibitor through the inhibition of C3 and C5 convertases.

1.7. "Co-Development Option" means the option defined in accordance with Section 3.3(a).

1.8. "Confidential Information" means (a) all proprietary information and materials, patentable or otherwise, of a Party which are disclosed by or on behalf of such Party to another Party pursuant to and in contemplation of this Agreement, including, without limitation, biological or chemical substances, formulations, techniques, methodology, equipment, data, reports, know-how, sources of supply, patent positioning and business plans, including any negative developments, and (b) any other information designated by the disclosing Party to the other Party as confidential or proprietary, whether or not related to making, using or selling Licensed Products.

1.9. "Development and Commercialization Plan" means (a) with respect to a Licensed Product as to which MLNM has elected option (a) under Section 3.3 and XOMA-US has elected to participate, a plan for the development and commercialization of such Licensed Product after Successful Phase II Clinical Trial Completion covering activities which MLNM and XOMA-US will have joint responsibility to conduct; and (b) with respect to a Licensed Product as to which MLNM has elected option (b) under Section 3.3 and XOMA-US has elected to participate, a plan for the development and commercialization of such Licensed Product after Successful Phase II Clinical Trial Completion covering activities which XOMA-US will have sole responsibility to conduct.

1.10. "Development Costs" means, with respect to a Licensed Product, the internal and external costs of a Party incurred in developing such Licensed Product, which costs shall include direct labor, materials, [*] and Allocable Overhead. [*]. Development Costs shall be determined by a Party in accordance with United States generally accepted accounting principles ("US GAAP") as consistently applied by such Party in the ordinary course of its business.

1.11. "Development Party" or "Development Parties" means MLNM and/or XOMA-US.

1.12. "Development Plan" means the initial plans set forth in Document I and Document II respectively for the development of the respective Licensed Products during the Development Term, as such plans are amended from time to time pursuant to Section 2.1 or Section 2.5. Each Development Plan shall describe all development activities for a Licensed Product in the Territory for the respective Field of Use, as determined and approved in accordance with Section 2.1 or Section 2.5, including, but not limited to, pre-clinical testing, toxicology, formulation, process development, manufacturing scale-up, manufacturing, quality assurance/quality control, clinical studies and regulatory affairs as well as a timeline and budget for completion of such activities.

1.13. "Development Term" means, with respect to a Licensed Product, the time period between the Effective Date and Successful Phase II Clinical Trial Completion of such Licensed Product.

1.14. "Effective Date" means November 26, 2001.

1.15. "FDA" or "Food and Drug Administration" means the United States Food and Drug Administration or any successor agency.

1.16. "Field of Use" means:

(a) with respect to CAB-2, or any related Licensed Product, [*]; and

(b) with respect to LDP-01, or any related Licensed Product, [*].

[*]

In the event that MLNM, XOMA-Ireland and XOMA-US enter into an agreement pursuant to Section 2.7(a) with respect to a Licensed Product, the agreed upon additional indication(s) shall become part of the Field of Use for such Licensed Product as of the date provided in such agreement.

1.17. "First Approval" means, the first receipt of authorization or clearance to market a Licensed Product in the Territory under a BLA.

1.18. "First Commercial Sale" means, with respect to each Licensed Product, the first commercial sale in the Territory or outside the Territory as part of a nationwide introduction by a Party or any of its Affiliates or Sublicensees.

1.19. "GMP" or "Good Manufacturing Practice" means the current good manufacturing practice regulations of the FDA as described in the United States Code of Federal Regulations or any applicable corresponding foreign regulations or their respective successor regulations.

1.20. "In-License" means an agreement existing as of the Effective Date between MLNM or a predecessor to MLNM and a third party pursuant to which MLNM has rights and obligations with respect to a Licensed Product. Attached hereto as Exhibit C is a complete list of such In-Licenses.

1.21. "IND" or "Investigational New Drug Application" means a United States FDA investigational new drug application or its equivalent or any corresponding foreign application in Canada.

1.22. "Joint Project Team" means a joint project team formed by the Development Parties for each Licensed Product in accordance with Section 3.4(b).

1.23. "Joint Steering Committee" means the committee composed of senior representatives from each Development Party to oversee and manage the development of Licensed Products in accordance with Section 2.1(a).

1.24. "Know-How" means, with respect to each Licensed Product, all materials, laboratory, pre-clinical and clinical data, know-how, and other scientific, technical or regulatory information, patentable or otherwise, developed, applied or acquired by a Party prior to or during the term of this Agreement, which relates to the identification, characterization, expression, synthesis, use or production of such Licensed Product and which is reasonably useful or necessary or is required to develop, use, formulate, manufacture, fill and finish, register, distribute and/or sell such Licensed Product. Know-How shall include rights acquired by a Party from a third party only if and/or solely to the extent that such Party has the right to sublicense the same to the other Party.

1.25. "LDP-01" means the monoclonal antibody known by MLNM as LDP-01 [*].

1.26. "Licensed Product" means either CAB-2 or LDP-01 and any and all formulations, mixtures or compositions thereof (including those containing one or more therapeutically active ingredients in addition to CAB-2 or LDP-01) which, or the making, use or sale of which, (a) in the context of the licenses granted to XOMA hereunder, is covered by a Valid Claim of any of the MLNM Patent Rights and/or embodies any MLNM Know-How, (b) in the context of the licenses granted to MLNM hereunder, is covered by a Valid Claim of any of the XOMA Patent Rights and/or embodies any XOMA Know-How, or (c) in the context of payment of royalties hereunder or the supply provisions hereof, is covered by a Valid Claim of any of the MLNM Patent Rights or the XOMA Patent Rights and/or embodies any MLNM Know-How or XOMA Know-How.

1.27. "Manufacturing Cost" means, with respect to a Licensed Product, the internal and external costs of a Party, incurred in manufacturing such Licensed Product [*]. Manufacturing Cost shall be determined by a Party in accordance with US GAAP as consistently applied by such Party in the ordinary course of its business.

1.28. "MLNM Intellectual Property" means, with respect to each Licensed Product, MLNM Know-How and MLNM Patent Rights.

1.29. "MLNM Know-How" means, with respect to each Licensed Product, all Know-How that is invented or developed under this Agreement by MLNM or that is within the control of MLNM other than that licensed to MLNM by the XOMA Parties pursuant to Article IV of this Agreement.

1.30. "MLNM Patent Rights" means, with respect to each Licensed Product, all Patent Rights that are invented or developed under this Agreement by MLNM or that are within the

control of MLNM other than Patent Rights licensed to MLNM by the XOMA Parties pursuant to Article IV of this Agreement. Attached hereto as Exhibit A and Exhibit B are lists of the MLNM Patent Rights existing as of the Effective Date for each Licensed Product.

1.31. "Net Sales" means, with respect to a Licensed Product, [*].

1.32. "Operating Costs" means, with respect to each Licensed Product, (a) cost of sales, (b) all internal and external costs incurred in conducting Phase IV clinical trials directly allocable to the marketing of such Licensed Product in its Field of Use in the Territory, and (c) all internal and external costs incurred in the marketing of such Licensed Product in its Field of Use in the Territory, which costs shall include pre-launch marketing and educational activities, marketing, promotion, distribution and selling expenses. [*]. Operating Costs shall be determined by each Party in accordance with US GAAP as consistently applied by such Party in the ordinary course of its business.

1.33. "Operating Margin/Profit" means, with respect to a Licensed Product, Net Sales of such Licensed Product in its Field of Use in the Territory less Operating Costs of the Parties and their Affiliates.

1.34. "Party" or "Parties" means MLNM, XOMA-US and/or XOMA-Ireland, as the context requires.

1.35. "Patent Rights" means with, respect to each Licensed Product, all patents (including, without limitation, all reissues, extensions, substitutions, confirmations, re-registrations, re-examinations, invalidations, supplementary protection certificates and patents of addition) and patent applications (including, without limitation, all provisional applications, continuations, continuations-in-part and divisions) which relate to such Licensed Product or the identification, characterization, expression, synthesis, use or production of such Licensed Product and which are reasonably useful or necessary or are required to develop, use, formulate, manufacture, fill and finish, register, distribute and/or sell such Licensed Product. Patent Rights shall include rights acquired by a Party from a third party only if and/or to the extent such Party has the right to sublicense the same to the other Party.

1.36. "Phase I Clinical Trial" means studies in humans the purpose of which is preliminary determination of safety in healthy individuals or patients and for which there are no primary endpoints relating to efficacy in the protocol.

1.37. "Phase II Clinical Trial" means such studies in humans of the safety, dose ranging and efficacy of a Licensed Product which are designed to generate sufficient data to commence Phase III Clinical Trials.

1.38. "Phase II Success Criteria" means the criteria determined by the Joint Steering Committee in accordance with Section 2.6.

1.39. "Phase III Clinical Trial" means a controlled study in humans of the efficacy and safety of a Licensed Product which is prospectively designed to demonstrate statistically whether such Licensed Product is effective and safe for use in a particular indication in a manner sufficient to obtain regulatory approval to market such Licensed Product.

1.40. "Project Team" means a project team formed in accordance with Section 2.5.

1.41. "Report" means, with respect to a Licensed Product, copies of minutes of all meetings with the FDA, copies of all INDs, copies of investigator brochures, copies of all clinical study protocols (for each, prior to submission to the FDA), notice of when first and last patients in a clinical trial have been treated and received their last treatment in such clinical trial, copies, including a draft copy, of any interim clinical trial analyses, and the final report in any clinical trial.

1.42. "Sublicensee" means a third party which is not an Affiliate of a Party and to whom such Party has granted a sublicense to develop, use, formulate, manufacture, fill and finish, register, distribute and/or sell Licensed Products. Without limiting the generality of the foregoing, a Sublicensee shall be deemed to include any third party who is granted a sublicense hereunder by a Party pursuant to the terms of the outcome or settlement of any infringement or threatened infringement action.

1.43. "Successful Phase II Clinical Trial Completion" means, with respect to a Licensed Product, the determination by the Joint Steering Committee or a third party under the dispute resolution mechanism pursuant to Section 2.1(c)(i) that the Phase II Success Criteria for such Licensed Product have been satisfied.

1.44. "Territory" means the United States of America and Canada.

1.45. "Third Party Claim" means any action (actual or threatened), arbitration, cause of action, claim, filed complaint, criminal prosecution, governmental or other examination or investigation, hearing, administrative or other proceeding involving a MLNM Indemnitee or a XOMA Indemnitee, as applicable, instituted by a person or entity other than a XOMA Indemnitee or a MLNM Indemnitee (or a XOMA Indemnitee or a MLNM Indemnitee who is not acting in their capacity as a XOMA Indemnitee or a MLNM Indemnitee, respectively), as the case may be, (but excluding infringement or misappropriation , the sole and exclusive remedy for which is provided in Section 7.4), and which, if prosecuted successfully, could result in a MLNM Loss or XOMA Loss, as applicable, for which such MLNM Indemnitee or XOMA Indemnitee, as the case may be, is entitled to indemnification under Article X.

1.46. "Valid Claim" means any claim in an unexpired patent which has not been held unenforceable, unpatentable or invalid by a decision of a court or other governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue, re-examination or disclaimer and which is not subject to an interference action.

1.47. "XOMA Development-Commercialization Option" means the option defined in accordance with Section 3.3(b).

1.48. "XOMA Intellectual Property" means, with respect to each Licensed Product, all XOMA Know-How and XOMA Patent Rights.

1.49. "XOMA Know-How" means, with respect to each Licensed Product, all Know-How that is invented or developed under this Agreement by XOMA-US or that XOMA-Ireland or XOMA-US has the legal right to license or sublicense to MLNM and that is reasonably necessary to the practice of licenses granted under this Agreement, other than that licensed to XOMA-US by MLNM pursuant to Article IV.

1.50. "XOMA Party" or "XOMA Parties" means XOMA-US and/or XOMA-Ireland.

1.51. "XOMA Patent Rights" means, with respect to each Licensed Product, all Patent Rights that are invented or developed under this Agreement by XOMA-US, or that XOMA-Ireland or XOMA-US has the legal right to license or sublicense to MLNM and that are reasonably necessary to the practice of licenses granted under this Agreement, other than Patent Rights listed in Exhibit E ("Excluded Technology") or licensed to XOMA-US by MLNM pursuant to Article IV. XOMA-Ireland shall be entitled to amend Exhibit E from time to time with the consent of MLNM, which consent shall not be unreasonably withheld, taking into account the original intent and purpose of this Agreement and the goals and other provisions of the then current Development Plans.

ARTICLE II

DEVELOPMENT

2.1. Joint Steering Committee.

(a) Formation and Decision-Making. Within [*] after execution of this Agreement by all Parties, the Development Parties shall establish a Joint Steering Committee to oversee and manage the development of the Licensed Products in their respective Fields of Use. The Joint Steering Committee shall consist of three (3) senior representatives designated by each Development Party. Each representative shall have relevant and appropriate preclinical, manufacturing, clinical development or commercialization expertise in order to oversee the develop-

ment of the Licensed Products. Each Development Party shall have one (1) vote on the Joint Steering Committee and all actions to be taken and determinations to be made by the Joint Steering Committee shall be by consensus. If a representative of a Development Party is unable to attend a meeting of a Joint Steering Committee, such Development Party may designate an alternate to attend such meeting. In addition, each Development Party may, at its discretion, invite a reasonable number of other employees, consultants or scientific advisors to attend the meetings of the Joint Steering Committee, provided that such invitees are bound by appropriate confidentiality obligations. The Joint Steering Committee shall meet no less frequently than [*] and shall meet at such other times as it deems appropriate. Meetings shall be held at such place or places as are mutually agreed or by teleconference or videoconference. Each Development Party may change one or all of its representatives to each Joint Steering Committee at any time upon notice to the other Development Party.

(b) Responsibilities. The Joint Steering Committee shall: (i) determine the overall development strategy for the Licensed Products in their respective Fields of Use in the Territory; (ii) review and approve modifications to the Development Plans and the related budgets for Licensed Products within [*] of each submission; (iii) facilitate the transfer through the Project Teams of Know-How between the Development Parties for purposes of conducting the Development Plans; (iv) regularly assess the progress of XOMA-US in its conduct of the Development Plans and against the timelines contained therein; (v) monitor the progress of the Project Team for each Licensed Product; (vi) in the event of co-development of a Licensed Product jointly by MLNM and XOMA-US in accordance with Section 3.4, review and approve the Development and Commercialization Plan and the related budget prepared by the Joint Project Team and any modifications thereto as recommended by the Joint Project Team within [*] of each submission and coordinate, oversee and approve the activities of the Joint Project Team; (vii) in the event of development and commercialization of a Licensed Product solely by XOMA-US under Section 3.5, and at the time of XOMA-US's election to participate in such development and commercialization, review and approve the Development and Commercialization Plan prepared by XOMA-US and, at such time as they are proposed, any modifications thereto as recommended by the XOMA-US and determine the diligence milestones with respect to dates by which XOMA-US shall have initiated Phase III Clinical Trials, filed a BLA and made the First Commercial Sale of a Licensed Product; and (viii) perform such other activities as are contemplated under this Agreement.

(c) Disputes.

(i) In the event the Joint Steering Committee is unable to reach consensus within thirty (30) days concerning: (x) the Phase II Success Criteria as set forth in Section 2.6; (y) determining whether the Phase II Success Criteria have been satisfied as set forth in Section 3.1; or (z) any other matter within its areas of responsibility, it shall submit the matter for resolution by senior management representatives designated by each Development Party.

Such representatives shall meet promptly to discuss the matter submitted and to determine a resolution. If such representatives are unable to determine a resolution within [*], the matter shall be resolved in accordance with the provisions set forth in Exhibit D.

(ii) Notwithstanding Section 2.1(c)(i), if MLNM has elected the option set forth in Section 3.3(a) to pursue further development of a Licensed Product jointly with XOMA-US, and the Joint Steering Committee is unable to reach consensus within thirty (30) days concerning a matter within its areas of responsibility or referred to it in connection with such further development of such Licensed Product, MLNM shall have the right to make the final determination concerning the resolution of such dispute.

2.2. Diligence During Development Term; [*].

(a) Diligence. During the Development Term, and consistent with the Development Plan, XOMA-US shall be responsible for and use commercially reasonable and diligent efforts: (a) to develop the Licensed Products, including providing Reports and any additional information reasonably requested by MLNM with regard to the development of Licensed Products to MLNM in a timely manner; and (b) to conduct all appropriate IND-enabling studies and human clinical studies for the purpose of developing the Licensed Products during the Development Term. XOMA shall be responsible for all regulatory filings with the FDA necessary to conduct such studies, and all communications with the FDA with respect to such studies, provided that MLNM shall have the right to participate at its own expense in such activities with XOMA-US.

(b) [*]

2.3. Third Party Conduct of Development Activities. With respect to the development of the Licensed Products in their respective Fields of Use in the Territory during the Development Term, XOMA-US may seek third parties to conduct contract services on its behalf in accordance with the Development Plan; provided that the material intellectual property and payment of royalty terms of agreements governing such contract services are reviewed and approved in advance of their execution by the Joint Steering Committee, and provided further that (a) with respect to any intellectual property developed in the conduct of such services, such intellectual property is owned by XOMA-US, XOMA-Ireland or their Affiliates or licensed to XOMA-US, XOMA-Ireland or their Affiliates with the right to sublicense to MLNM and such third parties are obligated to comply with the licensing, confidentiality and other terms and conditions of this Agreement, and (b) XOMA-US shall remain primarily liable for compliance with such terms and conditions.

2.4. Funding of Development Plan. XOMA-US will bear all Development Costs and Manufacturing Costs incurred in conducting the Development Plan for each Licensed Product

during the Development Term, as well as reasonable agreed upon pre-approval expenses listed in subsection (c) of the definition of Operating Costs incurred during the Development Term.

2.5. Project Teams. Within [*] of the Effective Date, MLNM and XOMA-US shall appoint their respective representatives to a Project Team for each Licensed Product. The Project Team for each Licensed Product shall be responsible for: (a) overseeing, controlling and implementing the Development Plan and undertaking activities necessary to complete the Development Plan in accordance with the timelines therein, including pre-clinical research, clinical research, manufacturing, and regulatory filings; (b) reporting XOMA-US's progress under the Development Plan and making recommendations to the Joint Steering Committee at least quarterly (in advance of Joint Steering Committee meetings) concerning amendments to the Development Plan including the level of resources allocated to the development of the Licensed Product and budget adjustments; (c) preparing and submitting Reports to the Joint Steering Committee; (d) facilitating the exchange of data, information, materials or results between the Development Parties pertaining to the Licensed Products; and (e) performing such other tasks and responsibilities as may be set forth in this Agreement.

2.6. Criteria for Successful Completion of Phase II Clinical Trials. Prior to the initiation of Phase II Clinical Trials for each Licensed Product, the Joint Steering Committee shall agree upon criteria for evaluation of the results of Phase II Clinical Trials for such Licensed Product ("Phase II Success Criteria") for purposes of the Joint Steering Committee's determination of Successful Phase II Clinical Trial Completion for such Licensed Product. Such criteria shall include, but not be limited to: (a) efficacy requirements for the Licensed Product and well-defined endpoints for measuring these requirements; (b) a safety profile for the Licensed Product; (c) demonstration of a pilot manufacturing process that allows for a commercially reasonable manufacturing margin after taking into consideration the projected dosing regimen; (d) maximum dosing and drug delivery requirements; and (e) other criteria that ensure the Licensed Product will address an unmet medical need in a commercially viable manner. The Phase II Success Criteria shall be incorporated into and made a part of the Development Plan for each Licensed Product.

2.7. [*].

ARTICLE III

PHASE III DEVELOPMENT AND COMMERCIALIZATION

3.1. Results of Phase II Clinical Trials. At such time as XOMA-US determines that the results of the Phase II Clinical Trial(s) for a Licensed Product satisfy the Phase II Success Criteria, XOMA-US shall notify the Joint Steering Committee and provide detailed informa-

tion concerning the results. The Joint Steering Committee shall review the results of the Phase II Clinical Trial(s) and other information from XOMA-US and determine whether the Phase II Success Criteria are satisfied.

3.2. Joint Steering Committee Decision.

(a) If the Joint Steering Committee determines that the Phase II Success Criteria are satisfied with respect to a Licensed Product, then MLNM shall exercise one of the options set forth in Section 3.3.

(b) If the Joint Steering Committee determines that the Phase II Success Criteria have not been met with respect to a Licensed Product, then the Joint Steering Committee shall determine whether XOMA-US should continue its development activities with respect to such Licensed Product in accordance with a revised Development Plan. Such Development Plan shall be directed to achieving the Phase II Success Criteria and shall be subject to the prior review and approval of the Joint Steering Committee. If the Joint Steering Committee fails to have XOMA-US continue development activities under a revised Development Plan within [*] of its decision that the Phase II Success Criteria were not met, then the license and other rights granted to XOMA-US with respect to such Licensed Product under this Agreement shall terminate pursuant to Section 12.5.

In the event MLNM subsequently develops such Licensed Product in any field in the Territory, MLNM will pay royalties to XOMA-US and XOMA-Ireland as set forth in the applicable part of Section 5.4.

(c) If the Joint Steering Committee fails to determine whether the Phase II Success Criteria have been satisfied with respect to a Licensed Product, then the Joint Steering Committee shall consider whether to modify the Phase II

Success Criteria. If the Joint Steering Committee fails to determine whether the Phase II Success Criteria have been satisfied or whether to modify the Phase II Success Criteria within [*] of notification from XOMA-US pursuant to Section 3.1, the dispute resolution mechanism set forth in Section 2.1(c)(i) shall be utilized as the exclusive mechanism for determining whether such criteria have been satisfied or whether to modify the Phase II Success Criteria.

3.3. MLNM Election of Development and Commercialization; XOMA-US Election to Participate. Within [*] after a determination under Section 3.2(a) of a Successful Phase II Clinical Trial Completion for a Licensed Product, MLNM shall elect by written notice to XOMA-US (a) that MLNM and XOMA-US jointly participate in the continued development of such Licensed Product in accordance with Section 3.4 beginning as of the date of MLNM's election under this Section 3.3, with MLNM to be solely responsible for commercialization of the Licensed Product in the Territory ("Co-Development Option") or (b) that XOMA-US shall retain sole responsibility for the development and commercialization of such Licensed Prod-

uct in its Field of Use in the Territory, including the full responsibility and cost for all pre-clinical and clinical development, manufacturing, regulatory and commercialization activities for such Licensed Product in the Territory ("XOMA Development-Commercialization Option"). Within [*] after MLNM's election, XOMA-US shall elect by written notice to MLNM (y) to participate under the terms of MLNM's election with respect to a Licensed Product or (z) not to participate under the terms of MLNM's election. In the case of XOMA-US's determination not to participate, then the license and other rights granted to XOMA-US with respect to such Licensed Product under this Agreement shall terminate pursuant to Section 3.6 in the same manner as if XOMA-US determined to withdraw from participation as provided therein.

3.4. Joint Development. In the event MLNM elects the Co-Development Option for a Licensed Product and XOMA-US elects to participate:

(a) Development and Commercialization Plan. MLNM and XOMA-US shall co-develop such Licensed Product in its Field of Use in the Territory in accordance with a Development and Commercialization Plan for such Licensed Product to be prepared by the Joint Project Team and submitted to the Joint Steering Committee for review and approval. For purposes of preparation of the Development and Commercialization Plan, and any revisions thereto, development activities shall be allocated taking into account the Development Parties' respective capabilities and capacities to perform such activities, with the understanding that MLNM will have sole responsibility for all commercialization activities, [*].

(b) Joint Project Team. Within [*] of MLNM's election under Section 3.3 with respect to a Licensed Product, the Development Parties shall appoint a Joint Project Team for such Licensed Product with an equal number of representatives of each Development Party. The Joint Steering Committee shall determine the number of persons to be appointed.

(c) Joint Project Team Decision-Making. The Joint Project Team for each Licensed Product shall meet [*] in person or via teleconference, or more frequently as such Joint Project Team may determine. Decisions and actions of a Joint Project Team will be made and taken by consensus and each Development Party shall have one (1) vote. Each Joint Project Team shall report to and operate subject to approval of the Joint Steering Committee. In the event a Joint Project Team is unable to resolve a matter within its areas of responsibility within [*] of the date when the matter is first raised by either Development Party, such matter shall be submitted to the Joint Steering Committee for resolution in accordance with Section 2.1(c)(i); provided, however, that in the event the Joint Steering Committee is unable to resolve a matter and submits such matter to senior management representation of each Development Party who

are also unable to resolve the matter, than the matter shall be referred back to the Joint Steering Committee and MLNM shall have the right to cast the tie-breaking vote.

(d) Joint Project Team Responsibilities. Each Joint Project Team will oversee and be responsible for all development activities for its Licensed Product in the Field of Use in the Territory as set forth in the Development and Commercialization Plan. Such responsibilities shall include:

(i) preparation of the initial Development and Commercialization Plan for such Licensed Product for submission to the Joint Steering Committee for review and approval within [*] of MLNM's election under

Section 3.3(a), including a budget of projected Development Costs for such activities;

(ii) preparation of updates, amendments or revisions to the Development and Commercialization Plan, including a budget for projected Development Costs, no less frequently than once per Agreement Year for submission to the Joint Steering Committee for review and approval no later than [*] prior to the end of the then-current Agreement Year; and

(iii) oversight of all activities directed to the development of a Licensed Product in its Field of Use in the Territory.

(e) Ownership of Regulatory Filings and Approvals. MLNM shall own and maintain all regulatory filings and approvals for such Licensed Product; provided such Licensed Product shall be labeled with the names of both Development Parties to the extent permitted by law. XOMA-US shall assign ownership of any orphan drug designation granted by the FDA or foreign equivalent to MLNM.

(f) Diligence. The Development Parties shall use commercially reasonable and diligent efforts to perform their responsibilities consistent with the Development and Commercialization Plan, while operating within the budget constraints set by the Joint Steering Committee and consistent with each Party's normal research and development practices.

(g) Costs Prior to First Commercial Sale. With respect to each Licensed Product, MLNM shall be responsible for [*] of Development Costs and Manufacturing Costs incurred with respect to the clinical development of such Licensed Product subsequent to Successful Phase II Clinical Trial Completion and prior to the First Commercial Sale; XOMA-US shall be responsible for [*] of such Development Costs and Manufacturing Costs. With respect to a Licensed Product, to the extent the Development Parties agree to undertake pre-launch marketing and education activities prior to the First Commercial Sale or manufacture Licensed Product intended for commercial

sale and incur costs in connection therewith, the Development Parties shall share such Operating Costs as follows: [*].

(h) Costs Subsequent to First Commercial Sale; Sharing of Operating Margin/Profits. With respect to each Licensed Product, Development Costs, Operating Costs and Operating Margin/Profits shall be shared as follows:

(i) Subsequent to the First Commercial Sale, the Development Parties shall share Operating Margin/Profit as follows: [*]. In addition, Development Costs incurred subsequent to the First Commercial Sale shall be shared as follows: [*]. To the extent MLNM has paid for [*] of the Manufacturing Costs in accordance with Section 3.4(g) for any quantity of Licensed Product that was originally intended for clinical development but is later sold or disposed of to third parties, XOMA-US shall credit MLNM in the amount of [*] of the total of such Manufacturing Costs consistent with the mechanism agreed to pursuant to Section 3.4(h)(ii).

(ii) The Development Parties shall agree upon a mechanism so that in the event that the allocation of activities under the Development and Commercialization Plan results, based on the then-current budget, in one Development Party (the "Burdened Party") incurring a greater sharing of Development Costs, Operating Costs or Manufacturing Costs than provided for in Section 3.4(g) or 3.4(h)(i) for a given calendar quarter, then a payment shall be made by the other Development Party to the Burdened Party within [*] of the beginning of such quarter to ensure that such costs are shared approximately in accordance with said allocation. If at the end of any calendar year, the Development Costs, Operating Costs or Manufacturing Costs incurred by a Development Party, after taking into account the payments under this subsection (ii) is not in accordance with the allocation set forth in Section 3.4(g) 3.4(h)(i), then a reconciliation payment shall be made by one Development Party to the other Development Party in order to achieve such allocation within [*] of the end of the relevant calendar year.

(iii) The Development Parties shall also agree on a mechanism for Quarterly reporting and distribution of Operating Margin/Profit in accordance with Section 3.4(h)(i).

3.5. Development and Commercialization by XOMA-US. In the event that MLNM elects the XOMA Development-Commercialization Option for a Licensed Product and XOMA-US elects to participate:

(a) Development and Commercialization. XOMA-US shall retain sole responsibility for the development and commercialization of such Licensed Product in its Field of Use in the Territory in accordance with a Development and Commercialization Plan prepared by XOMA-US and reviewed and approved by the Joint Steering Committee.

(b) License. XOMA-US shall receive exclusive license rights to develop and commercialize such Licensed Product in its Field of Use in the Territory under Section 4.3, which license shall be fully assignable to an Affiliate of XOMA-US as set forth in Section 14.4.

(c) Ownership of Regulatory Filings and Approvals. XOMA-US shall own and maintain all regulatory filings and approvals for such Licensed Product in its Field of Use in the Territory; provided that such Licensed Product shall be labeled with the names of both Development Parties to the extent permitted by law.

(d) Milestones. The Joint Steering Committee shall meet to agree upon [*].

(e) Diligence. XOMA-US shall use commercially reasonable and diligent efforts to develop and commercialize such Licensed Product. XOMA-US's responsibilities shall include the pre-clinical and clinical development, manufacturing, regulatory and commercialization responsibility for the Licensed Product. For purposes of this Section 3.5(e), commercially reasonable and diligent efforts shall mean exerting such effort and employing such resources as would normally be taken, exerted or employed by a third party for a product of similar market potential at a similar stage of its product life, taking into account the competitiveness of the relevant marketplace, the proprietary positions of third parties, the regulatory structure involved, and the profitability of the product. Without limiting the generality of the foregoing, XOMA-US agrees to: (y) prepare, file and prosecute all appropriate governmental applications to obtain approvals to develop, use, manufacture, formulate, fill and finish, register, distribute and sell such Licensed Product in its Field of Use in the Territory; and (z) use commercially reasonable efforts to market such Licensed Product in its Field of Use in the Territory. For purposes of this Section 3.5(e), the efforts of XOMA-US's Affiliates and Sublicensees shall count as the efforts of XOMA-US.

3.6. Opt-Out After Election Under Section 3.3.

(a) With respect to each Licensed Product, in the event MLNM elects the Co-Development Option and XOMA-US elects to participate, either Development Party shall have the right to withdraw from participation in the development of such Licensed Product by providing [*] advance written notice to the other Development Party.

(b) With respect to each Licensed Product, in the event MLNM elects the XOMA Development-Commercialization Option and XOMA-US elects to participate, XOMA-US shall have the right to withdraw from participation in the development of such Licensed Product by providing [*] advance written notice to MLNM.

(c) If a Development Party exercises its right under Section 3.6(a) or (b), (i) such Development Party shall continue to perform critical development activities pursuant to the applicable Development Plan until the appropriate transfer of Know-How to the other Development Party has successfully taken place to permit the other Development Party to proceed with development activities without unreasonable interruption and (ii) responsibility for the costs incurred for such development activities during the [*] shall be as set forth in Section 3.4(g).

(d) If XOMA-US withdraws from participation pursuant to the terms of Section 3.6(a) or (b), then MLNM shall have the right (subject to the provisions of Article V hereof), but not the obligation, to pursue at its cost all pre-clinical, clinical, development, manufacturing, regulatory and commercialization activities for such Licensed Product.

(e) If XOMA-US withdraws from participation pursuant to the terms of Section 3.6(a) or (b), licenses and rights under this Agreement shall be treated as follows: (i) all licenses and rights granted by MLNM to XOMA-US under this Agreement shall terminate (or, if the termination pertains to a single Licensed Product, only the licenses applicable to such Licensed Product), (ii) all licenses and rights granted by the XOMA Parties, as applicable, to MLNM under this Agreement shall survive and be converted, in each case, into perpetual, exclusive, worldwide, royalty-bearing licenses, (or, if the termination pertains to a single Licensed Product, only the licenses applicable to such Licensed

Product shall be converted), (iii) the XOMA Parties, as applicable, shall promptly transfer or cause to be transferred to MLNM all XOMA Know-How pertaining to the Licensed Products (or, if the termination pertains to a single Licensed Product, only the XOMA Know-How applicable to such Licensed Product) not previously transferred by it to MLNM reasonably necessary for the practice of the license rights granted to MLNM under this Agreement, (iv) the XOMA Parties, as applicable, shall transfer to MLNM all regulatory applications, regulatory approvals, orphan drug designations, trademarks and tradenames for Licensed Products (or, if the termination pertains to only a single Licensed Product, only those applicable to such Licensed Product) in its possession, and (v) the XOMA Parties, as applicable, shall promptly return to MLNM all tangible MLNM Know-How and Confidential Information, relating to the Licensed Products (or, if the termination pertains to only a single Licensed Product, only the MLNM Know-How and Confidential Information applicable to such Licensed Product) in such XOMA Party's possession.

(f) If MLNM withdraws from participation pursuant to the terms of Section 3.6(a), then the licenses, royalties and other rights granted to XOMA-US with respect to such Li-

censed Product under this Agreement shall be in accordance with the terms of Section 3.3(b) and Section 3.5 as if MLNM had elected the XOMA Development-Commercialization Option and XOMA-US had elected to participate; provided, however, if MLNM shall have withdrawn from participation under Section 3.6(a), XOMA-US shall have the right to withdraw immediately from participation pursuant to Sections 3.6(b) and 3.6(e) without providing [*] advance written notice.

(g) Royalty. If XOMA-US withdraws from participation pursuant to the terms of Section 3.6(a) or (b), MLNM will pay milestones and royalties to XOMA-US and XOMA-Ireland as set forth in the applicable parts of Section 5.3 and Section 5.4.

3.7. Excluded Technology. XOMA-US agrees (i) not to use Excluded Technology in connection with the performance of activities under a Development Plan or a Development and Commercialization Plan for either Licensed Product and (ii) not to develop either Licensed Product in such a manner that Excluded Technology is required, or that would require a license under Excluded Technology, to make, use or sell either Licensed Product, in either case, without the prior written consent of MLNM.

ARTICLE IV

LICENSES, TRANSFERS AND SUPPLY

4.1. Research and Development License to XOMA-US. Subject to the terms and conditions of this Agreement, and with respect to each Licensed Product, MLNM hereby grants to XOMA-US an exclusive, non-royalty-bearing license, without the right to sublicense (except in accordance with Sections 2.3 and 6.1), during the Development Term under the MLNM Intellectual Property to make, have made, use, and import such Licensed Product in the Field of Use in the Territory for the sole purpose of XOMA-US performing its responsibilities under the Development Plan in accordance with the terms and conditions of this Agreement.

4.2. Transfers of Know-How During the Development Term. Except as expressly set forth herein, each Party shall transfer or cause to be transferred to each other Party, at such other Party's request, any and all Know-How, or in the absence of any such request, such Know-How as the transferring Party believes that the receiving Party needs in order to perform its obligations under this Agreement or to exercise its license rights from the transferring Party to make, have made, use, develop, import and sell Licensed Products in its licensed or reserved fields of use. Each Party shall use such Know-How solely for the purposes of performing its obligations under this Agreement, and to the extent of its license rights under this Agreement and shall, to the extent practicable, transfer such Know-How back to the transferring Party upon termination of such license rights under this Agreement.

4.3. Commercial Licenses for XOMA-US in the Territory.

(a) Co-Development Option. Subject to the terms and conditions of this Agreement, with respect to each Licensed Product for which MLNM elects the Co-Development Option and XOMA-US elects to participate, MLNM grants to XOMA-US a co-exclusive (with MLNM), perpetual license, with the right to grant sublicenses authorized in accordance with the Development and Commercialization Plan, under the MLNM Intellectual Property to make, have made, use, develop, sell, offer for sale and import such Licensed Product in its Field of Use in the Territory.

(b) XOMA Development-Commercialization Option. Subject to the terms and conditions of this Agreement, with respect to each Licensed Product for which MLNM elects the XOMA Development-Commercialization Option and XOMA-US elects to participate, MLNM grants to XOMA-US an exclusive, royalty-bearing license, under the MLNM Intellectual Property to make, have made, use, develop, sell, offer for sale and import such Licensed Product in its Field of Use in the Territory. Such license shall include the right to grant sublicenses subject to prior review and consent of MLNM, which shall not be unreasonably withheld and, notwithstanding such limitation on sublicensing, shall be fully assignable to an Affiliate of XOMA-US as set forth in Section 14.4.

(c) Reservation of Rights. Notwithstanding the license grants in Sections 4.1 and 4.3, MLNM reserves the right under the MLNM Intellectual Property to make, have made, use, develop, sell, offer for sale and import each Licensed Product (i) in its Field of Use outside the Territory, (ii) outside its Field of Use throughout the world, and (iii) to use, develop and manufacture such Licensed Product in the Territory solely in support of the activities permitted under clauses (i) and (ii) or to otherwise use the MLNM Intellectual Property to perform obligations assigned to MLNM under this Agreement.

(d) Conversion of Exclusive License to Non-Exclusive License. On a Licensed Product by Licensed Product basis, and upon the expiration of the obligation to pay royalties set forth in Article V with respect to a Licensed Product in a country in the Territory, the license to the MLNM Know-How granted pursuant Section 4.3(a) with respect to such Licensed Product shall be converted to a fully paid-up, royalty-free, perpetual, non-exclusive license to the MLNM Know-How.

4.4. Commercial Licenses for MLNM.

(a) Co-Development Option. Subject to the terms and conditions of this Agreement, with respect to each Licensed Product for which MLNM elects the Co-Development Option and XOMA-US elects to participate, each XOMA Party grants to MLNM a co-exclusive (with the XOMA Parties), perpetual license, with the right to grant sublicenses authorized in accordance with the Development and Commercialization Plan, under the XOMA Intellectual

Property to make, have made, use, develop, sell, offer for sale and import such Licensed Product in its Field of Use in the Territory.

(b) Licenses Outside the Field and the Territory. Subject to the terms and conditions of this Agreement, each XOMA Party grants to MLNM a non-exclusive, [*], perpetual license under the XOMA Intellectual Property (i) to make, have made, use, develop, sell, offer for sale and import each Licensed Product (A) in its Field of Use outside the Territory and (B) outside its Field of Use throughout the world, (ii) to use, develop and manufacture such Licensed Product in the Territory solely in support of the activities permitted under clauses (i)(A) and (i)(B) and (iii) to otherwise perform obligations assigned to MLNM under this Agreement. The license granted in this Section 4.4(b) shall include the right to grant sublicenses; provided, however, that with respect to the XOMA Intellectual Property directly related to manufacturing of either Licensed Product MLNM shall obtain the prior consent of the relevant XOMA Party for such a sublicense, which consent shall not be unreasonably withheld. In general, the licenses granted under this Section 4.4 by XOMA-Ireland are to the XOMA Intellectual Property in existence on the Effective Date, and the licenses granted by XOMA-US are to the XOMA Intellectual Property that are developed or acquired under this Agreement.

(c) Reservation of Rights. Each XOMA Party reserves the right under the XOMA Intellectual Property to make, have made, use, develop, sell, offer for sale and import each Licensed Product to perform obligations assigned to XOMA-US under this Agreement.

4.5. In-Licenses. XOMA-US and XOMA-Ireland acknowledge receipt of copies of the In-Licenses as listed on Exhibit C and agrees to comply with the terms and conditions therein in XOMA-US's exercise of the licenses granted to it in Sections 4.1 and 4.3. XOMA-US and XOMA-Ireland further acknowledge that certain rights granted under this Agreement may be limited by the In-Licenses.

4.6. Access to Data and Regulatory Filings. With respect to each Licensed Product, each of the Parties agrees to share its data from all laboratory, preclinical and clinical studies conducted in support of its regulatory filings for the development, approval and marketing of the related Licensed Product with each other Party and its Affiliates and Sublicensees on a royalty-free basis, provided, however, that any data so transferred shall be used by the receiving Party and its Affiliates and Sublicensees solely as permitted by the licenses granted under this Article IV. Except as set forth in the preceding sentence, if a Sublicensee of a Party shall fail to agree to a reciprocal data sharing arrangement, such Sublicensee shall not be entitled to receive the data of any other Party or its Affiliates or Sublicensees (unless otherwise agreed). For

each Licensed Product, each Development Party shall provide the other Development Party with copies of its regulatory filings in the Field of Use, and shall permit the other Development Party to attend meetings with regulatory authorities in order to monitor the devel-

opment of such Licensed Product. Furthermore, each Party agrees to grant to each other Party the right to cross-reference any regulatory filing made by a Party or approval with regard to a Licensed Product as another Party believes may be useful or necessary for it to obtain approval to distribute and sell Licensed Products inside or outside the Territory, consistent with the terms of this Agreement. A Party may transfer the right to reference a regulatory filing or approval of another Party to a third party; provided that such other Party shall have a prior right of approval of such transfer, but such approval may not be unreasonably withheld.

4.7. Adverse Event Reporting. The Development Parties recognize that they will be required to submit adverse drug experience reports and supplemental information to various governmental agencies with respect to each Licensed Product. Accordingly, with respect to the investigation or marketing by a Development Party or its Affiliates or Sublicensees of Licensed Products, such Development Party agrees to: (a) report to the other Development Party as soon as reasonably possible, but no later than [*] after the initial receipt of a report of any serious and unexpected possibly product-related adverse experience with a Licensed Product, or sooner if required for either Development Party to comply with regulatory requirements; and (b) report to the other Development Party within a reasonable time period, to be agreed upon by the Development Parties, of the initial receipt of a report of any other adverse experience with a Licensed Product, or sooner if required for either Development Party to comply with regulatory requirements. The terms unexpected adverse experience, serious adverse experience and other adverse experience shall have the meanings given such terms in applicable guidelines of the International Council on Harmonization. Promptly after the execution of this Agreement, the Development Parties shall agree on more specific operating procedures for the exchange of the foregoing information.

4.8. Access to Process for Clinical Production and Supply. MLNM and XOMA-US shall prepare a plan to transfer to XOMA-US the process for producing each Licensed Product that MLNM possesses within [*] of the execution of this Agreement (including, without limitation, the pre-master cell bank for CAB-2 and the master cell bank for LDP-01) . Upon completion of the plan, there shall be no further or continuing obligation for MLNM to transfer other processes or improvements to any such process to XOMA-US with regard to either Licensed Product.

4.9. [*].

ARTICLE V

FEES AND ROYALTIES

5.1. License and Sublicense Fees.

(a) XOMA-US hereby agrees to pay a [*] license fee to MLNM in respect of LDP-01. The license fee shall be paid within thirty (30) days of the execution of this Agreement by wire transfer to a bank designated in advance by MLNM.

(b) With respect to each Licensed Product, in the event MLNM licenses rights to a third party in the Field of Use outside the Territory during or subsequent to a Phase II Clinical Trial, MLNM shall pay to XOMA-US [*] of any upfront license fee received by MLNM in respect of such license rights. In the event any such license or series of related licenses to the same third party or more than one related third party involves a Licensed Product and one or more other products, the upfront license fee payable in respect of or allocated to the Licensed Product(s) included in such license or licenses shall not be less than a commercially reasonable upfront license fee based on fair market value for such Licensed Product.

5.2. Milestone Payments During the Development Term. XOMA-US agrees to make the payments listed below to MLNM within [*] of achievement of the milestones set out below.

[*]

5.3. Milestone Payments Subsequent to Development Term.

(a) Milestone Payments Payable by XOMA-US. With respect to each Licensed Product, in the event that MLNM elects the XOMA Development-Commercialization

Option and XOMA-US elects to participate, then with respect to the first achievement of each of the milestones set forth in the following table with respect to such Licensed Product in the Field of Use in the Territory, XOMA-US shall make the indicated milestone payment to MLNM within [*] of the occurrence of the relevant event:

[*]

(b) Milestone Payments by MLNM. With respect to each Licensed Product, in the event that MLNM elects the Co-Development Option and XOMA-US elects not to participate, then with respect to the first achievement of each of the milestones set forth in the following table with respect to such Licensed Product in the Field of Use in the Territory, MLNM shall make the indicated milestone payment to XOMA-US within [*] of the occurrence of the relevant event:

[*]

5.4. Royalties.

(a) As Between the Development Parties. With respect to each Licensed Product, royalties on Net Sales shall be due and payable for each calendar quarter by one Development Party to the other Development Party under this Agreement in accordance with the circumstances and corresponding royalty rates in the table set forth below until [*] after the First Commercial Sale of such Licensed Product in or outside the Territory, as applicable:

CO-DEVELOPMENT OPTION ELECTED BY MLNM

	CIRCUMSTANCE	ROYALTY (Lower percentage applies if total calendar year Net Sales are less than or equal to [*]; higher percentage applies if total calendar year Net Sales are greater than [*])
1.	[*]	[*]% and [*]%
2.	[*]	[*]% and [*]%
3.	[*]	[*]% and [*]%
4.	[*]	[*]% and [*]%
5.	[*]	[*]% and [*]%
6.	[*]	[*]% and [*]%
7.	[*]	[*]% and [*]%
8.	[*]	[*]% and [*]%
9.	[*]	See applicable royalties in section of this table labeled "XOMA Development-Commercialization Option Elected by MLNM"
10.	[*]	[*]% and [*]%
11.	[*]	[*]% and [*]%
12.	[*]	[*]% and [*]%
13.	[*]	[*]% and [*]%

XOMA DEVELOPMENT-COMMERCIALIZATION OPTION ELECTED BY MLNM

	CIRCUMSTANCE	ROYALTY (Lower percentage applies if total calendar year Net Sales are less than or equal to [*]; higher percentage applies if total calendar year Net Sales are greater than [*])
14.	[*]	[*]% and [*]%
15.	[*]	[*]% and [*]%
16.	[*]	[*]% and [*]%
17.	[*]	[*]% and [*]%
18.	[*]	[*]% and [*]%
19.	[*]	[*]% and [*]%
20.	[*]	[*]% and [*]%
21.	[*]	[*]% and [*]%
22.	[*]	[*]% and [*]%
23.	[*]	[*]% and [*]%
24.	[*]	[*]% and [*]%
25.	[*]	[*]% and [*]%
	OTHER	
26.	[*]	[*]% and [*]%
27.	[*]	[*]% and [*]%
28.	[*]	[*]% and [*]%

(b) As Between MLNM and XOMA-Ireland. With respect to each Licensed Product, and in consideration of the license to MLNM of XOMA Intellectual Property owned or controlled by XOMA-Ireland, royalties on Net Sales shall be due and payable for each calendar quarter by MLNM to XOMA-Ireland under this Agreement in accordance with the circumstances and corresponding royalty rates in the table set forth below until [*] after the First Commercial Sale of such Licensed Product in or outside the Territory, as applicable:

	CO-DEVELOPMENT OPTION ELECTED BY MLNM	
	CIRCUMSTANCE	ROYALTY (Lower percentage applies if total calendar year Net Sales are less than or equal to [*]; higher percentage applies if total calendar year Net Sales are greater than [*])
1.	[*]	[*]% and [*]%
2.	[*]	[*]% and [*]%
3.	[*]	[*]% and [*]%
4.	[*]	[*]% and [*]%
5.	[*]	[*]% and [*]%
6.	[*]	[*]% and [*]%
7.	[*]	[*]% and [*]%
8.	[*]	[*]% and [*]%

9.	[*]	See applicable royalties in section of this table labeled "XOMA Development-Commercialization Option Elected by MLNM"
10.	[*]	[*]% and [*]%
11.	[*]	[*]% and [*]%
12.	[*]	[*]% and [*]%
13.	[*]	[*]% and [*]%

XOMA DEVELOPMENT-COMMERCIALIZATION
OPTION ELECTED BY MLNM

CIRCUMSTANCE		ROYALTY (Lower percentage applies if total calendar year Net Sales are less than or equal to [*]; higher percentage applies if total calendar year Net Sales are greater than [*])
14.	[*]	[*]% and [*]%
15.	[*]	[*]% and [*]%
16.	[*]	[*]% and [*]%
17.	[*]	[*]% and [*]%

18.	[*]	[*]% and [*]%
19.	[*]	[*]% and [*]%
20.	[*]	[*]% and [*]%
21.	[*]	[*]% and [*]%
22.	[*]	[*]% and [*]%
23.	[*]	[*]% and [*]%
24.	[*]	[*]% and [*]%

OTHER

25.	[*]	[*]% and [*]%
26.	[*]	[*]% and [*]%
27.	[*]	[*]% and [*]%

(c) General. On a Licensed Product-by-Licensed Product basis, with respect to any royalty payment due under this Section 5.4, in the calendar quarter in which total Net Sales reach [*] for that calendar year, a payment calculated by multiplying [*] times the difference between the royalty rate applicable above Net Sales of [*] and the royalty rate applicable below Net Sales of [*] shall be due and payable to MLNM, XOMA-US or XOMA-Ireland, as the case may be, at the time the next calendar quarter report and related payment are due to adjust for the increased royalty rate for the calendar year as a result of reaching the [*] threshold. For the purpose of calculating royalties, the first calendar year shall be a partial year that includes any partial month beginning with the First Commercial Sale and ending on December 31 of that calendar year and the last calendar year shall be a partial year that ends on the fifteenth (15th) day of the same month as the month during which the First Commercial Sale occurred.

5.5. Third-Party Royalties.

[*]

5.6. Reports and Payments. For royalties payable by one Party to another Party under this Article V, the Party obligated to pay such royalty shall deliver to the Party to which such obligation is owed, within [*] after the end of each calendar quarter, a royalty report together with the required royalty payment. Such reports shall indicate Net Sales on a product-by-product and country-by-country basis and the calculation of royalties from Net Sales. With respect to all sales of Licensed Products, the Net Sales and royalties payable shall be expressed in United States Dollars, and such reports shall include the rates of exchange used to convert Net Sales to United States Dollars from the currency in which such sales were made. The exchange rate to be used for converting Net Sales to United States Dollars shall be rates

used in the reporting Party's financial statements or, if such rates are not available, the rates for United States Dollars in the Foreign Exchange Rate - Currency Trading Chart reported in the East Coast Edition of the Wall Street Journal for the last business day of the calendar quarter to which the report relates. All milestone and royalty payments shall be made in United States Dollars by wire transfer to a bank designated in advance by the Party to which such payment is owed as applicable.

5.7. Tax Withholding. Each Party shall use all commercially reasonable and legal efforts to reduce tax withholding payments to be made to the other Parties. Notwithstanding such efforts, if a Party concludes that tax withholdings under the laws of any country are required with respect to payments to another Party, such Party shall be entitled to withhold the required amount and shall pay it to the appropriate governmental authority. In any such case, each Party so withholding shall promptly provide the other relevant Party with original receipts or other evidence reasonably desirable and sufficient to allow such Party to document such tax withholdings for purposes of claiming foreign tax credits and similar benefits.

ARTICLE VI

SUPPLY

6.1. Development Supply. During the Development Term XOMA-US shall, in accordance with the In-Licenses, manufacture its requirements for Licensed Products itself or through an Affiliate [*]. Further, in accordance with the In-Licenses, XOMA-US shall have the right to manufacture Licensed Products through a contract manufacturer with the prior approval of such contract manufacturer by MLNM, which approval shall not be unreasonably withheld.

6.2. Manufacture by XOMA-US. Subject to the terms of this Agreement and upon MLNM's request, XOMA-US agrees to use commercially reasonable efforts to manufacture and supply to MLNM in a timely manner quantities of each Licensed Product suitable for pre-clinical and clinical development activities outside the Field of Use in the Territory [*]. Subject to the terms of this Agreement and upon MLNM's request, XOMA-US agrees to use commercially reasonable efforts to manufacture and supply to MLNM in a timely manner quantities of each Licensed Product suitable for pre-clinical and clinical development activities outside the Territory [*]. XOMA-US shall not unreasonably deny MLNM's request to manufacture and supply Licensed Product under this Section 6.2; provided, however, that XOMA-US will not be required to supply MLNM's request in the event of a constraint of capacity to manufacture arising from XOMA-US's other production requirements or conduct of the Development Plans for Licensed Products.

6.3. Commercial Supply.

(a) In the event MLNM elects the Co-Development Option with respect to a Licensed Product and XOMA-US elects to participate, then the Joint Steering Committee, after receiving and reviewing recommendations from the Joint Project Team, shall plan for the commercial supply requirements for such Licensed Product in connection with the annual review and approval of the Development and Commercialization Plan.

(b) In the event MLNM elects the XOMA Development-Commercialization Option with respect to a Licensed Product and XOMA-US elects to participate, XOMA-US shall be solely responsible for the manufacture and supply of such Licensed Product.

6.4. Specifications. Each Development Party agrees that all Licensed

Product supplied to the other Development Party will be manufactured in accordance with agreed upon specifications for such Licensed Product and that such manufacture shall be in accordance with GMP.

ARTICLE VII

INTELLECTUAL PROPERTY

7.1. Ownership. MLNM shall own the entire right, title and interest in and to all Patent Rights and Know-How made solely by employees or consultants of MLNM or acquired solely by MLNM. The XOMA Parties shall own the entire right, title and interest in and to all Patent Rights and Know-How made solely by employees or consultants of XOMA-US or acquired solely by XOMA-US or XOMA-Ireland. The Development Parties shall jointly own any Patent Rights and Know-How made or acquired jointly in the course of the Development Program. MLNM shall own all trademarks pertaining to the Licensed Products except that in the event MLNM elects the XOMA Development-Commercialization Option, with respect to a Licensed Product and XOMA-US elects to participate, then XOMA-US shall have the right to own any trademarks to such Licensed Product in the Territory with respect to its Field of Use.

7.2. Prosecution and Maintenance of Patent Rights.

(a) MLNM shall have the right and responsibility, at its own expense, to prosecute and maintain patent protection for all MLNM Patent Rights that are solely owned by MLNM. The XOMA Parties shall have the right and responsibility, at their own expense, to prosecute and maintain patent protection for all XOMA Patent Rights that are solely owned by XOMA-US or XOMA-Ireland.

(b) Subject to the XOMA Parties' continuing right to the prior review of, comment on, revision to and approval of material documents, which shall not be unreasonably delayed or withheld, MLNM shall have the right and responsibility to prosecute and maintain patent protection for all Patent Rights made jointly by MLNM and XOMA-US in the course of performing a Development Plan or a Development and Commercialization Plan, as applicable, in the names of both MLNM and XOMA-US or a designated Affiliate. XOMA-US shall use commercially reasonable efforts to make available to MLNM or its authorized attorneys, agents or representatives, such of its employees as MLNM in its reasonable judgment deems necessary in order to assist it in obtaining patent protection for such jointly made Patent Rights. XOMA-US shall sign or use commercially reasonable efforts to have signed all legal documents necessary to file and prosecute patent applications or to obtain or maintain patents at no cost to MLNM. The XOMA Parties, on the one hand, and MLNM, on the other, otherwise agree to share equally all expenses for the prosecution and maintenance of patent protection for such jointly made Patent Rights.

(c) In the event MLNM elects not to seek or continue to seek or maintain patent protection on any MLNM Patent Rights that are solely owned by MLNM in the Territory, the XOMA Parties shall have the right (but not the obligation), at their expense (except as set forth in the last sentence of this Section 7.2(c)), to prosecute and maintain in any country within the Territory patent protection on such MLNM Patent Rights in MLNM's name. In any such case, MLNM shall use commercially reasonable efforts to make available to the XOMA Parties or their authorized attorneys, agents or representatives, such of its employees as the XOMA Parties in their reasonable judgment deem necessary in order to assist it in obtaining patent protection for such MLNM Patent Rights. MLNM shall sign or use commercially reasonable efforts to have signed all legal documents necessary to file and prosecute patent applications or to obtain or maintain patents at no cost to the XOMA Parties.

(d) In the event the XOMA Parties elect not to seek or continue to seek or maintain patent protection on any XOMA Patent Rights that are solely owned by the XOMA Parties, MLNM shall have the right (but not the obligation), at its expense (except as set forth in the last sentence of this Section 7.2(d)), to prosecute and maintain in any country patent protection on such XOMA Patent Rights in the relevant XOMA Party's name. In any such case, the XOMA Parties shall use commercially reasonable efforts to make available to MLNM or its authorized attorneys, agents or representatives, such of their employees as the XOMA Parties in their reasonable judgment deem necessary in order to assist it in obtaining patent protection for such XOMA Patent Rights. The XOMA Parties shall sign or use commercially reasonable efforts to have signed all legal documents necessary to file and prosecute patent applications or to obtain or maintain patents at no cost to MLNM.

(e) In the event MLNM elects not to seek or continue to seek or maintain patent protection on any Patent Rights made jointly by MLNM and XOMA-US in the course of the De-

velopment Plan or Development and Commercialization Plan, the XOMA Parties shall have the right (but not the obligation), at their expense (except as set forth in the last sentence of this Section 7.2(e)), to prosecute and maintain in any country patent protection on such jointly made Patent Rights in the names of both MLNM and XOMA-US. In any such case, MLNM shall use commercially reasonable efforts to make available to the XOMA Parties or their authorized attorneys, agents or representatives, such of its employees as the XOMA Parties in their reasonable judgment deem necessary in order to assist them in obtaining patent protection for such jointly made Patent Rights. MLNM shall sign or use commercially reasonable efforts to have signed all legal documents necessary to file and prosecute patent applications or to obtain or maintain patents at no cost to the XOMA Parties.

7.3. Infringement.

(a) Each Party shall promptly report in writing to the other Parties during the term of this Agreement any (i) known or suspected infringement of any of the Patent Rights or (ii) unauthorized use or misappropriation of any Confidential Information or Know-How by a third party of which it becomes aware, and shall provide the other Parties with all available evidence supporting such infringement, or unauthorized use or misappropriation.

(b) MLNM shall have the sole and exclusive right to initiate an infringement or other appropriate suit anywhere in the world against any third party who at any time has infringed, or is suspected of infringing, any of the MLNM Patent Rights or Patent Rights made jointly by MLNM and XOMA-US in the course of performing the Development Plan or the Development and Commercialization Plan (except those described in Section 7.2(e)), or of using without proper authorization all or any portion of the MLNM Know-How or Know-How made jointly by MLNM and XOMA-US in the course of performing the Development Plan or the Development and Commercialization Plan.

(c) The XOMA Parties shall have the sole and exclusive right to initiate an infringement or other appropriate suit anywhere in the world against any third party who at any time has infringed, or is suspected of infringing, any of the XOMA Patent Rights that are solely owned by the XOMA Parties or any Patent Rights made jointly by MLNM and XOMA-US in the course of performing the Development Plan or the Development and Commercialization Plan as to which MLNM has elected not to seek or continue to seek or maintain patent protection as set forth in Section 7.2(e) or of using without proper authorization all or any portion of the XOMA Know-How that is solely owned by the XOMA Parties.

(d) MLNM shall have the sole and exclusive right to select counsel for any suit referred to in subsection (b) above initiated by it and shall pay all expenses of the suit, including without limitation attorneys' fees and court costs. If MLNM obtains from a third party, in connection with such suit, any damages, license fees, royalties or other compensation (including any amount received in settlement of such litigation) fairly allocable to an in-

fringement or unauthorized use or misappropriation in the Territory in the relevant Field of Use, MLNM shall pay XOMA-US [*] of the monies received by MLNM from such third party as may be fairly allocated to such Field of Use in the Territory and remaining after MLNM deducts and retains, solely for itself, the monies equal to that portion of MLNM's costs and expenses associated with obtaining the damages, license fees, royalties or other compensation as may be fairly allocated to the Territory in such Field of Use. The Parties agree to negotiate in good faith the fair allocation of the foregoing payments and costs and expenses. If reasonably necessary or desirable, the XOMA Parties shall join as parties to the suit but shall be under no obligation to participate except to the extent that such participation is required as the result of being a named party to the suit. The XOMA Parties shall offer reasonable assistance to MLNM in connection therewith at no charge to MLNM except for reimbursement of reasonable out-of-pocket expenses incurred in rendering such assistance. The XOMA Parties shall have the right to participate and be represented in any such suit by their own counsel at their own expense. MLNM shall not settle any such suit involving rights of the XOMA Parties without obtaining the prior written consent of the affected XOMA Party, which consent shall not be unreasonably withheld.

(e) The XOMA Parties shall have the sole and exclusive right to select counsel for any suit referred to in subsection (c) above initiated by them and shall pay all expenses of the suit, including without limitation attorneys' fees and court costs. If the XOMA Parties obtain from a third party, in connection with such suit, any damages, license fees, royalties or other compensation (including any amount received in settlement of such litigation) fairly allocable to an infringement or unauthorized use or misappropriation outside the Territory in a Field of Use or outside a Field of Use worldwide, the XOMA Parties shall pay MLNM [*] of the monies received by the XOMA Parties from such third party as may be fairly allocated to (i) such Field of Use outside the Territory or (ii) outside such Field of Use worldwide and remaining after the XOMA Parties deduct and retain, solely for themselves, the monies equal to that

portion of the XOMA Parties' costs and expenses associated with obtaining the damages, license fees, royalties or other compensation as may be fairly allocated to countries outside the Territory in the case of clause (i) or the relevant countries worldwide in the case of clause (ii). The Parties agree to negotiate in good faith the fair allocation of the foregoing payments and costs and expenses. If reasonably necessary or desirable, MLNM shall join as a party to the suit but shall be under no obligation to participate except to the extent that such participation is required as the result of being a named party to the suit. MLNM shall offer reasonable assistance to the XOMA Parties in connection therewith at no charge to the XOMA Parties except for reimbursement of reasonable out-of-pocket expenses incurred in rendering such assistance. MLNM shall have the right to participate and be represented in any such suit by its own counsel at its own expense. The XOMA Parties shall not settle any such suit involving rights of MLNM without obtaining the prior written consent of MLNM, which consent shall not be unreasonably withheld.

(f) In the event MLNM elects not to initiate or pursue an infringement or other appropriate suit against any third party who at any time has infringed, or is suspected of infringing, any of the MLNM Patent Rights or Patent Rights made jointly by MLNM and XOMA-US in the course of performing the Development Plan or the Development and Commercialization Plan or of using without proper authorization all or any portion of the MLNM Know-How or Know-How made jointly by MLNM and XOMA-US in the course of performing the Development Plan or the Development and Commercialization Plan in the Territory and in the Field of Use, the XOMA Parties shall have the right, at its expense, to initiate or pursue such an infringement or other appropriate suit against such third party within the Territory and to retain all damages, license fees, royalties or other compensation (including any amount received in settlement of such litigation) received by the XOMA Parties from such third party. MLNM shall offer reasonable assistance to the XOMA Parties in connection therewith at no charge to the XOMA Parties except for reimbursement of reasonable out-of-pocket expenses incurred in rendering such assistance. The XOMA Parties shall not settle any such suit involving rights of MLNM without obtaining the prior written consent of MLNM, which consent shall not be unreasonably withheld.

(g) In the event the XOMA Parties elect not to initiate or pursue an infringement or other appropriate suit against any third party who at any time has infringed, or is suspected of infringing, any of the XOMA Patent Rights that are solely owned by the XOMA Parties or of using without proper authorization all or any portion of the XOMA Know-How that is solely owned by the XOMA Parties, MLNM shall have the right, at its expense, to initiate or pursue such an infringement or other appropriate suit against such third party and to retain all damages, license fees, royalties or other compensation (including any amount received in settlement of such litigation) received by MLNM from such third party. The XOMA Parties shall offer reasonable assistance to MLNM in connection therewith at no charge to MLNM except for reimbursement of reasonable out-of-pocket expenses incurred in rendering such assistance. MLNM shall not settle any such suit involving rights of the XOMA Parties without obtaining the prior written consent of the XOMA Parties, which consent shall not be unreasonably withheld.

7.4. Claimed Infringement.

(a) In the event that a third party at any time provides written notice of a claim to, or brings an action, suit or proceeding against, any Party, or any of their respective Affiliates or Sublicensees, claiming infringement of its patent rights or unauthorized use or misappropriation of its know-how, based upon an assertion or claim arising out of the development, use, manufacture, distribution or sale of Licensed Products, such Party shall promptly notify the other Parties of the claim or the commencement of such action, suit or proceeding, enclosing a copy of the claim and all papers served. Each Party agrees to make available to the other Parties its advice and counsel regarding the technical merits of any such claim at no cost to the

other Parties and to offer reasonable assistance to the other Parties at no cost to the other Parties.

(b) MLNM shall have sole and exclusive responsibility for the defense of any such claim brought against MLNM or its Affiliates or Sublicensees arising out of the development, use, manufacture, distribution or sale of Licensed Products (a "MLNM Claim"). MLNM shall also have the right to assume sole and exclusive responsibility for the defense of any such claim brought against the XOMA Parties or their Affiliates or Sublicensees arising out of the development, use, manufacture, distribution or sale of Licensed Products (a "XOMA Claim"). The XOMA Parties shall have the right to participate and be represented in the defense of a XOMA Claim by their own counsel at their own expense and shall have the sole and exclusive right to control such defense in the event MLNM fails to

exercise its right to assume such defense within thirty (30) days following written notice from the XOMA Parties of the XOMA Claim.

(c) MLNM shall have the sole and exclusive right to select counsel for any MLNM Claim and for any XOMA Claim the defense for which it has assumed sole and exclusive responsibility pursuant to Section 7.4(b); provided that if the XOMA Parties are not participating in the defense of a XOMA Claim, MLNM shall consult with the XOMA Parties with respect to selection of counsel for the defense of any XOMA Claim. All litigation costs and expenses incurred by MLNM in connection with any MLNM Claim or XOMA Claim shall be borne by MLNM; provided that in the event MLNM elects the Co-Development Option and XOMA-US elects to participate, all such costs shall be deemed to be Operating Costs chargeable against Operating Margin/Profit. MLNM shall keep the XOMA Parties promptly informed, and shall from time to time consult with the the XOMA Parties regarding the status of any such claims and shall provide the XOMA Parties with copies of all documents filed in, and all written communications relating to any suit brought in connection with such claims. the XOMA Parties shall also have the right to participate and be represented in any XOMA Claim or related suit at their own expense.

(d) In the event that MLNM shall not have assumed the sole and exclusive responsibility for the defense of any XOMA Claim, within thirty (30) days after receipt of written notice of such XOMA Claim, the XOMA Parties shall have sole and exclusive responsibility for the defense of the XOMA Claim. All litigation costs and expenses incurred by the XOMA Parties in connection with such XOMA Claim shall be borne by the XOMA Parties. The XOMA Parties shall keep MLNM promptly informed, and shall from time to time consult with MLNM regarding the status of any such XOMA Claim and shall provide MLNM with copies of all documents filed in, and all written communications relating to, any suit brought in connection with such XOMA Claim.

(e) No Party shall settle any claims or suits involving rights of another Party without obtaining the prior written consent of such other Party, which consent shall not be unreasonably withheld.

(f) THE FOREGOING STATES THE ENTIRE RESPONSIBILITY OF MLNM AND THE XOMA PARTIES, AND THE SOLE AND EXCLUSIVE REMEDY OF MLNM OR THE XOMA PARTIES, AS THE CASE MAY BE, IN THE CASE OF ANY CLAIMED INFRINGEMENT OF ANY THIRD PARTY RIGHTS OR UNAUTHORIZED USE OR MISAPPROPRIATION OF ANY THIRD PARTY'S KNOW-HOW.

7.5. Other Infringement Resolutions. In the event of a dispute or potential dispute which has not ripened into a demand, claim or suit of the types described in Sections 7.3 and 7.4 of this Agreement, the same principles governing control of the resolution of the dispute, consent to settlements of the dispute, and implementation of the settlement of the dispute (including the sharing in and allocating the payment or receipt of damages, license fees, royalties and other compensation) shall apply.

7.6. All rights granted pursuant to this Article VII are subject to MLNM's right to grant such rights under the terms of the In-Licenses.

ARTICLE VIII

CONFIDENTIAL INFORMATION

8.1. Non-Use and Non-Disclosure of Confidential Information. Each Party agrees that all Confidential Information of a Party that is disclosed by a Party to another Party (a) shall not be used by the receiving Party except in connection with the activities contemplated by this Agreement or in order to further the purposes of this Agreement, (b) shall be maintained in confidence by the receiving Party and (c) shall not be disclosed by the receiving Party to any third party who is not a consultant of, or an advisor to, the receiving Party or an Affiliate or Sublicensee of the receiving Party without the prior written consent of the disclosing Party. Notwithstanding the foregoing, the receiving Party shall be entitled to use and disclose Confidential Information which (i) was known or used by the receiving Party or its Affiliates prior to its date of disclosure to the receiving Party as demonstrated by competent written records, (ii) either before or after the date of the disclosure to the receiving Party is lawfully disclosed to the receiving Party or its Affiliates by sources other than the disclosing Party rightfully in possession of the Confidential Information, (iii) either before or after the date of the disclosure to the receiving Party becomes published or otherwise part of the public domain through no fault or omission on the part of the receiving Party or its Affiliates, (iv) is independently developed by or for the receiving Party or its Affiliates without reference to or in reliance upon the Confidential Information as demonstrated by competent written records, (v) is reasonably necessary to conduct clinical trials or to obtain regulatory approval of Licensed Products or for

the prosecution and maintenance of Patent Rights, (vi) is reasonably required in order for a Party to obtain financing or (vii) is required to be disclosed by the receiving Party to comply with applicable laws or regulations or to defend or prosecute litigation, provided that the receiving Party provides prior written notice of such disclosure to the disclosing Party and, upon the disclosing Party's request, takes reasonable and lawful actions to avoid or minimize the degree of such disclosure.

8.2. Limitation on Disclosures. Each Party agrees that it shall provide Confidential Information received from another Party solely to those of its employees, consultants and advisors, and the employees, consultants and advisors of its Affiliates or Sublicensees who have a need to know and an obligation to maintain in confidence the Confidential Information of the disclosing Party.

ARTICLE IX

AUDITS

At any given point in time, each Party shall have on file complete and accurate records for the last three years of its Costs, Manufacturing Costs, Operating Costs, Operating Margin/Profits and Net Sales incurred or earned in performance of this Agreement. For the sole purpose of verifying calculation and reporting of Development Costs, Manufacturing Costs, Operating Costs, Operating Margin/Profits and Net Sales, each Party shall have the right, once during each calendar year to retain, at its own expense, an independent certified public accountant, reasonably acceptable to the Party whose records are to be reviewed, to review such records upon reasonable notice to such Party, during regular business hours and under an obligation of confidentiality to such Party. The results of such review shall be made available to all Parties. If the audit demonstrates that the payments owed under this Agreement have been understated or overstated, the Party who made or received the incorrect payment shall pay the balance to the Party who received or made such payment, as the case may be, together with interest on such amounts from the date accrued at a rate equal to the then current prime rate as reported in the Wall Street Journal plus two percent. If the amount of discrepancy is greater than five percent of the amount owed, then the Party who made the incorrect statement shall reimburse the Party initiating such review for its reasonable cost of the audit.

ARTICLE X

INDEMNIFICATION AND INSURANCE

10.1. XOMA Indemnification. XOMA-US agrees to defend MLNM and its Affiliates, and their respective agents, directors, officers and employees (the "MLNM Indemnitees"), at XOMA-US's cost and expense, and will indemnify and hold harmless the MLNM Indemnitees from and against any and all losses, costs, damages, fees or expenses relating to

or in connection with a Third Party Claim ("MLNM Losses") arising out of any act or omission of XOMA-US, its Affiliates, Sublicensees, contractors or agents in connection with the development, use, manufacture, distribution or sale of any Licensed Product by XOMA-US, including, but not limited to, any actual or alleged injury, damage, death or other consequence occurring to any person claimed to result, directly or indirectly, from the possession, use or consumption of, or treatment with, any such Licensed Product, whether claimed by reason of breach of warranty, negligence, product defect or otherwise, and regardless of the form in which any such claim is made, provided that the foregoing indemnity shall not apply to the extent that any such MLNM Losses are attributable to the negligence or willful misconduct of the MLNM Indemnitees. In the event of any such claim against any MLNM Indemnitee, MLNM shall promptly notify XOMA-US in writing of the claim and XOMA-US shall manage and control, at its sole expense, the defense of the claim and its settlement. MLNM shall cooperate with XOMA-US and may, at its option and expense, be represented in any such action or proceeding. XOMA-US shall not be liable for any settlements, litigation costs or expenses incurred by MLNM without XOMA's written authorization. Notwithstanding the foregoing, if XOMA-US believes that the foregoing exception to its indemnification of the MLNM Indemnitees may apply, XOMA-US shall promptly notify MLNM and the MLNM Indemnitees shall then have the right to be represented in any such action or proceeding by separate counsel at MLNM's expense, provided that XOMA-US shall be responsible for payment of such expenses, plus interest, if the MLNM Indemnitees are ultimately determined to be entitled to indemnification from XOMA-US.

10.2. MLNM Indemnification. MLNM agrees to defend XOMA-US, XOMA-Ireland and their respective Affiliates, agents, directors, officers and employees (the "XOMA Indemnitees"), at MLNM's cost and expense, and will indemnify and hold harmless the XOMA Indemnitees from and against any and all losses, costs, damages, fees or expenses relating to or in connection with a Third Party Claim ("XOMA Losses") arising out of any act or omission of MLNM, its Affiliates,

Sublicensees, contractors or agents in connection with the development, use, manufacture, distribution or sale of any Licensed Product by MLNM including, but not limited to, any actual or alleged injury, damage, death or other consequence occurring to any person claimed to result, directly or indirectly, from the possession, use or consumption of, or treatment with, any such Licensed Product, whether claimed by reason of breach of warranty, negligence, product defect or otherwise, and regardless of the form in which any such claim is made, provided that the foregoing indemnity shall not apply to the extent that any such XOMA Losses are attributable to (a) the failure of any Licensed Product delivered by XOMA-US to MLNM pursuant to Article VI of this Agreement to meet applicable specifications or (b) the negligence or willful misconduct of the XOMA Indemnitees. In the event of any such claim against any XOMA Indemnitee, XOMA-US shall promptly notify MLNM in writing of the claim and MLNM shall manage and control, at its sole expense, the defense of the claim and its settlement. XOMA-US and XOMA-Ireland shall cooperate with MLNM and may, at its option and expense, be represented in any such action or proceeding. MLNM shall

not be liable for any settlements, litigation costs or expenses incurred by XOMA-US or XOMA-Ireland without MLNM's written authorization. Notwithstanding the foregoing, if MLNM believes that either of the foregoing exceptions to its indemnification of the XOMA Indemnitees set forth in the foregoing clause (a) or (b) above may apply, MLNM shall promptly notify XOMA-US, XOMA-Ireland and the XOMA Indemnitees shall then have the right to be represented in any such action or proceeding by separate counsel at XOMA-US's or XOMA-Ireland's expense, provided that MLNM shall be responsible for payment of such expenses, plus interest, if the XOMA Indemnitees are ultimately determined to be entitled to indemnification from MLNM.

10.3. In the event that both MLNM and XOMA-US would be liable under Section 10.1 and 10.2 as indemnitors for an actual or alleged injury, damage, death or other consequence occurring to any person, then each Party's indemnification obligation shall be deemed to be a contribution obligation to the other Parties equal to its proportional share of the total of the MLNM Losses plus the XOMA Losses, based on each Party's allocable share of Operating Costs chargeable against Net Sales in determining Operating Margin/Profit, and Sections 10.1 and 10.2 shall be superseded by this Section 10.3.

10.4. Insurance. Each Development Party shall maintain insurance, including product liability insurance, with respect to its activities hereunder. Such insurance shall be in such amounts and subject to such deductibles as the Development Parties may agree based upon standards prevailing in the industry at the time; provided that, as of the First Commercial Sale by a Development Party, such selling Development Party shall maintain a minimum of [*] in product liability insurance.

ARTICLE XI

EXPORT

11.1. General. The Development Parties acknowledge that the exportation from the United States of materials, products and related technical data (and the re-export from elsewhere of United States origin items) may be subject to compliance with United States export laws, including without limitation the United States Bureau of Export Administration's Export Administration Regulations, the Federal Food, Drug and Cosmetic Act and regulations of the United States Food and Drug Administration issued thereunder, and the United States Department of State's International Traffic and Arms Regulations which restrict export, re-export, and release of materials, products and their related technical data, and the direct products of such technical data. The Development Parties agree to comply with all exports laws and to commit no act that, directly or indirectly, would violate any United States law, regulation, or treaty, or any other international treaty or agreement, relating to the export, re-export,

or release of any materials, products or their related technical data to which the United States adheres or with which the United States complies.

11.2. Delays. The Development Parties acknowledge that they cannot be responsible for any delays attributable to export controls that are beyond the reasonable control of either Development Party.

11.3. Assistance. The Development Parties agree to provide reasonable assistance to one another in connection with each Development Party's efforts to fulfill its obligations under this Article XI.

11.4. Other. The Development Parties agree not to export, re-export, or release any item that may be used in the design, development, production,

stockpiling or use of chemical or biological weapons in or by a country listed in Country Group D:3 of Part 370 to Title 15 of the United States Code of Federal Regulations as it may be updated from time to time. As of September 28, 2001, Country Group D:3 comprises Afghanistan, Armenia, Azerbaijan, Bahrain, Belarus, Bulgaria, Burma, China, Cuba, Egypt, Georgia, India, Iran, Iraq, Israel, Jordan, Kazakhstan, North Korea, Kuwait, Kyrgyzstan, Lebanon, Libya, Macao, Moldova, Mongolia, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Syria, Taiwan, Tajikistan, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vietnam and Yemen.

ARTICLE XII

DEFAULT OR TERMINATION

12.1. Term. This Agreement shall remain in effect until terminated in accordance with this Article XII.

12.2. Termination of Agreement for Breach of Material Obligation. (a) MLNM shall have the right to terminate this Agreement in its entirety, or in part with respect to a single Licensed Product, at the option of MLNM, upon written notice to XOMA-US and XOMA-Ireland, in the event that XOMA-US or XOMA-Ireland shall be in default of any of its material obligations under this Agreement or with respect to such Licensed Product, and shall fail to remedy any such default within [*] after written notice from MLNM specifically stating that MLNM intends to terminate this Agreement in the event that XOMA-US or XOMA-Ireland, as the case may be, shall fail to remedy the default within such time period. Notwithstanding the foregoing, in the event of a default of a material obligation that cannot, by its nature, be cured within such [*] period, MLNM shall not have the right to terminate this Agreement (but shall retain any other rights and remedies it may be afforded in law or at equity) if XOMA-US or XOMA-Ireland, as the case may be, shall propose a plan of action relating to such default which is reasonably acceptable to MLNM and XOMA-US or XOMA-Ireland, as the case may be, shall be diligently complying with such plan.

(b) Either XOMA Party shall have the right to terminate this Agreement in its entirety, or in part with respect to a single Licensed Product, at the option of such XOMA Party, upon written notice to MLNM, in the event that MLNM shall be in default of any of its material obligations under this Agreement or with respect to such Licensed Product, and shall fail to remedy any such default within [*] after written notice from such XOMA Party specifically stating that such XOMA Party intends to terminate this Agreement in the event that MLNM shall fail to remedy the default within such time period. Notwithstanding the foregoing, in the event of a default of a material obligation that cannot, by its nature, be cured within such [*] period, the notifying XOMA Party shall not have the right to terminate this Agreement (but shall retain any other rights and remedies it may be afforded in law or at equity) if MLNM shall propose a plan of action relating to such default which is reasonably acceptable to the notifying XOMA Party and MLNM shall be diligently complying with such plan.

12.3. Termination Due to Failure of XOMA-US's Development and Commercialization. In the event MLNM has elected the XOMA Development-Commercialization Option with respect to a Licensed Product and XOMA-US elects to participate, and XOMA-US fails to achieve the diligence milestones established pursuant to Section 3.5(d), XOMA-US shall promptly notify MLNM and XOMA-US and MLNM shall promptly meet, discuss the reasons for such failure, and attempt in good faith to agree on appropriate action plans and revised deadlines for such milestones. If after such discussion, the matter is not resolved, then MLNM shall have the right to terminate this Agreement in accordance with Section 12.2(a).

12.4. Other Termination. In the event of an uncured, material breach of the Registration Rights Agreement by XOMA Ltd., an Event of Default as defined in the Promissory Note or termination by MLNM of the Investment Agreement for cause, MLNM shall have the right to terminate this Agreement in its entirety, or in part with respect to a single Licensed Product, at the option of MLNM, upon written notice to XOMA-US and XOMA-Ireland. In the event of a termination of the Investment Agreement by XOMA Ltd. for cause, XOMA-US and XOMA-Ireland shall have the right to terminate this Agreement in its entirety, or in part with respect to a single Licensed Product, at the option of XOMA-US and XOMA-Ireland, upon written notice to MLNM.

12.5. Consequence of Termination. In the event of termination by MLNM pursuant to Section 12.2(a) or 12.3, by a XOMA Party pursuant to Section 12.2(b) or by any Party pursuant to Section 12.4, (a) all licenses and rights granted by MLNM to XOMA-US under this Agreement shall terminate (or, if the termination pertains to a single Licensed Product, only the licenses applicable to such Licensed Product), (b) all licenses and rights granted by the XOMA Parties to MLNM under this Agreement shall survive and be converted, in each case, into perpetual, non-exclusive, worldwide, [*] licenses (or, if the termination pertains to a single Licensed Product, only the licenses applicable to such Licensed Product shall be converted); provided, however, that in the case of

termination by the XOMA Parties as a result of

a default, failure or breach by MLNM under Section 12.2(b), the obligations of diligence imposed on XOMA-US and XOMA-Ireland under this Agreement shall terminate to the extent such obligations are affected by the default by MLNM and MLNM shall be solely liable for actual damages incurred by the XOMA Parties arising out of such default, (c) the XOMA Parties shall promptly transfer or cause to be transferred to MLNM all XOMA Know-How pertaining to the Licensed Products (or, if the termination pertains to a single Licensed Product, only the XOMA Know-How applicable to such Licensed Product) not previously transferred by it to MLNM reasonably necessary for the practice of the license rights granted to MLNM under this Agreement, (d) XOMA-US and XOMA-Ireland shall transfer to MLNM all regulatory applications, regulatory approvals, orphan drug designations, trademarks and tradenames for Licensed Products (or, if the termination pertains to only a single Licensed Product, only that applicable to such Licensed Product) in its possession, and (e) XOMA-US and XOMA-Ireland shall promptly return to MLNM all tangible MLNM Know-How and Confidential Information, relating to the Licensed Products (or, if the termination pertains to only a single Licensed Product, only the MLNM Know-How applicable to such Licensed Product).

12.6. Survival. Upon termination of this Agreement, the following sections of this Agreement shall survive: Articles VII - X and XIII and Sections 12.5, 12.6, 14.2, 14.3, 14.8 and 14.9.

ARTICLE XIII

REPRESENTATIONS AND WARRANTIES

13.1. XOMA-US. XOMA-US represents and warrants that: (a) it has the full right, power and authority to enter into this Agreement; (b) to the knowledge of XOMA-US, there are no existing or threatened actions, suits or claims pending with respect to the subject matter hereof or the right of XOMA-US to enter into and perform its obligations under this Agreement; (c) it has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; (d) this Agreement has been duly executed and delivered on behalf of it, and constitutes a legal, valid, binding obligation, enforceable against it in accordance with the terms hereof subject as to enforceability to general principles of equity and to bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally; and (e) the execution and delivery of this Agreement and the performance of its obligations hereunder do not conflict with or violate any requirement of applicable laws or regulations and do not conflict with, or constitute a default under, any contractual obligation of it which conflict, violation or default could reasonably be expected to have a material adverse effect on the validity or enforceability or performance of this Agreement.

13.2. XOMA-Ireland. XOMA-Ireland represents and warrants that: (a) it has the full right, power and authority to enter into this Agreement and to grant the rights and licenses granted by it hereunder; (b) to the knowledge of XOMA-Ireland, there are no existing or threatened actions, suits or claims pending with respect to the subject matter hereof or the right of XOMA-Ireland to enter into and perform its obligations under this Agreement; (c) it has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; (d) this Agreement has been duly executed and delivered on behalf of it, and constitutes a legal, valid, binding obligation, enforceable against it in accordance with the terms hereof subject as to enforceability to general principles of equity and to bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally; and (e) the execution and delivery of this Agreement and the performance of its obligations hereunder do not conflict with or violate any requirement of applicable laws or regulations and do not conflict with, or constitute a default under, any contractual obligation of it which conflict, violation or default could reasonably be expected to have a material adverse effect on the validity or enforceability or performance of this Agreement.

13.3. MLNM. MLNM represents and warrants that: (a) it has the full right, power and authority to enter into this Agreement and to grant the licenses granted by it hereunder; (b) to the knowledge of MLNM, there are no existing or threatened actions, suits or claims pending with respect to the subject matter hereof or the right of MLNM to enter into and perform its obligations under this Agreement; (c) it has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; (d) this Agreement has been duly executed and delivered on behalf of it, and constitutes a legal, valid, binding obligation, enforceable against it

in accordance with the terms hereof subject as to enforceability to general principles of equity and to bankruptcy, insolvency, moratorium and other similar laws affecting the enforcement of creditors' rights generally; (e) the list of agreements attached hereto as Exhibit C contains a complete list of the licenses to which MLNM is a party as of the Effective Date which relate to the Licensed Products; (f) prior to the Effective Date, MLNM has discussed with representatives of XOMA-US the material information in MLNM's control and to MLNM's knowledge, regarding the proprietary status of CAB-2 and LDP-01 and the MLNM Patent Rights, and any potential restriction known to MLNM (contractual, patent or otherwise) that would limit or otherwise affect XOMA-US's right to develop or commercialize the MLNM Patent Rights; and (g) the execution and delivery of this Agreement and the performance of its obligations hereunder do not conflict with or violate any requirement of applicable laws or regulations and do not conflict with, or constitute a default under, any contractual obligation of it, which conflict, violation or default could reasonably be expected to have a material adverse effect on the validity or enforceability or performance of this Agreement.

13.4. Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR VALIDITY OF PATENT CLAIMS, WHETHER ISSUED OR PENDING.

ARTICLE XIV

MISCELLANEOUS

14.1. Publicity. Any public announcement with respect to the execution of this Agreement shall be agreed to among the Parties in advance of such announcement. Each Party understands that this Agreement is likely to be of significant interest to investors, analysts and others and, thus, that any Party shall have the right to make future announcements with respect to developments under this Agreement. The Parties agree that any such announcement shall not contain confidential technical or business information or, if disclosure of confidential technical or business information is required by law or regulation, shall make reasonable efforts to minimize such disclosure and obtain confidential treatment for any such information which is filed with a government agency. Each Party agrees to provide the other Parties with a copy of any such public announcement as soon as reasonably practicable prior to its scheduled release, but in any event no less than three (3) business days prior to its scheduled release. Each Party shall have the right to expeditiously review and recommend changes to any such announcement, provided that such right of review and recommendation shall only apply for the first time that specific information is disclosed and shall not apply to the subsequent disclosure of substantially similar information that has been previously disclosed. Except as otherwise required by law, the Party whose announcement has been reviewed shall delete any information the reviewing Parties reasonably deem inappropriate for disclosure.

14.2. Force Majeure. No failure or omission by the Parties in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same shall arise from any cause or causes beyond the control of the Parties, including, but not limited to, the following: acts of God; acts or omissions of any government; any rules, regulations or orders issued by any governmental authority or by any officer, department, agency or instrumentality thereof; fire; flood; storm; earthquake; accident; war; rebellion; insurrection; riot; and invasion and provided that such failure or omission resulting from one of the foregoing causes is cured as soon as is practicable after its occurrence.

14.3. Consequential Damages. No Party shall be liable under this Agreement for special, incidental or consequential damages or for loss of profit or lost revenue, even if advised

of the possibility of such damages; provided that this Section 14.3 shall not apply to Sections 4.1, 4.3 and 4.7 as well as the confidentiality and use obligations in Article VIII.

14.4. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the other Parties, except to a party who acquires all or substantially all of the business of the assigning Party to which the subject matter of this Agreement applies by merger, sale of assets or otherwise and except for Sections 3.5(b) and 4.3(b), which, together with the licenses granted pursuant thereto, may be assigned, in whole or in part, to one or more Affiliates of XOMA-US; provided that, such Affiliate(s) agree to be bound to the terms of this Agreement and XOMA Ltd. or its successor guarantees such

performance through an amendment to the Parent Company Agreement dated as of the Effective Date.

14.5. Section 365(n) of the United States Bankruptcy Code. All rights and licenses granted under or pursuant to any section of this Agreement are and shall otherwise be deemed to be for purposes of Section 365(n) of the United States Bankruptcy Code (Title 11, U.S. Code), as amended (the "Bankruptcy Code"), licenses of rights to "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code. The Parties shall retain and may fully exercise all of their respective rights and elections under the Bankruptcy Code. Upon the bankruptcy of any Party, the non-bankrupt Parties shall further be entitled to a complete duplicate of, or complete access to, any such intellectual property, and such, if not already in its possession, shall be promptly delivered to the non-bankrupt Parties, unless the bankrupt Party elects to continue, and continues, to perform all of its obligations under this Agreement.

14.6. Notices. Notices to MLNM shall be addressed to:

Millennium Pharmaceuticals, Inc.
75 Sidney Street
Cambridge, Massachusetts 02139 U.S.A.

Attention: Legal Department - General Counsel
Facsimile No.: (617) 374-0074

Notices to XOMA-US shall be addressed to:

XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710 U.S.A.

Attention: Legal Department - General Counsel
Facsimile No.: (510) 649-7571

Notices to XOMA-Ireland shall be addressed to:

XOMA Ireland Limited
Shannon Airport House
Shannon, County Clare
Ireland

Attention: Secretary
Facsimile No.: 011-353-61-472060

with copies (which shall not constitute notice) to:

Cahill, Gordon & Reindel
Eighty Pine Street
New York, New York 10005
Attn: Geoffrey E. Liebmann
Facsimile No.: 212 269-5420

Any Party may change its address by giving notice to the other Parties in the manner provided in this Section 14.6. Any notice required or provided for by the terms of this Agreement shall be in writing and shall be (a) sent by certified mail, return receipt requested, postage prepaid, (b) sent via a reputable overnight courier service, (c) sent by facsimile transmission or (d) delivered by hand. The effective date of the notice shall be the actual date of receipt by the receiving Party.

14.7. Independent Contractors. It is understood and agreed that the relationship among the Parties is that of independent contractors and that nothing in this Agreement shall be construed as authorization for any Party to act as the agent for any other Party.

14.8. Governing Law. This Agreement shall be governed and interpreted in accordance with the substantive laws of the State of New York notwithstanding the provisions governing conflict of laws under such law of the State of New York to the contrary, provided that

matters of intellectual property law shall be determined in accordance with the national intellectual property laws relevant to the intellectual property in question.

14.9. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of the relevant jurisdiction, the validity

of the remaining provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable, provided that the Parties shall negotiate in good faith in modification of this Agreement with a view to revising this Agreement in a manner which reflects, as closely as is reasonably practicable, the commercial terms of this Agreement as originally signed.

14.10. No Implied Waivers. The waiver by any Party of a breach or default of any provision of this Agreement by another Party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of any Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any right, power or privilege by such Party.

14.11. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to its subject matter and supersedes all previous written or oral representations, agreements and understandings among the Parties, including, without limitation, any confidentiality agreement among the Parties. This Agreement may be amended only by a writing signed by all Parties.

14.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have set their hand as of the date first above written.

MILLENNIUM PHARMACEUTICALS, INC.

By: ----------
Title:

XOMA (US) LLC

By: ----------
Title:

XOMA IRELAND LIMITED

By: ----------

Alan Kane, Director
duly authorized for and on behalf of
XOMA Ireland Limited in the presence of:

- ----------

EXHIBIT A

MLNM PATENT RIGHTS FOR CAB-2

[*]

EXHIBIT B

MLNM PATENT RIGHTS FOR LDP-01

[*]

Exh. B-1

EXHIBIT C

IN-LICENSES

CAB-2

[*]

LDP-01

[*]

Exh. C-1

EXHIBIT D

ARBITRATION OF CERTAIN DISPUTES

1.1 General. Any dispute that the Agreement expressly provides for resolution through arbitration, or any other matter the Parties agree to resolve through these procedures, shall be determined through binding arbitration in New York, New York in accordance with this Exhibit D and the Commercial Rules of Arbitration of the American Arbitration Association ("AAA"). Except as set forth in the foregoing sentence, this Exhibit D shall have no other force or effect.

1.2 Arbitration Panel. The arbitration panel shall be comprised of the three independent (3) arbitrators that are mutually acceptable to each Party. The Parties shall endeavor to select the arbitrators within ten (10) days of the failure of the Parties to resolve the matter by through negotiation of their designated executive officers. One arbitrator is to be appointed by the XOMA Parties, one by MLNM and a third arbitrator is to be appointed by the Parties' appointed arbitrators. If the Parties' appointed arbitrators shall fail to agree, within thirty (30) days from the date both such arbitrators have been appointed, on the identity of the third arbitrator, then such arbitrator shall be appointed by the appropriate administrative body of the AAA from its list of authorized arbitrators.

1.3 Exchange of Proposed Agreements. Within ten (10) days of the appointment of the arbitrator(s), the Parties shall exchange their final proposals in the form of a settlement agreement ready for execution. The arbitration panel shall promptly convene a hearing, at which time each Party shall have one (1) hour to argue in support of its final proposed settlement agreement. The Parties shall not call any witnesses in support of their arguments, nor shall any other discovery of any kind be permitted.

1.4 Selection of Proposed Settlement Agreement. The arbitrators shall select the proposed settlement agreement that most closely reflects a commercially reasonable solution as the binding settlement agreement to be executed by the Parties. In making their selection, the arbitrator(s) shall not modify the terms or conditions of any Party's final proposed settlement agreement nor shall the arbitrator(s) combine provisions from both final proposed settlement agreements. In making their selection, the arbitrator(s) shall consider the terms and conditions of this Agreement, the relative merits of the final proposed settlement agreements, and the written and oral arguments of the Parties. In the event the arbitrator(s) seek the guidance of the law of any jurisdiction, the law of the State of New York shall govern.

1.5 Notification of Decision. The arbitrator(s) shall make their decision known to all Parties as quickly as possible by delivering written notice of their decision to all Parties. Such written notice need not justify their decision. The Parties shall execute the agreement selected by the arbitration panel within five (5) days of receipt of notice of such selection.

Exh. D-1

The decision of the arbitrator(s) shall be final and binding on the Parties, and specific performance may be ordered by any court of competent jurisdiction.

1.6 Costs. The Parties shall bear their own costs in preparing for the arbitration. The costs of the arbitrator(s) shall be equally divided between the XOMA Parties, on the one hand, and MLNM, on the other.

EXHIBIT E

Excluded Technology

[*]

[*] indicates that a confidential portion of the text of this agreement has been omitted.

INVESTMENT AGREEMENT

dated as of November 26, 2001

by and among

XOMA LTD.,

a Bermuda company

and

MILLENNIUM PHARMACEUTICALS, INC.,

a Delaware corporation

and

mHOLDINGS TRUST,

a Massachusetts business trust

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INVESTMENT AGREEMENT

THIS INVESTMENT AGREEMENT (the "Agreement") is made as of November 26, 2001 (the "Effective Date") by and among XOMA LTD., a Bermuda company (the "Company"), MILLENNIUM PHARMACEUTICALS, INC., a Delaware corporation ("Millennium"), and mHOLDINGS TRUST (the "Trust"), a business trust organized under the laws of the Commonwealth of Massachusetts and an indirect, wholly-owned subsidiary of Millennium. The Trust and Millennium are hereinafter collectively referred to as the "Purchasers" and each as a "Purchaser".

W I T N E S S E T H

WHEREAS, XOMA (US) LLC, a wholly-owned subsidiary of the Company, and Millennium are parties to a Development and License Agreement, executed as of November 26, 2001 (the "Development and License Agreement");

WHEREAS, the Purchasers wish to purchase from the Company, and the Company wishes to sell to the Purchasers, common shares of the Company, USD $0.0005 par value per share ("Common Shares") and a convertible promissory note in the form attached hereto as Exhibit B (the "Note");

NOW, THEREFORE, in consideration of the promises and the mutual covenants set forth herein, the Company and the Purchasers, intending to become legally bound, hereby agree as follows:

ARTICLE I

INTERPRETATION; DEFINITIONS

SECTION 1.1. Interpretation. As used in this Agreement, unless the context otherwise requires:

(a) any reference to the Company and its Subsidiaries means the Company and each of its Subsidiaries;

(b) words of any gender include all genders;

(c) words using the singular or plural number also include the plural or singular number, respectively; and

(d) the terms "hereof", "herein", and "hereby" and derivative or similar words refer to this entire Agreement.

SECTION 1.2. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Affiliate" shall have the meaning set forth in the Development and License Agreement.

"Agreement" is defined in the recitals to this Agreement.

"Applicable Period" means the period from the date of this Agreement through the Fifth Closing Date and thereafter for so long as the Purchasers continuously beneficially own Shares representing in the aggregate four percent (4%) or more of the outstanding Common Shares.

"Business Day" means any day on which banking institutions are open in Berkeley, California, New York, New York and Boston, Massachusetts.

"Closing" or "Closings" means any or all of the First Closing, Second Closing, Third Closing, Fourth Closing and/or Fifth Closing as the context requires.

"Common Shares" is defined in the recitals to this Agreement.

"Company" is defined in the recitals to this Agreement.

"Company Bye-laws" is defined in Section 3.1(a).

"Company Charter" is defined in Section 3.1(a).

"Company Intellectual Property Rights" is defined in Section 3.1(m).

"Company SEC Documents" is defined in Section 3.1(f).

"Company Share Plans" is defined in Section 3.1(d).

"Confidential Information" is defined in Section 8.9.

"Contract" is defined in Section 3.1(c)(i).

"Development and License Agreement" is defined in the recitals of this Agreement.

"Effective Date" is defined in the recitals of this Agreement.

"Event of Default" is defined in the Note.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor federal statute and the rules and regulations of the SEC promulgated thereunder, all as the same shall be in effect from time to time.

"Fifth Closing" is defined in Section 2.2(e).

"Fifth Closing Average Price" is defined in Section 2.1(e).

"Fifth Closing Date" is defined in Section 2.2(e).

"Fifth Closing Shares" is defined in Section 2.1(e).

"Fifth Purchase Price" is defined in Section 2.1(e).

"First Closing" is defined in Section 2.2(a).

"First Closing Date" is defined in Section 2.2(a).

"First Purchase Price" is defined in Section 2.1(a).

"Fourth Closing" is defined in Section 2.2(d).

"Fourth Closing Average Price" is defined in Section 2.1(d).

"Fourth Closing Date" is defined in Section 2.2(d).

"Fourth Closing Shares" is defined in Section 2.1(d).

"Fourth Purchase Price" is defined in Section 2.1(d).

"GAAP" means United States generally accepted accounting principles.

"Governmental Entity" is defined in Section 3.1(c)(ii).

"Lien" is defined in Section 3.1(c)(i).

"Losses" is defined in Section 7.1(a).

"Material Adverse Effect" on or with respect to an entity (or group of entities taken as a whole) means any state of facts, event, change or effect that has had, or would rea-

sonably be expected to have, a material adverse effect on (a) the business (including, without limitation, clinical development programs), properties, results of operations or financial condition of such entity (or, if with respect thereto, of such group of entities taken as a whole), excluding, however, any such effect caused by economic, tax, or other matters of general applicability, or, by matters generally affecting the industry in which the such entity and its subsidiaries conduct business (in each case, however, only to the extent the entity or group of entities is not affected disproportionately), or (b) the ability of such entity (or group of entities) to consummate the transactions contemplated under this Agreement, or the Registration Rights Agreement.

"Material Contract" is defined in Section 3.1(j)(i).

"Millennium" is defined in the introductory paragraph of this Agreement

"Note" is the convertible promissory note in the form attached hereto as Exhibit B to be issued by the Company to the Purchasers at the First Closing.

"Permit" is defined in Section 3.1(c)(i).

"Permitted Liens" means those Liens (A) securing debt that is reflected on the balance sheets or the notes thereto contained in the Company SEC Documents filed with the SEC and publicly available prior to the date hereof, (B) for taxes not yet due or payable or being contested in good faith and for which adequate reserves have been established in accordance with GAAP, (C) that constitute mechanics', carriers', workmens' or like liens, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course, (D) incurred or deposits made in the ordinary course of business consistent with past practice in connection with workers' compensation, unemployment insurance and social security, retirement and other legislation and (E) constituting easements, covenants, declarations, rights or way, encumbrances, or similar restrictions in connection with real property owned by the Company or any of its Subsidiaries that do not materially impair the use of such real property by the Company and any of its Subsidiaries, and in the case of Liens described in clause (B), (C), (D) or (E) that individually or in the aggregate, could not reasonably be expected to have

a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole.

"Person" means any individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated organization, government or department or agency of a government or other entity.

"Principal Trading Market" is defined in Section 2.1(b).

"Purchase Price" means any or all of the First Purchase Price, Second Purchase Price, Third Purchase Price, Fourth Purchase Price or Fifth Purchase Price.

"Purchasers" is defined in the recitals to this Agreement.

"Purchasers' Indemnifiable Losses" is defined in Section 7.1(a).

"Purchasers' Indemnitees" is defined in Section 7.1(a).

"Registration Rights Agreement" is defined in Section 5.3(e)(i).

"SEC" means the Securities and Exchange Commission.

"Second Closing" is defined in Section 2.2(b).

"Second Closing Average Price" is defined in Section 2.1(b).

"Second Closing Date" is defined in Section 2.2(b).

"Second Closing Shares" is defined in Section 2.1(b).

"Second Purchase Price" is defined in Section 2.1(b).

"Securities Act" means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the SEC promulgated thereunder, all as the same shall be in effect from time to time.

"Shares" means the Second Closing Shares, the Third Closing Shares, the Fourth Closing Shares, the Fifth Closing Shares and any Common Shares issued to the Purchasers upon conversion of the Note.

"Subsidiary" means, as to any Person, any corporation or other business entity at least a majority of the shares of stock or other interests of which having general voting power under ordinary circumstances to elect a majority of the Board of Directors of such corporation or other business entity (irrespective of whether or not at the time stock or other investments of any other class or classes shall have or might have voting power by reason of the happening of any contingency) is, at the time as of which the determination is being made, owned by such Person, or one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries.

"Third Closing" is defined in Section 2.2(c).

"Third Closing Average Price" defined in Section 2.1(c).

"Third Closing Date" is defined in Section 2.2(c).

"Third Closing Shares" is defined in Section 2.1(c).

"Third Purchase Price" is defined in Section 2.1(c).

"Trading Day" means any day on which the Principal Trading Market for the Common Shares is open for trading.

"Trust" is defined in the recitals to this Agreement.

"Voting Securities" means at any time shares of any class of share capital of the Company which are then entitled to vote generally in the election of directors.

ARTICLE II

PURCHASE AND SALE OF NOTE AND SHARES

SECTION 2.1. Purchase and Sale.

(a) First Closing. Subject to the terms and conditions of this Agreement, on the First Closing Date, as defined in Section 2.2(a) below, the Company shall issue and sell the Note to the Purchasers, and the Purchasers shall purchase the Note from the Company, for an aggregate purchase price of Five Million Dollars (USD $5,000,000) (the "First Purchase Price").

(b) Second Closing. Subject to the terms and conditions of this Agreement and subject to adjustment under Section 2.1(f) below, on the Second Closing Date, as defined in Section 2.2(b) below, the Company agrees to issue and sell to the Purchasers, and the Purchasers agree to purchase from the Company, for an aggregate purchase price of Seven Million Five Hundred Thousand Dollars (USD $7,500,000) (the "Second Purchase Price"), a number of Common Shares (the "Second Closing Shares") equal to [*].

(c) Third Closing. Subject to the terms and conditions of this Agreement, and subject to adjustment pursuant to Section 2.1(f) below, on the Third Closing Date, as defined in Section 2.2(c) below, the Company agrees to issue and sell to the Purchasers, and the Purchasers agree to purchase from the Company, for an aggregate purchase price of Seven Million Five Hundred Thousand Dollars (USD $7,500,000) (the "Third Purchase Price"), a number of Common Shares (the "Third Closing Shares") equal to [*].

(d) Fourth Closing. Subject to the terms and conditions of this Agreement, and subject to adjustment pursuant to Section 2.1(f) below, on the Fourth Closing Date, as defined in Section 2.2(d) below, the Company agrees to issue and sell to the Purchasers, and the Purchasers agree to purchase from the Company, for an aggregate purchase price of Fifteen Million Dollars (USD $15,000,000) (the "Fourth Purchase Price"), a number of Common Shares (the "Fourth Closing Shares") equal to [*].

(e) Fifth Closing. Subject to the terms and conditions of this Agreement, and subject to adjustment pursuant to Section 2.1(f) below, on the Fifth Closing Date, as defined in Section 2.2(e) below, the Company agrees to issue and sell to the Purchasers, and the Purchasers agree to purchase from the Company, for an aggregate purchase price of Fifteen Million Dollars (USD $15,000,000) (the "Fifth Purchase Price"), a number of Common Shares (the "Fifth Closing Shares") equal to [*].

(f) [*].

(g) Notwithstanding the foregoing or any other provisions of this Agreement, in connection with any Closing, the Company shall have the right to elect to not issue and sell to the Purchasers any Shares as provided in Sections 2.1(b) through (e) above. In the event that the Company so elects not to issue and sell Shares to the Purchasers at a particular Closing, or in the event that a particular Closing shall not have occurred prior to or on the latest date set forth or otherwise referred to in Section 2.2(a), (b), (c), (d) or (e), whichever is applicable (as may be extended by the written consent of both Purchasers or pursuant to Section 5.3(a) hereof or Section 3(a) of the Registration Rights Agreement), then the Purchasers shall have no obligations under this Agreement with respect to such Closing, unless the failure of such Closing to occur results from a failure of either Purchaser to fulfill any obligation under this Agreement.

SECTION 2.2. Closing Dates. Subject to the terms and conditions of this Agreement:

(a) The closing of the purchase and sale of the Note hereunder (the "First Closing") shall be held at the offices of the Purchasers' counsel, at 10:00 a.m., Boston time, on a date that is mutually agreeable to the parties but in any event within five (5) Business Days after all of the conditions set forth in Article V have been satisfied or waived. The date of the First Closing is hereinafter referred to as the "First Closing Date".

(b) The closing of the purchase and sale of the Second Closing Shares hereunder (the "Second Closing") shall be held at the offices of the Purchasers' counsel, at 10:00 a.m., Boston time, on [*] (or, if such date is not a Business Day, then the first preceding Business Day), unless the parties otherwise consent in writing, or as

adjusted pursuant to Section 5.3(a). The date of the Second Closing is hereinafter referred to as the "Second Closing Date."

(c) The closing of the purchase and sale of the Third Closing Shares hereunder (the "Third Closing") shall be held at the offices of the Purchasers' counsel, at 10:00 a.m., Boston time, on [*] (or, if such date

is not a Business Day, then the first preceding Business Day), unless the parties otherwise consent in writing, or as adjusted pursuant to Section 5.3(a). The date of the Third Closing is hereinafter referred to as the "Third Closing Date."

(d) The closing of the purchase and sale of the Fourth Closing Shares hereunder (the "Fourth Closing") shall be held at the offices of the Purchasers' counsel, at 10:00 a.m., Boston time, on [*] (or, if such date is not a Business Day, then the first preceding Business Day), unless the parties otherwise consent in writing, or as adjusted pursuant to Section 5.3(a). The date of the Fourth Closing is hereinafter referred to as the "Fourth Closing Date."

(e) The closing of the purchase and sale of the Fifth Closing Shares hereunder (the "Fifth Closing") shall be held at the offices of the Purchasers' counsel, at 10:00 a.m., Boston time, on [*] (or, if such date is not a Business Day, then the first preceding Business Day), unless the parties otherwise consent in writing, or as adjusted pursuant to Section 5.3(a). The date of the Fifth Closing is hereinafter referred to as the "Fifth Closing Date."

SECTION 2.3. Transactions at Each Closing.

(a) On the First Closing Date, subject to the terms and conditions of this Agreement (i) the Company shall issue and sell to the Purchasers, and the Purchasers shall purchase, the Note; and (ii) the Company shall deliver to Millennium the Note, issued in the name of the Trust against payment of the First Purchase Price by wire transfer of immediately available funds to an account or accounts previously designated by the Company no less than five (5) Business Days prior to the First Closing Date.

(b) On the Second Closing Date, subject to the terms and conditions of this Agreement, (i) the Company shall issue and sell to the Purchasers, and the Purchasers shall purchase, the Second Closing Shares; and (ii) the Company shall deliver to Millennium a certificate representing the Second Closing Shares, registered in the name of the Trust against payment of the Second Purchase Price by wire transfer of immediately available funds to an account or accounts previously designated by the Company no less than five (5) Business Days prior to the Second Closing Date.

(c) On the Third Closing Date, subject to the terms and conditions of this Agreement, (i) the Company shall issue and sell to the Purchasers, and the Purchasers shall purchase, the Third Closing Shares; and (ii) the Company shall deliver to Millennium a certificate representing the Third Closing Shares, registered in the name of the Trust against payment of the Third Purchase Price by wire transfer of immediately available funds to an account or accounts previously designated by the Company no less than five (5) Business Days prior to the Third Closing Date.

(d) On the Fourth Closing Date, subject to the terms and conditions of this Agreement, (i) the Company shall issue and sell to the Purchasers, and the Purchasers shall purchase, the Fourth Closing Shares; and (ii) the Company shall deliver to Millennium a certificate representing the Fourth Closing Shares, registered in the name of the Trust against payment of the Fourth Purchase Price by wire transfer of immediately available funds to an account or accounts previously designated by the Company no less than five (5) Business Days prior to the Fourth Closing Date.

(e) On the Fifth Closing Date, subject to the terms and conditions of this Agreement, (i) the Company shall issue and sell to the Purchasers, and the Purchasers shall purchase, the Fifth Closing Shares; and (ii) the Company shall deliver to Millennium a certificate representing the Fifth Closing Shares, registered in the name of the Trust against payment of the Fifth Purchase Price by wire transfer of immediately available funds to an account or accounts previously designated by the Company no less than five (5) Business Days prior to the Fifth Closing Date.

SECTION 2.4. Limitations on the Obligations of Purchaser. Notwithstanding the foregoing, the Purchasers shall not be obligated to purchase the Shares at the Second, Third, Fourth or Fifth Closings to the extent, but only to the extent, that:

(a) the sale of such Shares would require the Company to obtain shareholder approval of the sale; or

(b) the total number of Shares to be purchased at any such Closing, plus the total number of Shares previously purchased pursuant hereto and still owned by the Purchasers as of such Closing (including Shares obtained through conversion of the Note) and acquired pursuant to this Agreement, would equal or exceed 9.9 percent (9.9%) of the outstanding Common Shares as of the date of such Closing; provided, however, that upon the occurrence

of such event, Millennium agrees to purchase from the Company a non-convertible, unsecured note with commercially reasonable terms and conditions to be negotiated at such time for the portion of the applicable Purchase Price that would cause the occurrence of the event specified in this subsection 2.4(b).

For the avoidance of doubt, it is understood that the foregoing limitations may only apply in part and that the Purchasers shall be required to purchase any portion of the Second, Third, Fourth or Fifth Closing Shares to which such limitations do not apply.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.1. Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchasers as follows:

(a) Corporate Organization. The Company is a company duly organized, validly existing and in good standing under the laws of Bermuda. Each Subsidiary is duly organized and validly existing and, if applicable, is in good standing, under the laws of the jurisdiction of its organization. Each of the Company and its Subsidiaries is duly qualified or licensed and, if applicable, is in good standing as a foreign entity, in each jurisdiction in which the properties owned, leased or operated, or the business conducted, by it require such qualification or licensing, except for any such failure so to qualify or be in good standing which, individually or in the aggregate, would not have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole. The Company and each of the Subsidiaries has the requisite power and authority to carry on its business as it is now being conducted. The Company has heretofore made available to the Purchasers complete and correct copies of the Memorandum of Continuance of the Company (the "Company Charter") and the Bye-laws of the Company (the "Company Bye-Laws") and the comparable organizational documents of each of its Subsidiaries, each as amended to date and currently in full force and effect.

(b) Corporate Authority; Authorization; Enforceability. The Company has the requisite company power and authority to execute, deliver and perform this Agreement and the Registration Rights Agreement, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement, the Note and the Registration Rights Agreement, the issuance and sale by the Company of the Note and the Shares, and the performance by the Company of the other transactions contemplated hereby and thereby have been duly authorized by the Company's Board of Directors, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or the Registration Rights Agreement or for the Company to consummate the transactions so contemplated herein and therein. The Note being issued at the First Closing has been duly authorized by all necessary corporate action on the part of the Company and a sufficient number of authorized but unissued Common Shares have been reserved by appropriate

action in connection with the conversion of the Note. The Shares being issued at the Second, Third, Fourth and Fifth Closings and upon conversion of the Note have been duly authorized by all necessary corporate action on the part of the Company. This Agreement, the Note and the Registration Rights Agreement are valid and binding agreements of the Company, enforceable against the Company in accordance with their respective terms, assuming that this Agreement and the Registration Rights Agreement are valid and binding agreements of each Purchaser, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies and except that rights to indemnity may be limited by public policy.

(c) No Violations; Consents and Approvals.

(i) Assuming the representations and warranties of the Purchasers in Section 3.2 hereof are true and correct, neither the execution, delivery or performance by the Company of this Agreement, the Note, or the Registration Rights Agreement nor the consummation by the Company of the transactions contemplated hereby or thereby (A) will result in

a violation or breach of the Company Charter or the Company Bye-laws or (B) will result in a violation or breach of (or give rise to any right of termination, revocation, cancellation or acceleration under), or constitute a default (with or without due notice or lapse of time or both) under, or result in the creation of any lien, mortgage, charge, encumbrance or security interest of any kind (a "Lien") upon any of the properties or assets of the Company or any of its Subsidiaries under, (1) any of the terms, conditions or provisions of any note, bond, mortgage, indenture, or material contract, agreement, obligation, instrument, offer, commitment, understanding or other arrangement (each a "Contract") or of any material license, waiver, exemption, order, franchise, permit or concession (each a "Permit") to which the Company or any of its Subsidiaries is a party or by which any of their properties or assets may be bound, or (2) any judgment, order, decree, statute, law, regulation or rule applicable to the Company or any of its Subsidiaries, except in the case of clause (B), for violations, breaches, defaults, rights of cancellation, termination, revocation or acceleration or Liens that would not, individually or in the aggregate, have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole.

(ii) Assuming the representations and warranties of the Purchasers in Section 3.2 hereof are true and correct, no consent, approval, order or authorization of, or registration, declaration or filing with, any government or any court, administrative agency or commission or other governmental authority or agency, federal, state, local or foreign (a "Governmental Entity"), is required to be obtained or made by the Com-

pany in connection with the execution, delivery or performance by the Company of this Agreement, the Note or the Registration Rights Agreement or the consummation by the Company of the transactions contemplated hereby or thereby, other than (w) the listing of the Shares on a Principal Trading Market, (x) registration of the resale of the Shares under the Securities Act as contemplated by the Registration Rights Agreement, (y) as may be required under applicable state securities or "blue sky" laws, and (z) the consent of the Bermuda Monetary Authority to the issuance of the Note and the Shares (which consent has already been obtained subject to the requirement that the Common Shares are listed on an appointed stock exchange as defined in Section 2(1) of the Companies Act 1981 of Bermuda). The current Principal Trading Market is an appointed stock exchange as defined in Section 2(1) of the Companies Act 1981 of Bermuda.

(d) Share Capital. The authorized share capital of the Company consists of (a) 135,000,000 Common Shares, USD $0.0005 par value per share, of which 70,104,855 shares were issued and outstanding on November 15, 2001, all of which were duly authorized, and validly issued and are fully paid and nonassessable, and (b) 1,000,000 preference shares, USD $0.05 par value per share, of which as of November 15, 2001 (i) 135,000 shares were designated Series A Preference Shares, none of which were outstanding, and (ii) 7,500 shares were designated Series B Preference Shares, none of which were outstanding. As of the close of business on November 15, 2001, there were outstanding under the Company's share option plans (collectively, the "Company Share Plans"), options to acquire an aggregate of 4,219,144 Common Shares (subject to adjustment on the terms set forth therein), and an equal number of Common Shares are reserved for future issuance under the Company Share Plans. Except as set forth above, or disclosed in the Company SEC Documents, no capital shares are reserved for future issuance. There are no preemptive or similar rights on the part of any holders of any class of securities of the Company or of any of its Subsidiaries to acquire any of the Shares. Except for the Common Shares, the Company has outstanding no bonds, debentures, notes or other obligations or securities the holders of which currently have the right to vote with the shareholders of the Company on any matter. Except as set forth above or disclosed in the Company SEC Documents as of the date of this Agreement, there are no securities convertible into or exchangeable for, or options, warrants, calls, subscriptions, rights, contracts, commitments, arrangements or understandings of any kind to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries contingently or otherwise to issue, deliver or sell, or cause to be issued, delivered or sold, additional capital shares or other Voting Securities of the Company or of any of its Subsidiaries. Except as disclosed in the Company SEC Documents there are no outstanding agreements of the Company or any of its Subsidiaries to repurchase,

redeem or otherwise acquire any capital shares of the Company or any of its

Subsidiaries.

(e) Subsidiaries. The Company has no Subsidiaries other than XOMA Limited, a United Kingdom company, XOMA (US) LLC, a Delaware limited liability company, XOMA (Bermuda) Ltd., a Bermuda company, XOMA Technology Ltd., a Bermuda company and XOMA Ireland Limited, an Irish company, all of which are wholly-owned by the Company. All of the outstanding shares of capital stock of each Subsidiary are owned by the Company free and clear of all Liens, other than Permitted Liens.

(f) SEC Filings. The Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC under the Securities Act and the Exchange Act since December 31, 2000 (the "Company SEC Documents"). As of its filing date, each Company SEC Document filed, as amended or supplemented, if applicable, (i) complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as applicable, and (ii) did not, at the time it was filed, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made, not misleading, provided that no representation or warranty is made as to information contained in or omitted from any registration statement or prospectus filed pursuant to the Securities Act in reliance upon and in conformity with information furnished to the Company by any underwriter or selling shareholder specifically for inclusion therein.

(g) Absence of Certain Events and Changes. Except as disclosed in the Company SEC Documents filed with the SEC and publicly available prior to the date hereof, or in Company press releases (including joint press releases) released publicly prior to the date hereof, or as otherwise contemplated or permitted by this Agreement, since December 31, 2000, there has not been any event or change which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole, or any material change in the Company's accounting policies, principles or methods not required by GAAP.

(h) Compliance with Law. Except as disclosed in the Company SEC Documents, each of the Company and its Subsidiaries is in compliance with all statutes, laws, regulations, rules, judgments, orders and decrees of all Governmental Entities applicable to it that relate to its respective business, and neither the Company nor any of its Subsidiaries has received any notice alleging noncompliance except, with reference to all the foregoing, where the failure to be in compliance would not, individually or in the aggregate, have a Material Adverse Effect on the Company and its

Subsidiaries, taken as a whole. Each of the Company and its Subsidiaries has all Permits that are required in order to permit it to carry on its business as it is presently conducted, except where the failure to have such Permits would not, individually or in the aggregate, have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole. All such Permits are in full force and effect and the Company and its Subsidiaries are in compliance with the terms of such Permits, except where the failure to be in full force and effect or in compliance would not individually or in the aggregate, have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole.

(i) Litigation. Except as disclosed in the Company SEC Documents filed with the SEC and publicly available prior to the date hereof or in press releases (including joint press releases) released publicly prior to the date hereof by the Company or in press releases by others which are provided to the Purchasers by the Company prior to the date hereof, and except for applications and proceedings relating to regulatory approval of new drugs or the granting of patents, (i) there are no civil, criminal or administrative actions, suits, proceedings, or governmental investigations, pending or, to the knowledge of the Company, threatened, against the Company or any of its Subsidiaries that individually or in the aggregate, are likely to have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole, and (ii) there are no outstanding judgments, orders, decrees, or injunctions of any Governmental Entity against the Company or any of its Subsidiaries, that, insofar as can reasonably be foreseen, individually or in the aggregate, in the future would have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole, and (iii) to the knowledge of the Company, no product liability claims have been asserted in a writing given to the Company or any of its Subsidiaries or threatened against the Company or any of its Subsidiaries, taken as a whole, with respect to products or product candidates developed, tested, manufactured, marketed, distributed or sold by the Company or any of its Subsidiaries.

(j) Contracts.

(i) The Company has filed as exhibits to the Company SEC Documents all material agreements required to be filed under the rules and regulations of the SEC. Such agreements are referred to herein as "Material Contracts." The Company has received no written notice and otherwise has no knowledge that any other party to a Material Contract intends to request an amendment to such Material Contract which could reasonably be expected to have a Material Adverse Effect on the Company and its Subsidiaries, taken as a whole, or to terminate such Material Contract.

(ii) All Material Contracts are legal, valid, binding, in full force and effect and enforceable against the Company or its Subsidiary party thereto and, to the knowledge of the Company, each other party thereto. To the knowledge of the Company, there does not exist under any Material Contract any material violation, breach or event of default, or event or condition that, after notice or lapse of time or both, would constitute a material violation, breach or event of default thereunder, on the part of any of the Company or its Subsidiaries or, to the knowledge of the Company or any of its Subsidiaries, any other Person.

(k) Taxes. The Company has filed all federal, state and local income and franchise tax returns required to be filed through the date hereof (or has obtained valid extensions) and has paid all taxes due thereon, and no tax deficiency has been determined adversely to the Company which has had, nor does the Company have any knowledge of any tax deficiency which, if determined adversely to the Company, could reasonably be expected to have, a Material Adverse Effect.

(l) Status of Shares. At each Closing or conversion of the Note, as applicable, the Shares then being issued will have been validly issued and, assuming payment therefor has been made, will be fully paid and nonassessable, and; the issuance of such Shares will not be subject to preemptive rights of any other Person. The Shares will be eligible for listing on a Principal Trading Market prior to issuance of such Shares at Closing.

(m) Intellectual Property. To the Company's knowledge, except as set forth on Schedule 3.1(m), (i) the Company and its Affiliates have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights and licenses (collectively, the "Company Intellectual Property Rights") which are necessary for use in connection with their business as presently conducted and which the failure to do so could reasonably be expected to have a Material Adverse Effect and (ii) there is no existing infringement by another Person of any of the Company Intellectual Property Rights which are necessary for use in connection with the Company's and its Affiliates' business as presently conducted, which infringement could reasonably be expected to have a Material Adverse Effect.

(n) Brokers or Finders. No agent, broker, investment banker or other firm is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement.

(o) Financial Statements and Related Matters. Each of (i) the unaudited balance sheet for the Company as of September 30, 2001 and the related statements of income and cash flows for the 9-month period then ended, and (ii) the audited balance sheets and statements of income and cash flows for the fiscal years ended December

31, 2000 and 1999 (including in all cases the notes thereto, if any), in each case as filed with the SEC, is accurate and complete in all material respects, is consistent with the Company's books and records (which, in turn, are accurate and complete in all material respects), presents fairly the Company's financial condition and results of operations as of the times and for the periods referred to therein, has been prepared in accordance with GAAP consistently applied and, with respect to unaudited financial statements, is subject to normal year-end adjustments that are not expected to be material in amount. The Company agrees to provide the Purchasers with updated financial statements at the Second Closing Date, Third Closing Date, Fourth Closing Date and Fifth Closing Date for the most recent quarterly reporting periods for which a filing has been made under the Exchange Act (including the notes thereto, the "Updated Financial Statements").

(p) Other Indebtedness. Except as disclosed or reflected in the

financial statements contained in the Company SEC Documents, the Company has no outstanding material indebtedness. Indebtedness means all obligations of the Company for borrowed money evidenced by notes, bonds, debentures or similar instruments, for which interest charges are customarily paid, other than accounts payable and accrued obligations incurred in the ordinary course of business consistent with past practice.

SECTION 3.2. Representations and Warranties of the Purchasers. Each Purchaser hereby represents and warrants to the Company as follows:

(a) Organization. Each Purchaser is duly organized and validly existing and in good standing under the laws of its jurisdiction, with all requisite power and authority to own, lease and operate its properties and to conduct its business as now being conducted.

(b) Authority; Authorization; Enforceability. Each Purchaser has the requisite corporate or trust power and authority to execute, deliver and perform its obligations under this Agreement and the Registration Rights Agreement and to consummate the transactions contemplated hereby and thereby. All necessary corporate or trust action required to have been taken by or on behalf of each Purchaser by applicable law or otherwise to authorize the approval, execution, delivery and performance by each Purchasers of this Agreement and the Registration Rights Agreement and the consummation of the transactions contemplated hereby or thereby have been duly authorized, and no other proceedings on its part are or will be necessary to authorize this Agreement and the Registration Rights Agreement or for it to consummate such transactions. This Agreement and the Registration Rights Agreement are valid and binding agreements of the Purchasers, enforceable against the Purchasers in accordance with their respective terms, assuming that this Agreement and Registration Rights Agreement are

valid and binding agreements of the Company, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies and except that rights to indemnity may be limited by public policy.

(c) Conflicting Agreements and Other Matters. Neither the execution and delivery of this Agreement and the Registration Rights Agreement nor the performance by each Purchaser of its obligations hereunder (including without limitation the purchase by the Purchasers of the Note and the Shares) or thereunder will (i) conflict with, result in a breach of the terms, conditions or provisions of, constitute a default under, result in the creation of any Lien upon any of the properties or assets of the Purchasers pursuant to, or (ii) require any consent, approval or other action by or any notice to or filing with any Government Entity pursuant to, the organizational documents or agreements of the Purchasers or any agreement, instrument, order, judgment, decree, statute, law, rule or regulation by which the Purchasers are bound except for filings after each Closing under Section 13(d) of the Exchange Act.

(d) Acquisition for Investment. (i) The Purchasers are acquiring the Note and the Shares for their own account for the purpose of investment and not with a view to or for sale in connection with any distribution thereof, and the Purchasers have no present intention to effect, or any present or contemplated plan, agreement, undertaking, arrangement, obligation, indebtedness, or commitment providing for, any distribution of the Note or the Shares, (ii) the Purchasers are "accredited investors" as defined in Rule 501(a) under the Securities Act, (iii) the Purchasers have carefully reviewed the representations concerning the Company contained in this Agreement, and (iv) the Purchasers have sufficient knowledge and experience in finance and business that they are capable of evaluating the risks and merits of their investment in the Company and able financially to bear the risks thereof.

(e) Reoffers and Resales. All subsequent offers and sales of the Note and the Shares by each Purchaser shall be made pursuant to registration of the Shares under the 1933 Act or pursuant to an exemption from registration.

(f) Company Reliance. Each Purchaser understands that the Note and the Shares are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and each Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understand-

ings of each Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of each Purchaser to acquire the Shares.

(g) Information Provided. Each Purchaser and its advisors have been furnished with all materials relating to the business, finances and operations of the Company and materials relating to the offer and sale of the Note and the Shares which have been requested by such Purchaser; each Purchaser and its advisors have been afforded the opportunity to ask questions of the Company and have received satisfactory answers to any such inquiries; without limiting the generality of the foregoing, each Purchaser has had the opportunity to obtain and to review the Company SEC Documents; and each Purchaser understands that its investment in the Notes and the Shares involves a high degree of risk.

(h) Absence of Approvals. Each Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed or made any recommendation or endorsement of the Notes or the Shares.

(i) Financial Capability. Each Purchaser presently has and will have the financial capacity and the necessary capital to perform its obligations hereunder. Each Purchaser has, or has available to it, sufficient funds to satisfy all of its financial obligations under this Agreement. Each Purchaser will promptly notify the Company of any event or circumstance which could be reasonably be expected to hinder its ability to perform its obligations hereunder.

(j) Brokers or Finders. No agent, broker, investment banker or other firm is or will be entitled to any broker's or finder's fee or any other commission or similar fee from the Purchasers in connection with any of the transactions contemplated by this Agreement.

(k) SEC Filings. Millennium has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC under the Securities Act and the Exchange Act since December 31, 2000 (the "Millennium SEC Documents"). As of its filing date, each Millennium SEC Document filed, as amended or supplemented, if applicable, (i) complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as applicable, and (ii) did not, at the time it was filed, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made, not misleading, provided that no representation or warranty is made as to information contained in or omitted from any registration statement or prospectus filed pursuant to the Securities Act in reliance upon and in conformity with information furnished to Millennium by any underwriter or selling shareholder specifically for inclusion therein.

ARTICLE IV

COVENANTS AND ADDITIONAL AGREEMENTS

SECTION 4.1. Ordinary Course. During the period from the date of this Agreement and continuing until the First Closing Date, the Company will conduct its business in the ordinary course in substantially the same manner as presently conducted.

SECTION 4.2. Further Actions.

(a) Each of the Company and the Purchasers shall use commercially reasonable efforts to take or cause to be taken all actions, and to do or cause to be done all other things, necessary, proper or advisable in order to fulfill and perform its obligations, and satisfy all conditions precedent, in respect of this Agreement, the Note and the Registration Rights Agreement, or otherwise to consummate and make effective the transactions contemplated hereby and thereby.

(b) Each of the Company and the Purchasers shall, as promptly as practicable, (i) use commercially reasonable efforts to make, or cause to be made, all filings and submissions required under any law applicable to it or any of its Subsidiaries, and give such reasonable undertakings as may be required in connection therewith, and (ii) use commercially reasonable efforts to obtain or make, or cause to be obtained or made, all Permits necessary to be obtained or made by it or any of its Subsidiaries, in each case in connection with this Agreement, the Note and the Registration Rights Agreement, the sale and transfer of the Note and the Shares pursuant hereto and the consummation of the other

transactions contemplated hereby or thereby.

(c) Each of the Company and the Purchasers shall coordinate and cooperate with the other party in exchanging such information and supplying such reasonable assistance as may be reasonably requested by such other party in connection with the filings and other actions contemplated by this Agreement, the Note and the Registration Rights Agreement.

(d) At all times prior to the Fifth Closing Date, or the earlier termination of this Agreement, the Company and each Purchaser shall promptly notify each other in writing of any fact, condition, event or occurrence that is reasonably likely to result in the failure of any of the conditions contained in Article V to be satisfied at the relevant Closing, promptly upon becoming aware of the same.

(e) [*].

(f) [*].

SECTION 4.3. Further Assurances. The Company shall, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be reasonably necessary, or otherwise reasonably be requested by the Purchasers, and render effective the consummation of the transactions contemplated hereby and thereby, or otherwise to carry out the intent and purposes of this Agreement.

SECTION 4.4. [*].

SECTION 4.5. Selling Restrictions.

[*].

(f) The selling restrictions set forth in this Section 4.5 shall terminate and the Purchasers shall have the right, directly or indirectly, to sell, transfer or otherwise dispose of any Shares without regard to any selling restrictions set forth in this Section 4.5 in the event that:

(i) the Company has entered into (A) a merger agreement in which the holders of the Voting Securities would cease to hold a majority of the voting securities of the surviving corporation, (B) an agreement to sell all or substantially all its assets, or (C) an agreement to be acquired, business combination, consolidation or any such similar transaction, in each case with any Person other than a wholly-owned subsidiary of the Company; provided, however, the limitation shall (1) continue if (x) the merger agreement is with a majority-owned subsidiary of the Company and the Company is to be the surviving corporation in the merger or (y) the majority of the directors of the Company, who have held that position for at least nine (9) months prior to the entering into of the merger agreement continue as the directors of the surviving company after the merger or (2) be reinstated if such merger agreement or other agreements referred to in the foregoing clause (A), (B) or (C) is subsequently terminated or the transactions contemplated thereunder are not consummated;

(ii) a tender or exchange offer (other than a tender or exchange offer that the Company's Board of Directors has recommended be rejected) is made by any Person (other than an Affiliate of, or any Person acting in concert with a Purchaser) to acquire Voting Securities which, if added to the Voting Securities (if any) already owned by such Person, would result, if consummated in accordance with its terms, in the

beneficial ownership by such Person of more than 50% of the total voting power of all Voting Securities then outstanding, provided that the limitation shall be reinstated if such tender or exchange offer is withdrawn or terminated without such Person acquiring such 50% ownership level; or

(iii) a tender or exchange offer, which the Company's Board of Directors has not approved or recommended, is made by any Person (other than an Affiliate of, or any Person acting in concert with, a Purchaser) to acquire Voting Securities which, if added to the Voting Securities (if any) already owned by such Person, would result, if consummated in accordance with its terms, in the beneficial ownership by such Person of more than 50% of the total voting power of all Voting Securities then outstanding and the Purchasers, upon the advice of legal counsel and financial advisors, reasonably believe in good faith, taking into account the conditions of the offer, that such tender or exchange offer will result in Voting Securities being purchased, provided that the limitation shall be reinstated if such

tender or exchange offer is withdrawn or terminated without such Person acquiring such 50% ownership level.

SECTION 4.6. Standstill Agreement.

(a) During the Applicable Period, except as permitted by Section 4.6(b) or (c), the Purchasers and their Affiliates will not (and will not assist or encourage others to) directly or indirectly in any manner:

(i) acquire, or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, gift or otherwise, any direct or indirect beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) or interest in any securities or direct or indirect rights, warrants or options to acquire, or securities convertible into or exchangeable for, any securities of the Company;

(i) make, or in any way participate in, directly or indirectly, alone or in concert with others, any "solicitation" of "proxies" to vote (as such terms are used in the proxy rules of the SEC promulgated pursuant to Section 14 of the Exchange Act); provided, however, that the prohibition in this subparagraph (ii) shall not apply to solicitations exempted from the proxy solicitation rules by Rule 14a-2 under the Exchange Act as such Rule is in effect as of the date hereof;

(ii) form, join or in any way participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with respect to any voting securities of the Company;

(iii) acquire or agree to acquire, directly or indirectly, alone or in concert with others, by purchase, exchange or otherwise, (i) any of the assets, tangible or intangible, of the Company or (ii) direct or indirect rights, warrants or options to acquire any assets of the Company, except for such assets as are then being offered for sale by the Company;

(iv) enter into any arrangement or understanding with others to do any of the actions restricted or prohibited under clauses (i), (ii) or (iii) of this Section 4.6(a); or

(v) otherwise act in concert with others, to seek to offer to the Company or any of its shareholders any business combination, restructuring, recapitalization or similar transaction to or with the Company or otherwise seek in concert with others, to control, change or influence the management, board of directors or policies of the Company or nominate any person as a director of the Company who is not nominated by the then incumbent directors, or propose any matter to be voted upon by the shareholders of the Company.

(b) Nothing herein shall prevent the Purchasers from purchasing any securities of the Company pursuant to the terms of this Agreement (including through exercise of its rights under Section 4.5 hereof) and Purchaser shall not be treated as having breached any covenant in this Agreement solely as a result of such purchase.

(c) This Section 4.6 shall terminate and the Purchasers and their Affiliates shall have the right to acquire any securities of the Company without regard to the limitation on share ownership set forth in this Section 4.6 in the event that:

(i) the Company has entered into (A) a merger agreement in which the holders of the Voting Securities would cease to hold a majority of the voting securities of the surviving corporation, (B) an agreement to sell all or substantially all its assets, or (C) an agreement to be acquired, business combination, consolidation or any such similar transaction, in each case with any Person other than a wholly-owned subsidiary of the Company; provided, however, the limitation shall continue if (1) the merger agreement is with a majority-owned subsidiary of the Company and the Company is to be the surviving corporation in the merger, or (2) the merger agreement or other agreements referred to in the foregoing clause (A), (B) or (C) is subsequently terminated or the transactions contemplated thereunder are not consummated; or

(ii) a tender or exchange offer (other than a tender or exchange offer that the Company's Board of Directors has recommended be rejected) is made by any Person or 13D Group (as hereinafter defined) (other than an Affiliate of, or any Person acting in concert with, a Purchaser) to acquire Voting Securities which, if added to the Voting Securities (if any) already owned by such Person or 13D Group, would result, if consummated in accordance with its terms, in the beneficial ownership by such Person or 13D Group of more than 50% of the total voting power of all Voting Securities then outstanding, provided that the limitation shall be reinstated if such tender or exchange offer is withdrawn or terminated

without such Person or 13D Group acquiring such 50% ownership level, and provided further, notwithstanding the termination or withdrawal of any such tender or exchange offer, any securities of the Company acquired by the Purchasers or their Affiliates following the making of such tender or exchange offer and prior to such termination or withdrawal may be retained; or

(iii) it is publicly disclosed or a Purchaser otherwise learns that Voting Securities representing more than 50% of the total voting power of all Voting Securities then outstanding are beneficially owned by any Person or 13D Group (other than an Affiliate of, or any person acting in concert with, a Purchaser); or

(iv) a proxy contest (or similar incident) is made by any Person or 13D Group (other than an Affiliate of, or any Person acting in concert with a Purchaser) to elect individuals who at the beginning of any calendar year did not constitute the majority of the members of the Board of Directors of the Company then in office and the Purchasers, upon the advice of legal counsel and financial advisors, reasonably believe in good faith that such proxy contest will result in the election of individuals who will constitute a majority of members of the Board of Directors of the Company, but who did not, at the beginning of the calendar year, constitute the majority of the members of the Board of Directors of the Company then in office, provided that the limitation shall be reinstated if such proxy contest or similar incident is terminated or withdrawn without affecting the change in the Board of Directors referred to above and provided further that, notwithstanding the termination or withdrawal of any such proxy contest or similar incident, any securities of the Company acquired by the Purchasers or their Affiliates following initiation of such proxy contest or similar incident and prior to such termination or withdrawal may be retained.

(d) As used herein, the term "13D Group" shall mean any group of Persons formed for the purpose of acquiring, holding, voting or disposing of Voting Securities which would be required under Section 13(d) of the Exchange Act and the rules and regulations thereunder (as now in effect and based on present legal interpretations thereof) to file a statement on Schedule 13D with the SEC as a "person" within the meaning of Section 13(d)(3) of the Exchange Act. Ownership of Voting Securities under Section 4.6(c) above and Section

4.5(d) above shall be determined in accordance with Rule 13d-3 of the Exchange Act as currently in effect.

(e) Nothing herein shall prevent the Purchasers from acquiring securities of another operating entity, including without limitation a biotechnology or pharmaceutical company, that beneficially owns any of the Company's securities.

ARTICLE V

CONDITIONS PRECEDENT

SECTION 5.1. Each Party's Obligations. The obligations of the Company and each Purchaser to consummate the transactions contemplated to occur at each Closing shall be subject to the satisfaction prior to each Closing of each of the following conditions, each of which may be waived only if it is legally permissible to do so:

(a) Approvals. All material authorizations, consents, orders or approvals of, or regulations, declarations or filings with, or expirations of applicable waiting periods imposed by, any Governmental Entity (including, without limitation, any foreign antitrust filing) necessary for the consummation of the transactions contemplated hereby, shall have been obtained or filed or shall have occurred.

(b) No Litigation, Injunctions or Restraints. No statute, rule, regulation, executive order, decree, temporary restraining order, preliminary or permanent injunction or other order enacted, entered, promulgated, enforced or issued by any Governmental Entity or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect.

SECTION 5.2. Conditions to the Obligations of the Company. The obligations of the Company to consummate the transactions contemplated to occur at each Closing shall be subject to the satisfaction or waiver thereof prior to each Closing of the following condition:

The representations and warranties of the Purchasers that are qualified as to materiality shall be true and correct, and those that are not so qualified shall be true and correct in all material respects, as of the date of this

Agreement and as of the time of each Closing as though made at and as of such time, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties that are qualified as to materiality shall be true and correct, and those that are not so qualified shall be true and correct in all material respects, on and as of such earlier date), and the Com-

pany shall have received a certificate signed by an authorized officer of each of the Purchasers to such effect.

SECTION 5.3. Conditions to the Obligations of the Purchasers. The obligations of the Purchasers to consummate the transactions contemplated to occur at each Closing shall be subject to the satisfaction or waiver thereof prior to each Closing of each of the following conditions:

(a) Representations and Warranties. The Purchasers shall have received a certificate signed by (i) the chief executive officer, president or senior vice president, operations of the Company and (ii) the chief financial officer of the Company describing the extent to which the representations and warranties of the Company set forth in this Agreement that are qualified as to materiality are true and correct, and those that are not so qualified are true and correct in all material respects, as of the date of this Agreement and as of the time of each Closing as though made at and as of such time, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties that are qualified as to materiality are true and correct, and those that are not so qualified are true and correct in all material respects, on and as of such earlier date). At each of the Second Closing, Third Closing, Fourth Closing and Fifth Closing, in such certificate the chief executive officer, president or senior vice president, operations and chief financial officer of the Company shall also represent and warrant that the Updated Financial Statements for the applicable period, are accurate and complete in all material respects, consistent with the Company's books and records (which, in turn are accurate and complete in all material respects), present fairly the Company's financial condition and results of operations as of the times and for the periods referred to therein, have been prepared in accordance with GAAP consistently applied and, with respect to unaudited financial statements, are subject to normal year-end adjustments that are not expected to be material in amount. If the events or information disclosed in the certificate described in the first sentence of this Section 5.3(a) could, in the reasonable judgment of the Company's chief executive officer or board of directors after consultation with Company counsel, indicate that there has occurred an event or circumstance that is required to be publicly disclosed pursuant to the rules of the Principal Trading Market or applicable Federal or state securities laws, [*], unless the Company subsequently advises the Purchasers in writing that the circumstances surrounding such event or information have changed such that, in the reasonable judgment of the Company's chief executive officer or board of directors, after consultation with Company counsel, disclosure will no longer be required, in which case such Closing shall be held no later than five (5) Business Days thereafter. The disclosure of any other Material Adverse Effect in the certificate referenced above shall not be deemed a failure of a Closing condition.

(b) Updated Financial Statements. Not less than two (2) weeks prior to each of the Second, Third, Fourth and Fifth Closings, the Company shall provide each Purchaser with Updated Financial Statements. In addition, the Company shall provide such supplemental schedules as may be required to cause the representations and warranties of the Company set forth in this Agreement to be true and correct on the date of the relevant Closing.

(c) Development and License Agreement. The Development and License Agreement shall have become effective in accordance with the terms and conditions thereof, and no material, uncured breach by the Company shall have occurred, and there shall have been no termination of the Development and License Agreement or the Registration Rights Agreement for cause by the Purchasers.

(d) Principal Trading Market Listing. The Common Shares shall continue to be listed on a Principal Trading Market as of the date of each Closing. Trading in the Company's securities shall not have been suspended, other than a temporary suspension of trading to provide for an orderly market. Prior to any Closing, the Company shall have received Principal Trading Market approval for quotation of the Shares to be issued at such Closing, subject only to official notice of issuance.

(e) Registration of Shares.

(i) The Company shall have executed and delivered the Registration Rights Agreement between the Company and the Purchasers of even date herewith (the "Registration Rights Agreement").

(ii) Prior to the Second Closing, the Company shall have caused the Shares to be issued upon conversion of the Note and the Second Closing Shares to be registered for resale by the Purchasers pursuant to an effective registration statement on Form S-3 and meeting the requirements set forth in the Registration Rights Agreement.

(iii) Prior to the Third Closing, the Company shall have caused the Third Closing Shares to be registered for resale by the Purchasers pursuant to an effective registration statement on Form S-3 and meeting the requirements set forth in the Registration Rights Agreement.

(iv) Prior to the Fourth Closing, the Company shall have caused the Fourth Closing Shares to be registered for resale by the Purchasers pursuant to an effective registration statement on Form S-3 and meeting the requirements set forth in the Registration Rights Agreement.

(v) Prior to the Fifth Closing, the Company shall have caused the Fifth Closing Shares to be registered for resale by the Purchasers pursuant to an effective registration statement on Form S-3 and meeting the requirements set forth in the Registration Rights Agreement.

(f) Opinion of the Company's Counsel. The Purchasers shall have received an opinion dated as of each Closing (and as of conversion of the Note) of each of (x) Christopher J. Margolin, Vice President, General Counsel and Secretary of the Company, in substantially the form attached as Exhibit C, and (y) Conyers Dill & Pearman, special counsel to the Company, in substantially the form attached as Exhibit D, and (z) Cahill Gordon & Reindel, special counsel to the Company, in substantially the form attached as Exhibit E.

(g) Performance of Obligations of the Company. The Company shall have performed or complied in all material respects with all obligations and covenants required to be performed or complied with by the Company under this Agreement and the Registration Rights Agreement and the Purchasers shall have received a certificate signed by the chief executive officer and chief financial officer of the Company to such effect.

(h) Corporate Proceedings, Approvals. All corporate proceedings and approvals of the Company in connection with the transactions contemplated under this Agreement, the Note, and the Registration Rights Agreement and all documents and instruments incident thereto, shall have been obtained, and the Purchasers and its counsel shall have received all such documents and instruments, or copies thereof, certified or requested, as may be reasonably requested.

(i) Conversion or Repayment of Note. Prior to or at the Second Closing, the Note and all accrued interest thereon shall have been converted to Common Shares or repaid in accordance with the terms set forth therein.

ARTICLE VI

TERMINATION

SECTION 6.1. Termination. This Agreement may be terminated at any time prior to the Fifth Closing:

(a) by mutual written consent of the Purchasers and the Company;

(b) by the Purchasers or the Company, if there shall be any statute, law, regulation or rule that makes consummating the transactions contemplated hereby illegal or if any court or other Governmental Entity of competent jurisdiction shall have issued judgment, order, decree or ruling, or shall have taken such other action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby and such judgment, order, decree or ruling shall have become final and

non-appealable;

(c) by the Purchasers:

(i) if the Development and License Agreement has been terminated for any reason, or if the Company shall have failed to perform in any material respect any of its obligations hereunder or under the Registration Rights Agreement, or shall have breached in any respect any representation or warranty contained herein qualified by materiality or shall have breached in any material respect any representation or warranty not so qualified, and the Company has failed to perform such obligation within 30 days of its receipt of written notice thereof from the Purchasers, and such failure to perform shall not have been waived in accordance with the terms of this Agreement;

(ii) if any of the conditions set forth in Section 5.1 or 5.3 shall become impossible to fulfill (other than as a result of any breach by the Purchasers of the terms of this Agreement) and shall not have been waived in accordance with the terms of this Agreement;

(iii) if the Common Shares shall no longer be listed on any Principal Trading Markets; or

(iv) if an Event of Default other than pursuant to Section 8(d) thereof shall have occurred under the Note.

(d) by the Company:

(i) if the Development and License Agreement has been terminated for any reason, or if the Purchasers shall have failed to perform in any material respect any of their obligations hereunder or shall have breached in any respect any representation or warranty contained herein qualified by materiality or shall have breached any material respect any representation or warranty not so qualified, and the Purchasers have failed to perform such obligation or cure such breach, within 30 days of its receipt of written notice thereof from the Company, and such failure to perform shall not have been waived in accordance with the terms of this Agreement; or

(ii) if any of the conditions set forth in Section 5.1 or 5.2 shall become impossible to fulfill (other than as a result of any breach by the Company of the terms of this Agreement) and shall not have been waived in accordance with the terms of this Agreement.

SECTION 6.2. Effect of Termination. In the event of termination of this Agreement by either the Company or the Purchasers as provided in Section 6.1, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of the Purchasers or the Company, other than the provisions of Section 4.4, this Section 6.2 and Section 8.9, except to the extent that such termination results from the breach by a party of any of its representations, warranties, covenants or agreements set forth in this Agreement, as to which breaches the parties shall retain any and all rights attendant thereto.

ARTICLE VII

INDEMNIFICATION

SECTION 7.1. Indemnification of the Purchasers.

(a) The Company covenants and agrees to indemnify and hold harmless each of the Purchasers, their Affiliates (other than the Company and any of its Subsidiaries), and their respective officers, directors, partners, employees, agents, advisers and representatives (collectively, the "Purchasers' Indemnitees") from and against, and pay or reimburse the Purchasers' Indemnitees for, any and all claims, demands, liabilities, obligations, losses, costs, expenses, fines or damages (whether absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including interest and penalties with respect thereto and all expenses incurred in the investigation or defense of any of the same or in asserting, preserving or enforcing any of their respective rights hereunder (collectively, "Losses"), resulting from or based on (or allegedly resulting from or based on) any breach by the Company of any representation, warranty, covenant or obligation of the Company hereunder. The Losses described in this Section 7.1(a) are herein referred to as "Purchasers' Indemnifiable Losses". The Company shall reimburse the Purchasers' Indemnitees for any legal or other expenses incurred by such Purchasers' Indemnitees in connection with investigating or defending any such Purchasers' Indemnifiable Losses as such expenses are incurred.

(b) In the event of any such claim against any Purchaser Indemnitee, the Purchasers shall promptly notify the Company in writing of the claim and the Company shall manage and control, at its sole expense, the defense of the claim and its settlement. The Purchaser Indemnitees shall cooperate with the Company and may, at their option and expense, be represented in any such action or proceeding. The Company shall not be liable for any set-

tlements, litigation costs or expenses incurred by the Purchaser Indemnitees without the Company's written authorization.

SECTION 7.2. Indemnification of the Company.

(a) The Purchasers, jointly and severally, covenant and agree to indemnify and hold harmless each of the Company, its Affiliates (other than the Purchasers and any of their Subsidiaries), and their respective officers, directors, partners, employees, agents, advisers and representatives (collectively, the "Company's Indemnitees") from and against, and pay or reimburse the Company's Indemnitees for, any and all Losses resulting from or based on (or allegedly resulting from or based on) any breach by a Purchaser of any representation, warranty, covenant or obligation of the Purchasers hereunder. The Losses described in this Section 7.2(a) are herein referred to as "Company's Indemnifiable Losses". The Purchasers shall reimburse the Company's Indemnitees for any legal or other expenses incurred by the Company's Indemnitees in connection with investigating or defending any such Company's Indemnifiable Losses as such expenses are incurred.

(b) In the event of any such claim against any Company Indemnitee, the Company shall promptly notify the Purchasers in writing of the claim and the Purchasers shall manage and control, at their sole expense, the defense of the claim and its settlement. The Company Indemnitees shall cooperate with the Purchasers and may, at their option and expense, be represented in any such action or proceeding. The Purchasers shall not be liable for any settlements, litigation costs or expenses incurred by the Company Indemnitees without the Purchasers' written authorization.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1. Governing Law. This Agreement shall be construed and the respective rights of the parties determined according to the substantive laws of the State of New York notwithstanding the provisions governing conflict of laws under such New York law to the contrary.

SECTION 8.2. Assignment. Neither the Company nor the Purchasers may assign this Agreement in whole or in part without the consent of the other, except if such assignment occurs in connection with the sale or transfer (by merger or otherwise) of all or substantially all of the business and assets of the Company or the Purchasers to which the subject matter of this Agreement pertains, provided that the acquirer confirms to the other party in writing its agreement to be bound by all of the terms and conditions of this Agreement.
Not-

withstanding the foregoing, either party may assign this Agreement to an Affiliate, provided that such party shall guarantee the performance of such Affiliate, and provided further that either party may assign its rights (but not its obligations) pursuant to this Agreement in whole or in part to an Affiliate of such party that is controlled by such party.

SECTION 8.3. Amendments. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous arrangements with respect to the subject matter hereof, whether written or oral. The parties also acknowledge the simultaneous execution and delivery of the Development and License Agreement, the Note and the Registration Rights Agreement, none of which shall be superseded by this Agreement. Any amendment or modification to this Agreement shall be made in writing signed by both parties.

SECTION 8.4. Notices. Notices to the Company shall be addressed to:

XOMA LTD.
2910 Seventh Street
Berkeley, California 94710
Attn: General Counsel

Telephone: (510) 644-1170
Facsimile: (510) 649-7571

with copies (which shall not constitute notice) to:

Cahill Gordon & Reindel
Eighty Pine Street
New York, New York 10005
Attn: Geoffrey E. Liebmann, Esq.
Telephone: (212) 701-3000
Facsimile: (212) 269-5420

Notices to Millennium shall be addressed to:

Millennium Pharmaceuticals, Inc.
75 Sidney Street
Cambridge, Massachusetts 02139-4815
Attn: General Counsel
Telephone: (617) 679-7000
Facsimile: (617) 621-0264

with copies (which shall not constitute notice) to:

Hill & Barlow
A Professional Corporation|
One International Place
100 Oliver Street
Boston, Massachusetts 02110-2600
Attn: Andrea M. Teichman, Esq.
Telephone: (617) 428-3000
Facsimile: (617) 428-3500

Notices to the Trust shall be addressed to:

mHOLDINGS TRUST
c/o Millennium Pharmaceuticals, Inc.
75 Sidney Street
Cambridge, Massachusetts 02139-4815
Attn: President
Telephone: (617) 679-7000
Facsimile: (617) 374-7788

With copies to:

Millennium Pharmaceuticals, Inc.
75 Sidney Street
Cambridge, Massachusetts 02139-4815
Attn: General Counsel
Telephone: (617) 679-7000
Facsimile: (617) 621-0264

Either Party may change its address to which notices shall be sent by giving notice to the other Party in the manner herein provided. Any notice required or provided for by the terms of this Agreement shall be in writing and shall be (a) delivered by hand, (b) sent by registered or certified mail, return receipt requested, postage prepaid, (c) sent via a reputable overnight courier service, or (d) sent by facsimile transmission, in each case properly addressed in accordance with the paragraph above. The effective date of notice shall be the actual date of receipt by the Party receiving the same.

SECTION 8.5. Public Announcements. The provisions of Section 14.1 of the Development and License Agreement herein shall govern any and all public statements with respect to the transactions contemplated by this Agreement.

SECTION 8.6. No Strict Construction. This Agreement has been prepared jointly and shall not be strictly construed against either Party.

SECTION 8.7. Headings. The captions or headings of the sections or other subdivisions hereof are inserted only as a matter of convenience or for reference and shall have no effect on the meaning of the provisions hereof.

SECTION 8.8. No Implied Waivers; Rights Cumulative. No failure on the part of the Company or the Purchasers to exercise, and no delay in exercising, any right, power, remedy or privilege under this Agreement, or provided by statute or at law or in equity or otherwise, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Agreement or as an acquiescence therein, nor shall any

single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

SECTION 8.9. Confidentiality. Each of the Purchasers and the Company shall, and shall cause each of its Affiliates to, treat and hold as confidential all information concerning the business and affairs of the other party disclosed to it or of which it becomes aware in connection with this Agreement that is not already generally available to the public (the "Confidential Information"), and refrain from using any of the Confidential Information except in connection with this Agreement. In the event that any party or its Affiliate is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, such party shall notify the other party promptly of the request or requirement so that such other party may seek an appropriate protective order or waive compliance with the provisions of this Section 8.9. If, in the absence of a protective order or the receipt of a waiver hereunder, any party is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, such party may disclose the Confidential Information to the tribunal; provided that such disclosing party shall use commercially reasonable efforts to obtain, at the request of the other party, an order or other assurance that confidential treatment shall be accorded to such portion of the Confidential Information required to be disclosed as the party to whom such information relates shall designate.

SECTION 8.10. Severability. If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, the parties hereto shall substitute, by mutual consent, valid provisions for such invalid, illegal or unenforceable provisions which valid provisions in their economic effect are sufficiently similar to the invalid, illegal or unenforceable provisions that it can be reasonably assumed that the parties would have entered into this Agreement with such valid provisions. In case such valid provisions cannot be agreed

upon, the invalid, illegal or unenforceable of one or several provisions of this Agreement shall not affect the validity of this Agreement as a whole, unless the invalid, illegal or unenforceable provisions are of such essential importance to this Agreement that it is to be reasonably assumed that the parties would not have entered into this Agreement without the invalid, illegal or unenforceable provisions.

SECTION 8.11. Execution in Counterparts. This Agreement may be executed in counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original, and all of which counterparts, taken together, shall constitute one and the same instrument.

SECTION 8.12. No Third Party Beneficiaries. No person or entity other than the Purchasers, the Company and their respective Affiliates and permitted assignees hereunder shall be deemed an intended beneficiary hereunder or have any right to enforce any obligation of this Agreement.

SECTION 8.13. Specific Enforcement. The Purchasers, on the one hand, and the Company, on the other, acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions hereof in any court of the United States or any state thereof having jurisdiction, this being in addition to any other remedy to which they may be entitled at law or equity.

SECTION 8.14. Cooperation. The Purchasers and the Company agree to take, or cause to be taken, all such further or other actions as shall reasonably be necessary to make effective and consummate the transactions contemplated by this Agreement.

SECTION 8.15. Expenses and Remedies. Whether or not the Closings take place, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expense.

SECTION 8.16. Transfer of Shares. The Purchasers understand and agree that the Note and the Shares have not been registered under the Securities Act or the securities laws of any state and that they may be sold or otherwise disposed of only in one or more transactions registered under the Securities Act and, where applicable, such laws or as to which an exemption from the registration requirements of the Securities Act and, where applicable, such laws is available. The Purchasers acknowledge that except as provided in the Registration Rights Agreement, the Purchasers have no right to require the Company to register the Note or the Shares and understand and agree that each certificate representing the Note or the Shares (other than, with respect to the

first legend, Shares that are no longer subject to the provisions of Section 3.6 and other than, with respect to the second legend, Shares which have

been transferred in a transaction registered under the Securities Act or exempt from the registration requirements of the Securities Act pursuant to Rule 144 thereunder or any similar rule or regulation) shall bear the legends in substantially the following form:

"THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY AN AGREEMENT ON FILE AT THE OFFICE OF THE COMPANY."

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR AN APPLICABLE EXEMPTION TO THE REGISTRATION REQUIREMENTS OF SUCH ACT OR SUCH LAWS."

and the Purchasers agree to transfer the Note and the Shares only in accordance with the provisions of such legends.

[The remainder of this page has intentionally been left blank.]

IN WITNESS WHEREOF, EACH PURCHASER and the COMPANY have each caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

XOMA LTD.

By: _____
Name:
Title:

MILLENNIUM PHARMACEUTICALS, INC.

By: _____
Name:
Title:

mHOLDINGS TRUST

By: _____
Name:
Title:

SCHEDULE 3.1(m)

CERTAIN INTELLECTUAL PROPERTY MATTERS

[*]

EXHIBIT A

[*]

[*] indicates that a confidential portion of the text of this agreement has been omitted.

THE TRANSFER OF THE SECURITIES REPRESENTED BY THIS NOTE IS RESTRICTED BY AN AGREEMENT ON FILE AT THE OFFICE OF THE COMPANY.

THE SECURITIES REPRESENTED BY THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR AN APPLICABLE EXEMPTION TO THE REGISTRATION REQUIREMENTS OF SUCH ACT OR SUCH LAWS.

XOMA LTD.
CONVERTIBLE SUBORDINATED PROMISSORY NOTE

USD $5,000,000 Dated: November 26, 2001

New York, New York

XOMA LTD., a company duly organized and existing under the laws of Bermuda (the "Company"), for value received, hereby promises to pay to mHOLDINGS TRUST or permitted registered assigns (the "Holder"), the principal sum of USD $5,000,000, with interest at the rate of the lesser of [*]. This Note is executed and delivered in connection with that certain Investment Agreement dated as of November 26, 2001 by and among the Company, the Holder and Millennium Pharmaceuticals, Inc. ("Millennium") (as the same may be amended, modified or supplemented or restated, the "Investment Agreement"). All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Investment Agreement.

1. Principal; Maturity Date. The principal of this Note shall be due and payable in a single installment on the earliest of: (a) the Second Closing Date, immediately prior to the Second Closing, (b) the tenth Business Day following the termination of the Development and License Agreement, and (c) the tenth Business Day following the first date on which the Common Shares are no longer listed on any Principal Trading Market (the earliest such date, the "Maturity Date").

2. Interest. Interest shall accrue on the unpaid principal balance of this Note at the aforesaid rate from the date of execution of this Note and shall be due and payable on the Maturity Date, unless sooner converted in accordance with the terms hereof. Interest shall accrue on overdue payments of principal and interest, unless such payments have been extended by the Holder, at the annual rate of [*].

3. Payment. Unless converted by the Company pursuant to Section 6 below or sooner converted automatically in accordance with the terms hereof, final payment in full of the principal balance (and all accrued interest) of this Note will be made to the Holder on the Maturity Date, in lawful money of the United States in immediately available funds, by wire transfer to a bank designated by the Holder.

4. Registration and Transfer of this Note. The Company will keep the registration and transfer books for this Note. This Note may be transferred only on the books of the Company. This Note may not be transferred by the Holder without the prior written consent of the Company, which may not be unreasonably withheld. Upon surrender for transfer of this Note at the principal office of the Company, duly endorsed for transfer or accompanied by a proper assignment duly executed by the registered owner or such owner's attorney in fact duly authorized in writing, the Company will issue and deliver to the transferee a new, fully registered Note in like principal amount.

5. Prepayment. The principal amount of this Note and all accrued interest thereon may be prepaid in cash at any time. Notice of any prepayment shall be given by mail at least five (5) Business Days prior to the prepayment date to the Holder at the address shown in Section 14 below. A prepayment of less than all amounts outstanding under this Note may be made, however, any such partial prepayment must be of at least [*]. Any prepayment shall be applied first, to accrued interest, and second, to principal. No further interest will accrue on the portion of this Note to be prepaid from and after the date fixed for prepayment if payment of the prepayment amount has been made or duly provided for.

6. Conversion.

(a) Subject to Sections 6(c) - (e) below, principal and accrued interest on this Note may be converted in whole at the election of the Company upon the

Maturity Date, into the Company's Common Shares, USD $0.0005 par value per share ("Common Shares"). The number of shares into which this Note may be converted shall be determined by [*].

(b) If the Company elects to convert this Note into Common Shares, it must so notify the Holder in writing at least [*] prior to the Maturity Date, and all principal and all accrued interest must be so converted. The Company may not convert partial amounts of principal or interest. Subject to Section 6(c) below, if the Company does not elect to convert this Note into Common Shares, all outstanding principal and all accrued interest thereon must be paid to the Holder in cash on the Maturity Date as set forth in Section 3, unless otherwise agreed in writing by the Holder.

(c) In no event shall the Company be entitled to convert this Note and the accrued interest into a total number of Common Shares that, together with the Second Closing Shares (if they are to be issued at the time of such conversion), exceeds 9.9% of the total is-

sued and outstanding Common Shares as of the date of such conversion; if conversion of this Note would exceed this 9.9% threshold, that portion of the principal and accrued interest that, including the Second Closing Shares (if to be then issued), would convert into 9.9% of the total issued and outstanding shares of Common Shares as of the date of such conversion shall be so converted, and the remainder of the principal and accrued interest shall be repaid in cash.

(d) The Company shall not be entitled to convert any portion of this Note or the accrued interest unless there is on the conversion date (i) an effective registration statement under the Act covering resale of all of the Common Shares into which the principal of this Note and all accrued interest thereon would convert, (ii) such Shares are listed on a Principal Trading Market, and (iii) the Company has received all requisite consents and permissions for the Conversion Shares from all applicable governmental entities, including, without limitation, the Bermuda Monetary Authority, which consent already has been obtained subject to the requirement that the Common Shares are listed on an appointed stock exchange as defined in Section 2(1) of the Companies Act 1981 of Bermuda. If such is not the case at any time prior to the Maturity Date, then this Note shall remain outstanding until the Maturity Date and, if no such effective registration statement is then in place, the Company will be required to repay all outstanding principal and accrued interest in cash on the Maturity Date. In addition, the Company shall not be entitled to convert the principal of this Note or the accrued interest during a pricing period used to determine the Second Purchase Price pursuant to the Investment Agreement.

(e) After this Note is converted pursuant to the terms of this Section 6 or repaid pursuant to Section 3, the Holder shall surrender this Note at the office of the Company. If this Note is converted, the Company shall, within three (3) Trading Days, cause to be issued and delivered to the Holder of this Note a certificate or certificates in the name of the Holder (unless otherwise designated by the Holder) for the number of shares to which the Holder of this Note shall be entitled. If this Note matures on the Second Closing Date in accordance with Section 1(a) and is converted in accordance with Section 6, such conversion shall be deemed to have been made on the Second Closing Date, immediately prior to the Second Closing. The person or persons entitled to receive the shares issued upon any conversion shall be treated for all purposes as the record holder or holders of such shares as of such date. No fractional shares shall be issued upon conversion of this Note. In lieu thereof, the Company shall pay to the Holder the amount of outstanding principal and interest that is not so converted.

(f) If the Company shall by reclassification of securities or otherwise change any of the Common Shares into the same or a different number of securities of any other class or classes, this Note shall thereafter represent the right to acquire such number and

kind of securities as would have been issuable as the result of such change with respect to the Common Shares immediately prior to such reclassification.

7. Persons Deemed Owners. The person in whose name a Note is registered on the books and records of the Company shall be deemed to be the absolute owner thereof for all purposes, and payment of any principal or interest on such Note shall be made only to the registered owner thereof or such owner's legal representative. All payments made to the registered owner or such owner's legal representative shall be valid and effectual to discharge the liability of the Company upon this Note to the extent of the sum or sums so paid.

8. Events of Default. Event of Default, whenever used herein, means any one of the following (regardless of the reason or cause of such Event of Default):

(a) The Company fails to make a payment, when due, of any principal or interest due on this Note;

(b) The entry of any decree or order by a court having jurisdiction adjudging the Company a debtor or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under US Code, Title 11 (the "Bankruptcy Code") or any other applicable federal or state law, the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company, or of any substantial part of the property of the Company, and the continuance of any such decree or order unstayed, undischarged, or undismissed and in effect for more than ninety (90) consecutive days;

(c) Institution by the Company of proceedings, under the Bankruptcy Code or any other applicable federal or state law, seeking an order for relief, or the consent of the Company to the institution of bankruptcy or insolvency proceedings against the Company, or the consent by the Company to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or other similar official of or for the Company or any substantial part of the property of the Company, or the making by the Company of any assignment for the benefit of creditors, or the taking of any action by the Company in furtherance of any such action;

(d) Any declared default of the Company under any other material indebtedness of the Company that gives the lender or holder of such indebtedness the right to accelerate such indebtedness, and such indebtedness is in fact accelerated;

(e) Any representation or warranty made by the Company in or in connection with the Investment Agreement or the Registration Rights Agreement shall prove to have been false or misleading in any material respect when made or deemed to be made; or

(f) Default shall have been made by the Company in the due observance or performance of any covenant or agreement contained in this Note, the Investment Agreement or the Registration Rights Agreement and such default shall continue for [*] after written notice thereof to the Company by the Holder or Millennium.

(g) [*]

9. Subordination. The indebtedness evidenced by this Note is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full in cash of all Senior Indebtedness (as defined in Section 9(d) below) of the Company. The Holder, by its acceptance of this Note agrees to be bound by such provisions.

(a) Insolvency Proceedings. If there shall occur any receivership, insolvency, assignment for the benefit of creditors, bankruptcy (voluntary or involuntary), reorganization or arrangements with creditors (whether or not pursuant to bankruptcy or other insolvency laws), sale of all or substantially all of the assets (other than in the form of a merger not resulting in insolvency), dissolution, liquidation, or any other marshaling of the assets and liabilities of the Company, (i) the holder(s) of Senior Indebtedness shall be entitled to receive payment in full in cash of all Senior Indebtedness then outstanding before the Holder shall be entitled to receive any payment or distribution, whether in cash, securities or other property, in respect of the principal of, interest on or other amounts due with respect to this Note at the time outstanding, and (ii) any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated, at least to the extent provided in this Section 9, to the payment of all Senior Indebtedness at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) which would otherwise (but for this Section 9) be payable or deliverable in respect of the amounts due under this Note shall be paid or delivered directly to the holder(s) of the Senior Indebtedness (ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness held by each) or to a trustee or other representative for holder(s) of Senior Indebtedness.

(b) Permitted Payments; Default on Senior Indebtedness. Subject to Section 9(a), so long as there shall not have occurred and be continuing an event of default which has been declared in writing, or is automatically effective in the case of bankruptcy or insolvency events, with respect to any Senior Indebtedness (as such event of default is defined therein or in the instrument under which it is outstanding), which event of default permits the holder or its representative to accelerate the maturity thereof (a "Senior Default"), the Company shall be

permitted to make, subject to the limitations set forth in Section 5, and the Holder to accept and receive, payments of principal and accrued interest under this Note.

Notwithstanding anything to the contrary contained in this Section 9, the Company shall not make and the Holder shall not receive any payment of any kind or amounts payable under this Note after delivery by a holder of Senior Indebtedness to the Company and the Holder of written notice that a Senior Default has occurred; provided, however, that such payments may thereafter be made if such holder of Senior Indebtedness consents to such payments in writing or agrees in writing that such Senior Default has been cured or waived.

(c) Acceleration; Enforcement Rights. Prior to the payment in full in cash of the Senior Indebtedness, except for payments or conversions permitted or required under Section 1, 2, 3, 6, 8(g), 9(a) or 9(b), the Holder shall have no right to accelerate the maturity of the amounts due under this Note or otherwise demand payment thereof, or institute or attempt to institute any bankruptcy or insolvency proceedings against the Company without the prior written consent of each holder of Senior Indebtedness.

(d) Turnover of Payments. Except for payments or conversions permitted or required under Section 1, 2, 3, 6, 8(g), 9(a) or 9(b), should any payment or distribution, whether in cash, securities or other property, be received by the Holder upon or with respect to the amounts payable under this Note by any means, including, without limitation, set off, prior to the payment in full in cash of the Senior Indebtedness, the Holder shall receive and hold the same in trust, as trustee, for the benefit of the holder(s) of the Senior Indebtedness, and shall forthwith deliver the same to the holder(s) of the Senior Indebtedness (ratably according to the aggregate amounts remaining unpaid on account of the Senior Indebtedness held by each) or to a trustee or other representative for holder(s) of Senior Indebtedness in precisely the form received for application to the Senior Indebtedness (whether or not it is then due).

(e) Subrogation. Except for payments or conversions permitted or required under Section 1, 2, 3, 6, 8(g), 9(a) or 9(b), subject to the payment in full in cash of all Senior Indebtedness and the termination of any commitments to lend under the agreements or instruments governing such Senior Indebtedness, the Holder shall be subrogated to the rights of the holder(s) of such Senior Indebtedness (to the extent of the payments or distributions made to the holder(s) of such Senior Indebtedness pursuant to the provisions of this Section 9) to receive payments and distributions of assets of the Company applicable to the Senior Indebtedness. No such payments or distributions applicable to the Senior Indebtedness shall, as between the Company and its creditors, other than the holder(s) of Senior Indebtedness and the Holder, be deemed to be a payment by the Company to or on account of the Senior Indebtedness.

(f) Continuing Subordination. The subordination effected by these provisions is a continuing subordination and may not be modified or terminated by the Holder until payment in full in cash of the Senior Indebtedness. At any time and from time to time, without the consent of or notice to the Holder and without impairing or affecting the obligations of

the Holder hereunder: (i) the time for the Company's performance of, or compliance with any agreement relating to Senior Indebtedness may be modified or extended or such performance may be waived; (ii) a holder of Senior Indebtedness may exercise or refrain from exercising any rights under any agreement relating to the Senior Indebtedness; (iii) any agreement relating to the Senior Indebtedness may be revised, amended or otherwise modified for the purpose of adding or changing any provision thereof or changing in any manner the rights of the Company, any holder of Senior Indebtedness or any guarantor thereunder; (iv) payment of Senior Indebtedness or any portion thereof may be accelerated or extended or refunded or any instruments evidencing the Senior Indebtedness may be renewed in whole or in part; (v) any person liable in any manner for payment of the Senior Indebtedness may be released by a holder of Senior Indebtedness; (vi) a holder of Senior Indebtedness may make loans or otherwise extend credit to the Company whether or not any default or event of default exists with respect to such Senior Indebtedness; and (vii) a holder of Senior Indebtedness may take and/or release any lien at any time on any collateral now or hereafter securing the Senior Indebtedness and take or fail to take any action to perfect any lien at any time granted therefor, and take or fail to take any action to enforce such liens. Notwithstanding the occurrence of any of the foregoing, these subordination provisions shall remain in full force and effect with respect to the Senior Indebtedness.

(g) Holder's Waivers. The Holder hereby expressly waives for the benefit of the holder(s) of Senior Indebtedness (i) all notices not specifically required pursuant to the terms of this Note (other than notices of the incurrence of

Senior Indebtedness, which shall be provided to the Holder substantially concurrently with the incurrence of such Senior Indebtedness); (ii) any claim which the Holder may now or hereafter have against a holder of Senior Indebtedness arising out of any and all actions which a holder of Senior Indebtedness in good faith takes or omits to take with respect to the Senior Indebtedness (including, without limitation, (A) actions with respect to the creation, perfection or continuation of liens in or on any collateral security for the Senior Indebtedness, (B) actions with respect to the occurrence of an event of default under any Senior Indebtedness, (C) actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of the collateral security for the Senior Indebtedness and (D) actions with respect to the collection of any claim for all or any part of the Senior Indebtedness or the valuation, use, protection or release of any collateral security for the Senior Indebtedness; and (iii) any right to require holders of Senior Indebtedness to exhaust any collateral or marshal any assets.

(h) Reliance of Holder(s) of Senior Indebtedness. The Holder, by its acceptance hereof, shall be deemed to acknowledge and agree that the foregoing subordination provisions are, and are intended to be, an inducement to and a consideration of each holder of Senior Indebtedness, whether such Senior Indebtedness was created or acquired before or after the creation of the indebtedness evidenced by this Note, and each such holder of Senior In-

debtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and holding, or in continuing to hold, such Senior Indebtedness.

(i) Definition of Senior Indebtedness. For purposes of this Section 9, "Senior Indebtedness" means (x) the principal of, premium, if any, interest, rent and royalties payable on, or in connection with, and all fees, costs, expenses and other amounts accrued or due on, or in connection with, indebtedness of the Company, whether outstanding on the date hereof or hereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company to banks, insurance companies, pension funds, leasing companies or other institutions regularly engaged in the business of lending money, for money borrowed from such institutions by the Company for working capital purposes, acquisitions or otherwise, (y) that certain Convertible Subordinated Note Agreement, dated April 22, 1996, between the Company and Genentech, Inc., as amended (the "Genentech Note"), and (z) any deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to any such indebtedness or any indebtedness issued in exchange, replacement, refunding or refinancing of, or for, Senior Indebtedness by banks, insurance companies, pension funds, leasing companies or other institutions regularly engaged in the business of lending money. Any debt may by its terms declare that it is junior to the debt evidenced by this Note.

10. Amendment. The terms of this Note may only be modified by the Holder and the Company in writing.

11. Additional Terms and Conditions. The Company (i) waives presentment, demand, notice of demand, protest, notice of protest, and notice of nonpayment and any other notice required to be given under the law to the Company, in connection with the delivery, acceptance, performance, default or enforcement of this Note, except for notice of proposed transfer of this Note in accordance with the terms hereof; (ii) agrees that any failure to act or failure to exercise any right or remedy, on the part of the Holder shall not in any way affect or impair the obligations of the Company or be construed as a waiver by the Holder of, or otherwise affect, any of its rights under this Note; (iii) agrees to pay, on demand, all costs and expenses of collection of this Note and/or the enforcement of the Holder's right hereunder, including reasonable attorney's fees and disbursements; and (iv) will not willfully avoid or seek to avoid the observance or performance of any of the terms of this Note, but shall at all times in good faith assist in the carrying out of all of the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder against impairment.

12. Invalidity. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Note operate or would prospectively operate to invalidate this Note, then and in either of those events, such

provision or provisions only shall be deemed null and void and shall not affect any other provision of this Note and the remaining provisions of this Note shall remain operative and in full force and effect and shall in no way be affected, prejudiced and disturbed thereby.

13. Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New York notwithstanding the provisions governing conflict of laws under such New York law to the contrary.

14. Notices. All notices, requests, consents, and other communications under this Note shall be in writing and shall be (a) delivered by hand, (b) mailed by certified or registered mail, return receipt requested, postage prepaid, (c) sent via reputable overnight courier service, or (d) sent by facsimile transmission.

Notices to the Company shall be addressed to:

XOMA LTD.
2910 Seventh Street
Berkeley, California 94710
Attn: General Counsel
Telephone: (510) 644-1170
Facsimile: (510) 644-7571

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

Cahill Gordon & Reindel
Eighty Pine Street
New York, New York 10005
Attn: Geoffrey E. Liebmann, Esq.
Telephone: (212) 701-3000
Facsimile: (212) 269-5420

Notices to the Holder shall be addressed to:

mHOLDINGS TRUST
c/o Millennium Pharmaceuticals, Inc.
75 Sidney Street
Cambridge, Massachusetts 02139-4815
Attn: President
Telephone: (617) 679-7000
Facsimile: (617) 374-7788

With a copy to:

Millennium Pharmaceuticals, Inc.
75 Sidney Street
Cambridge, Massachusetts 02139-4815
Attn: General Counsel
Telephone: (617) 679-7000
Facsimile: (617) 621-0264

Notices provided in accordance with this Section 14 shall be effective upon actual receipt by the party receiving the same.

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IN WITNESS WHEREOF, this Note has been duly executed and delivered by the Company as of the date first written above.

COMPANY:

XOMA LTD.

By:
Its:

[*] indicates that a confidential portion of the text of this agreement has been omitted.

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT, dated as of November 26, 2001 (this "Agreement"), is made by and among XOMA Ltd., a Bermuda company (the "Company"), mHoldings Trust, a Massachusetts business trust, and Millennium Pharmaceuticals, Inc., a Delaware corporation (mHoldings Trust and Millennium Pharmaceuticals, Inc. collectively referred to as the "Initial Investor").

W I T N E S S E T H :

WHEREAS, in connection with an Investment Agreement dated as of November 26, 2001, between the Initial Investor and the Company (the "Investment Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Investment Agreement, to issue and sell to the Initial Investor a Convertible Promissory Note in the principal amount of $5,000,000 (the "Note"), convertible into the Company's Common Shares, $0.0005 par value per share (the "Common Shares") and up to $45,000,000 in Common Shares (the Common Shares issued to the Initial Investor pursuant to the Investment Agreement and the Common Shares issuable upon conversion of the Note hereinafter referred to as the "Shares"); and

WHEREAS, to induce the Initial Investor to execute and deliver the Investment Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "Securities Act"), and applicable state securities laws with respect to the Shares;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Initial Investor hereby agree as follows:

1. Definitions.

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

(i) "Investor" or "Investors" means the Initial Investor and any permitted transferees or assignees of Shares or the Note issued to the Initial Investor provided such transferee or assignee agrees to become bound by the provisions of this Agreement in accordance with Section 9 hereof (and in the event of any such transfer, when the consent by or action of the Investor is required hereunder, such event or action shall be deemed

taken if approved by the Investors holding a majority of the Registrable Securities).

(ii) "register," "registered," and "registration" refer to a registration effected by (x) preparing and filing a Registration Statement or Statements in compliance with the Securities Act on such appropriate registration form promulgated by the United States Securities and Exchange Commission ("SEC") as shall be selected by the Company, and, when required pursuant to Section 2 hereof, shall permit the disposition of Registrable Securities in accordance with the intended method or methods specified by the holders of Registrable Securities, other than by an underwritten offering, and (y) the declaration or ordering of effectiveness of such Registration Statement by the SEC.

(iii) "Registrable Securities" means the Shares; provided, however, that such Shares shall cease to be Registrable Securities (i) upon any sale thereof pursuant to a registration statement or Rule 144 promulgated under the Securities Act, (ii) during such period, as determined by counsel to the Company, as Rule 144 would permit the Investors to sell all Registrable Securities to the public without registration in a period of 90 consecutive days (but only so long as the Company meets the "current public information" requirements of Rule 144) or (iii) at such time as paragraph (k) of Rule 144 under the Securities Act becomes available to such Investor for the sale of such Shares as determined by counsel to the Company; provided, further, that if,

subsequent to Shares ceasing to be Registrable Securities, the issuance of additional Shares at a subsequent Closing causes the additional Shares not to meet one of the three criteria noted above, then such additional Shares shall be deemed Registrable Securities.

(iv) "Registration Statement" means a registration statement under the Securities Act registering Registrable Securities, including, without limitation, a Shelf Registration Statement.

(b) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Investment Agreement.

2. Registration.

(a) Shelf Registration. The Company shall file, by no later than three months prior to each of the Second Closing, Third Closing, Fourth Closing and Fifth Closing, a "shelf" registration statement covering the Registrable Securities rea-

sonably expected by the Company to be issued at the next Closing (and, with respect to the Second Closing, if the Note is converted, upon such conversion), in each case on any appropriate form pursuant to Rule 415 under the Securities Act (each such "shelf" registration statement, a "Shelf Registration Statement") in order to permit the offer and sale of the Registrable Securities from time to time by an Investor while such Shelf Registration Statement is effective and current; provided that the Company shall have no such obligation with respect to any Shares it has elected not to issue at any such Closing, as provided in the Investment Agreement; and provided, further, that the Company shall have no obligation to file a Shelf Registration Statement as provided for above to the extent a Registration Statement covering the Registrable Securities reasonably expected by the Company to be issued at the next Closing has already been filed pursuant to this Section 2. Effectiveness of a Shelf Registration Statement covering all Shares to be issued at the Second Closing and, if the Note is converted, all Shares issuable upon such conversion shall be a condition to the Purchasers' obligations at the Second Closing, as more fully set forth in the Investment Agreement. Effectiveness of a Shelf Registration Statement covering all Shares to be issued at the Third Closing shall be a condition to the Purchasers' obligations at the Third Closing, as more fully set forth in the Investment Agreement. Effectiveness of a Shelf Registration Statement covering all Shares to be issued at the Fourth Closing shall be a condition to the Purchasers' obligations at the Fourth Closing, as more fully set forth in the Investment Agreement. Effectiveness of a Shelf Registration Statement covering all Shares to be issued at the Fifth Closing shall be a condition to the Purchasers' obligations at the Fifth Closing, as more fully set forth in the Investment Agreement. If for any reason, notwithstanding the provisions of this Section 2(a), an Investor holds Shares that are not covered by a Shelf Registration Statement due to the failure of a Shelf Registration Statement to be effective, or the failure of a Shelf Registration Statement to cover all of the Shares issued at the Closing or Closings that shall have transpired (and, if the Note is converted, upon such conversion), then subject to Section 3(a) hereof, the Company shall as soon as reasonably practicable file a new Shelf Registration Statement covering such Shares. Subject to Section 3(a) hereof, the Company shall use commercially reasonable efforts to (i) have each Shelf Registration Statement declared effective as soon as reasonably practicable after its filing, and (ii) keep such registration statement continuously effective until all Registrable Securities included therein cease to be Registrable Securities.

(b) Demand Registration. If, at any time after the Second Closing Date under the Investment Agreement, a Shelf Registration Agreement covering all of the outstanding Shares and, if the Note is converted, Shares issuable upon conversion

of the Note, is not effective due to the failure of a Shelf Registration Statement to cover all of the Shares issued at the Closing or Closings that shall have transpired (and, if the Note is converted, upon such conversion), Investors holding a majority of the Registrable Securities may notify the Company in writing that they intend to offer or cause to be offered for public sale Registrable Securities held by such Investors, other than by an underwritten offering. Upon receipt of such notice, the Company shall forthwith

cause such of the Registrable Securities as may be requested by any Investor to be registered under the Securities Act as soon as reasonably practicable. Upon exercise of a right for registration of any Registrable Securities under this Section 2(b) by such Investors, the Company shall prepare and file a Registration Statement covering such Registrable Securities with the SEC as promptly as practicable, but in any event not later than [*] after the Company's receipt of such request.

(c) The manner of disposition of any Registrable Securities provided for in any Registration Statement required to be filed pursuant to this Section 2 shall not be required to include an underwritten offering.

3. Obligations of the Company. In connection with the registration of the Registrable Securities, the Company shall:

(a) prepare and file with the SEC within the applicable time frames set forth in Section 2 a Registration Statement or Statements with respect to all Registrable Securities to be included therein, and thereafter use commercially reasonable efforts to cause the Registration Statement to become effective as soon as reasonably practicable after such filing. If such Registration Statement is filed pursuant to Rule 415, the Company shall use its commercially reasonable efforts, subject to the next paragraph, to keep the Registration Statement effective pursuant to Rule 415 at all times while the shares covered thereby remain Registrable Securities.

Notwithstanding anything to the contrary in Section 2 or Section 3 hereof, if at any time or from time to time after the effective date of a Registration Statement filed pursuant to Section 2, the Company notifies the Investor in writing of the existence of a Potential Material Event (as defined below), the Investor shall not offer to sell any Shares or engage in any other transaction involving or relating to Shares, from the time of the giving of notice with respect to a Potential Material Event until the Investor receives written notice from the Company that such Potential Material Event either has been disclosed to the public or no longer constitutes a Potential Material Event, but in no event for a period of more than [*] (a "Suspension Period"). Notwithstanding anything to the

contrary, the Company may not declare Suspension Periods [*]. If a Potential Material Event shall occur prior to the date a Registration Statement is filed under Section 2, then the Company's obligation to file such Registration Statement shall be delayed without penalty for not more than, (x) [*] with respect to the applicable Closing, in the case of a Registration Statement to be filed under Section 2(a), and (y) [*] as a result of any such Potential Material Events in any twelve-month period, in the case of a Registration Statement to be filed under Section 2(b). If a Potential Material Event shall occur either (i) prior to the date a Registration Statement is filed under Section 2(a), or (ii) after the date such Registration Statement is filed under Section 2(a) but prior to the date a Registration Statement is effective under Section 2(a), then the Second Closing, Third Closing, Fourth Closing or Fifth Closing as appropriate shall be delayed, for not more than [*] and not more than once for each Closing, unless otherwise agreed to by the Investor. PRIOR TO A REGISTRATION STATEMENT BEING DECLARED EFFECTIVE, THE COMPANY MUST GIVE INVESTOR NOTICE IN WRITING OF THE EXISTENCE OF A POTENTIAL MATERIAL EVENT PROMPTLY UPON DETERMINATION THAT SUCH AN EVENT WILL IMPACT THE EXPECTED TIMING OF THE EFFECTIVENESS OF SUCH REGISTRATION STATEMENT OR OF THE NEXT CLOSING. AFTER A REGISTRATION STATEMENT IS DECLARED EFFECTIVE, THE COMPANY MUST GIVE INVESTOR NOTICE IN WRITING OF THE EXISTENCE OF A POTENTIAL MATERIAL EVENT PROMPTLY UPON DETERMINATION THAT SUCH AN EVENT EXISTS.

For purposes of this Agreement, "Potential Material Event" means (i) any engagement or activity by, or circumstance or development involving, the Company, disclosure of which in a Registration Statement would, in the good faith determination of the Chief Executive Officer or the Board of Directors of the Company, materially adversely affect the Company, which determination shall be accompanied by a good faith determination by the Chief Executive Officer or the Board of Directors of the Company that such Registration Statement would be materially misleading absent the inclusion of such information, or (ii) pursuant to applicable law, the Company is required to file a post-effective amendment to the then-effective Registration Statement(s) because the Company experiences a fundamental change;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration

Statement(s) and the prospectus(es) used in connection with the Registration Statement(s) as may be necessary to keep the Registration Statement(s) effective at all times while the

Company is obligated to keep such Registration Statement current in accordance with Section 3(a);

(c) furnish to each Investor whose Registrable Securities are included in a Registration Statement, such number of copies of a prospectus, and all amendments and supplements thereto as are required by applicable provisions of the Securities Act, and such additional copies as such Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Investor;

(d) use commercially reasonable efforts to (i) register and qualify the Registrable Securities covered by a Registration Statement under such other securities or blue sky laws of such jurisdictions in the United States in which the Investors are residents, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as conditions thereto to (I) qualify to do business in any jurisdictions where it would not otherwise be required to qualify but for this Section 3(d), (II) subject itself to general taxation in any such jurisdiction, (III) file a general consent to service of process in any such jurisdiction, (IV) provide any undertakings that cause more than nominal expense or burden to the Company or (V) make any change in its memorandum of continuance or bye-laws;

(e) as promptly as practicable after becoming aware of such event, notify each Investor who holds Registrable Securities being sold pursuant to such registration of the happening of any event of which the Company has knowledge, as a result of which the prospectus included in any Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and subject to Section 3(a) hereof, use commercially reasonable efforts promptly to prepare a supplement or amendment to the Registration Statement to correct such untrue statement or omission, and deliver a number of copies of such supplement or amendment to each Investor as such Investor may reasonably request;

(f) as soon as reasonably practicable after becoming aware of such event, notify each Investor who holds Registrable Securities being sold pursuant to such

registration of the issuance by the SEC of any stop order or other suspension of effectiveness of the Registration Statement; and use commercially reasonable efforts to prevent the issuance of any stop order or other order suspending the effectiveness of such Registration Statement and, if such an order is issued, to obtain the withdrawal thereof at the earliest possible time and to notify each Holder of the issuance of such order and the resolution thereof;

(g) permit a single counsel designated in writing to the Company as selling shareholders' counsel by the Investors who hold a majority in interest of the Registrable Securities being sold pursuant to such registration to review such Registration Statement and all amendments and supplements thereto a reasonable period of time prior to their filing with the SEC, and shall give commercially reasonable consideration in good faith to any comments of such counsel;

(h) make generally available to its security holders as soon as practicable, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Rule 158 under the Securities Act) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of each Registration Statement;

(i) make available for inspection by any Investor whose Registrable Securities are being sold pursuant to such registration, and any

attorney, accountant or other agent retained by any such Investor (collectively, the "Inspectors"), all pertinent financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably necessary to enable each Investor to exercise its due diligence responsibility, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request for purposes of such due diligence; provided, however, that each Inspector shall hold in confidence and shall not make any disclosure (except to an Investor) of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (i) the disclosure of such Record is necessary to avoid or correct a material misstatement or omission in any Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction or (iii) the information in such Records 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 confidentiality agreements (in form and

substance satisfactory to the Company) with the Company with respect thereto. 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 its 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) the disclosure of such information is necessary to avoid or correct a material misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning 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, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information;

(j) use commercially reasonable efforts either to secure the quotation or listing of the Registrable Securities on the Principal Trading Market or, if despite the Company's commercially reasonable efforts to satisfy the preceding requirement, the Company is unsuccessful in securing such quotation, to arrange for at least two market makers to register with the National Association of Securities Dealers, Inc. ("NASD") as such with respect to such Registrable Securities;

(k) provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the Registration Statement;

(l) cooperate with the Investors who hold Registrable Securities being sold to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities sold in the denominations or amounts, as the case may be, and registered in such names as the Investors may reasonably request within three (3) Trading Days after the sale of such Registrable Securities in accordance with an effective and current Registration Statement or Rule 144. In connection therewith, the Company shall deliver, and shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Securities (with copies to the Investors whose

Registrable Securities are included in such Registration Statement) instructions to the transfer agent to issue new share certificates without a legend. The Company shall notify each Investor of the effectiveness of each Registration Statement promptly following such effectiveness; and

(m) take such other commercially reasonable actions as are necessary to expedite and facilitate disposition by the Investor of the Registrable Securities pursuant to the Registration Statement.

4. Obligations of the Investors. In connection with the registration of the Registrable Securities pursuant to Section 2 of this Agreement, the Investors shall have the following obligations:

(a) It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Agreement with respect to each Investor that such Investor shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of the Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least ten (10) days prior to the first anticipated filing date of a Registration Statement, the Company shall notify each Investor of the information the Company requires from each such Investor (the "Requested Information") if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. If within four (4) business days prior to the filing date the Company has not received the Requested Information from an Investor (a "Non-Responsive Investor"), then the Company may file such Registration Statement without including Registrable Securities of such Non-Responsive Investor;

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

(c) Each Investor agrees that, upon receipt of any notice from the Company pursuant to Section 3(a) or of the happening of any event of the kind described in Section 3(e) or 3(f) such Investor will immediately discontinue disposition of Registrable Securities pursuant to a Registration Statement covering such Registrable Securities until (I) in the case of a Potential Material Event, the end of the time period specified in Section 3(a), (II) in the case of Section 3(e), un-

til such Investor's receipt of the copies of the supplemented or amended prospectus contemplated therein, and if so directed by the Company, such Investor shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in such Investor's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice and (III) in the case of Section 3(f), the lifting of the order contemplated by such section; and

(d) For any offer or sale of any of the Registrable Securities under a Registration Statement by the Investor in a transaction that is not exempt under the Securities Act, the Investor, in addition to complying with any other federal securities law, shall deliver a copy of the final prospectus (together with any amendment of or supplement to such prospectus) of the Company covering the Registrable Securities, in the form furnished to the Investor by the Company, to the purchaser of any of the Registrable Securities on or before the settlement date for the purchase of such Registrable Securities.

5. Expenses of Registration. All expenses (other than broker discounts and/or commissions and share transfer taxes) incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees and the fees and disbursements of counsel for the Company and of one legal counsel representing the Investors not to exceed [*] per Registration Statement, shall be borne by the Company.

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

(a) To the fullest extent permitted by law, the Company will indemnify and hold harmless each Investor who holds such Registrable Securities, the directors, if any, of such Investor, the officers, if any, of such Investor, and each person, if any, who controls any Investor within the meaning of the Securities Act or the Exchange Act (each, an "Indemnified Person"), against any losses, claims, damages, expenses or liabilities (joint or several) (collectively "Claims") to which any of them become subject under the Securities Act, the Exchange Act or

other federal or state law, insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact con-

tained in a 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 any preliminary prospectus (as amended or supplemented if the Company files any amendment or supplement thereto with the SEC) if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC), if used within the period during which the Company shall be required to keep such Registration Statement current pursuant to the terms of this Agreement, or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law or any rule or regulation thereunder (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). Subject to the restrictions set forth in Section 6(d) with respect to the number of legal counsel, the Company shall reimburse the Investors and each such controlling person, as soon as reasonably practicable as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (I) shall not apply to a Claim arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person; (II) with respect to any preliminary prospectus, shall not inure to the benefit of any such person from whom the person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any person controlling such person) if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected in the prospectus, as then amended or supplemented, if such prospectus was timely made available by the Company pursuant to Section 3(c) hereof; and (III) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld. 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 pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to indemnify and hold harmless, to the same extent and in the same manner set forth in Section 6(a), 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 Securities

Act or the Exchange Act, any underwriter and any other shareholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such shareholder or underwriter within the meaning of the Securities Act or the Exchange Act against any Claims to which any of them may become subject, under the Securities Act, the Exchange 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, 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 such Registration Statement or any amendment thereof or supplement thereto; and such Investor will promptly 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 6(b) 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 the Investor shall be liable under this Section 6(b) for only that amount of a Claim as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(b) 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.

(c) The Company shall be entitled to receive indemnities from selling brokers, dealer managers and similar securities industry professionals participating in any distribution with respect to information such persons so furnished in writing by such persons expressly for inclusion in the Registration Statement.

(d) Promptly after receipt by an indemnified party under this Section 6 of notice of the commencement of any action (including any governmental action), such indemnified party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written 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 parties; provided, however, that any indemnified party shall have the right to retain its own counsel, with the reasonable 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 party and the indemnifying party would be inappropriate due to actual or potential differing interests between any indemnified party and an indemnifying party represented by such counsel in such proceeding. Notwithstanding the foregoing, the Company shall be obligated to pay for only one separate legal counsel for the Investors, which shall be selected by the Investors holding a majority in interest of the Registrable Securities. The failure to deliver written 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 party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action. The indemnification required by this Section 6 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.

7. Contribution. In order to provide for just and equitable contribution, if a claim for indemnification pursuant to this Agreement is made but it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that such indemnification may not be enforced in such case, even though the express provisions hereof provide for indemnification in such case, then the indemnifying party, on the one hand, and the indemnified party on the other hand, shall contribute to the losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements to which the indemnified persons may be subject in accordance with the relative benefits received by the indemnifying party, on the one hand, and the indemnified party, on the other hand, and also the relative fault of the parties, in connection with the statements, acts or omissions which resulted in such losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses and disbursements, and the relevant equitable considerations shall also be considered, but contribution by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities. No person found liable for a fraudulent misrepresentation shall be entitled to contribution from any person who is not also found liable for such fraudulent misrepresentation.

8. Reports Under Exchange Act. With a view to making available to the Investors the benefits of Rule 144 or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without regis-

tration, until such time as the Investors have sold all the Registrable Securities pursuant to a Registration Statement or Rule 144 or until paragraph (k) of Rule 144 becomes available with respect to the sale of all Registrable Securities, the Company agrees to use commercially reasonable efforts to:

(a) make and keep current public information available under paragraph (c) of Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act and furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request such information as may be reasonably requested to permit the Investors to sell such Securities pursuant to Rule 144 without registration.

9. Assignment of the Registration Rights. The rights to have the Company register Registrable Securities pursuant to this Agreement may be assigned by the Investors to permitted transferees or assignees of all or any portion of the Shares only if: (a) such transfer or assignment is made in compliance with the Investment Agreement, (b) the Company is, within a reasonable time after transfer or assignment of such securities, furnished with written notice of (i) the name and address of such transferee or assignee and (ii) the securities with respect to which such registration rights are being transferred or assigned, (c) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws, and (d) at or before the time the Company received the written notice contemplated by clause (b) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein.

10. Amendment of Registration Rights. Any provision of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investors holding a majority of the Registrable Securities. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company.

11. Miscellaneous.

(a) A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Com-

pany shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

(b) Except as otherwise provided in this Agreement, any notice which is required or convenient under the terms of this Agreement shall be duly given if it is in writing and (a) delivered in person (b) mailed by certified mail, return receipt requested, postage prepaid, (c) sent by private overnight courier service (such as Federal Express), or (d) sent by facsimile transmission and directed as follows:

(i) If to the Company, addressed to:

XOMA LTD.
2910 Seventh Street
Berkeley, California 94710
Attn: General Counsel
Telephone: (510) 644-1170
Facsimile: (510) 649-7571

with copies (which shall not constitute notice) to:

Cahill Gordon & Reindel
Eighty Pine Street
New York, New York 10005
Attn: Geoffrey E. Liebmann
Telephone: (212) 701-3000
Facsimile: (212) 269-5420

(ii) If to the Initial Investor, addressed to:

Millennium Pharmaceuticals, Inc.
75 Sidney Street
Cambridge, Massachusetts 02139-4815

Attn: General Counsel
Telephone: (617) 679-7000
Facsimile: (617) 621-0264

with copies (which shall not constitute notice) to:

Hill & Barlow
A Professional Corporation
One International Place
100 Oliver Street
Boston, Massachusetts 02110-2600
Attn: Andrea M. Teichman, Esq.
Telephone: (617) 428-3000
Facsimile: (617) 428-3500

(iii) If to any other investor, at such address (or facsimile number) as such Investor shall have provided in writing to the Company; or

in the case of clauses (i) through (iii) above, at such other address as each such party furnishes by notice given in accordance with this Section 11(b). The effective date of notice shall be the actual date of receipt by the party receiving same.

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

(d) This Agreement shall be enforced, governed by and construed in accordance with the laws of the State of New York notwithstanding the provisions governing conflict of law under such law of the State of New York to the contrary. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

(e) This Agreement constitutes the entire agreement among 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 with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof.

(f) Subject to the requirements of Section 9 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

(g) All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

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

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of day and year first above written.

XOMA LTD.

By

Name

Title

MILLENNIUM PHARMACEUTICALS, INC.

By

Name

Title

MHOLDINGS TRUST

By

Name

Title
