As filed with the Securities and Exchange Commission on January 11, 2006
(S-4) Registration No. 333-130441 / (S-3) Registration No. 333-130442

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 2 TO
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
(with respect to 6.50% Convertible SNAPs $_{SM}$ due 2012 being offered in the exchange offer)

AMENDMENT NO. 2 TO
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933
(with respect to the 6.50% Convertible SNAPs $_{SM}$ due 2012 being offered for cash)

XOMA Ltd.
(Exact name of registrant as specified in its charter)

Bermuda	**52-2154066**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

2910 Seventh Street
Berkeley, California 94710
(510) 204-7200
(Address, including ZIP code, and telephone number, including area code, of registrant's principal executive offices)

Christopher J. Margolin, Esq.
XOMA Ltd.
2910 Seventh Street
Berkeley, California 94710
(510) 204-7292
(Name, address, including ZIP code, and telephone number, including area code, of agent for service)

Copies to:

James B. Bucher, Esq.	**Geoffrey E. Liebmann, Esq.**	**Abigail Arms, Esq.**
Shearman & Sterling LLP	**Cahill Gordon & Reindel LLP**	**Shearman & Sterling LLP**
1080 Marsh Road	**80 Pine Street**	**801 Pennsylvania Avenue, N.W.**
Menlo Park, CA 94025	**New York, New York 10005**	**Washington, D.C. 20004**
(650) 838-3600	**(212) 701-3000**	**(202) 508-8000**

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.
If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. ☐
If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended (Securities Act), please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐
If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐
If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ☐
If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ☐
If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(c) under the Securities Act, check the following box. ☐
If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ☐

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the SEC acting pursuant to Section 8(a) may determine.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 21. Exhibits and Financial Statement Schedules

(a) Exhibits

Exhibit Number		Page
1.1	Form of Dealer Manager Agreement.*	
1.2	Form of Placement Agreement.*	
3.1	Memorandum of Continuance of XOMA Ltd. (Exhibit 3.4)(1)	
3.2	Bye-Laws of XOMA Ltd. (as amended) (Exhibit 3.2)(1)	
4.1	Shareholder Rights Agreement dated as of February 26, 2003 by and between XOMA Ltd. and Mellon Investor Services LLC as Rights Agent (Exhibit 4.1)(1)	
4.2	Form of Resolution Regarding Preferences and Rights of Series A Preference Shares (Exhibit 4.2)(1)	
4.3	Form of Resolution Regarding Preferences and Rights of Series B Preference Shares (Exhibit 4.3)(2)	
4.4	Form of Common Stock Purchase Warrant (Incyte Warrants) (Exhibit 2)(3)	
4.5	Indenture dated as of February 7, 2005, between XOMA Ltd. and Wells Fargo Bank, National Association, as trustee (Exhibit 4.1)(4)	
4.6	Form of Indenture between XOMA Ltd. and Wells Fargo Bank, National Association, as trustee, relating to the Company's 6.50% Convertible SNAPs$_{SM}$ due February 1, 2012*	
5.1	Opinion of Cahill Gordon & Reindel LLP**	
5.2	Opinion of Conyers Dill & Pearman**	
10.1	Registration Rights Agreement dated as of February 7, 2005, between XOMA Ltd. and J.P. Morgan Securities Inc. on behalf of the initial purchasers (Exhibit 4.2)(4)	
12.1	Statements regarding Computation of Ratio of Earnings to Fixed Charges***	
23.1	Consent of Independent Registered Public Accounting Firm***	
23.2	Consent of Conyers Dill & Pearman (included in Exhibit 5.1)**	
23.3	Consent of Cahill Gordon & Reindel LLP (included in Exhibit 5.2)**	
24.1	Power of Attorney ***	
25.1	Form T-1 Statement of Eligibility under the Trust Indenture Act of 1939, as amended, of Wells Fargo Bank, National Association.*	
99.1	Form of Letter of Transmittal.***	
99.2	Form of Notice of Guaranteed Delivery.***	
99.3	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.***	
99.4	Form of Letter to Clients.***	
99.5	Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*	

* Filed herewith.
**To be filed by amendment.
***Previously filed.
(1)Incorporated by reference to the referenced exhibit to XOMA's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (File No. 0-14710).
(2)Incorporated by reference to the referenced exhibit to XOMA's Registration Statement on Form S-4 filed November 27, 1998, as amended (File No. 333-68045).
(3)Incorporated by reference to the referenced exhibit to XOMA's Current Report on Form 8-K dated July 9, 1998 filed July 16, 1998 (File No. 0-14710).
(4)Incorporated by reference to the referenced exhibit to XOMA's Current Report on Form 8-K filed on February 8, 2004 (File No. 0-14710).

SIGNATURE

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement on Form S-4 and Registration Statement on Form S-3 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Berkeley, State of California, on January 11, 2006.

XOMA LTD.

By /s/ JOHN L. CASTELLO
Name: **John L. Castello**
Title: **Chairman of the Board, President and Chief Executive Officer**

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ JOHN L. CASTELLO **John L. Castello**	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)	January 11, 2006
/s/ PATRICK J. SCANNON **Patrick J. Scannon**	Chief Scientific and Medical Officer and Director	January 11, 2006
/s/ J. DAVID BOYLE II **J. David Boyle II**	Vice President, Finance and Chief Financial Officer (Principal Financial and Accounting Officer)	January 11, 2006
* **James G. Andress**	Director	January 11, 2006
* **William K. Bowes, Jr.**	Director	January 11, 2006
* **Arthur Kornberg**	Director	January 11, 2006
* **Peter B. Hutt**	Director	January 11, 2006
* **W. Denman Van Ness**	Director	January 11, 2006
* **Patrick J. Zenner**	Director	January 11, 2006

*By: /S/ CHRISTOPHER J. MARGOLIN

Christopher J. Margolin
Attorney-in-fact

Exhibit 1.1

DEALER MANAGER AGREEMENT

January 11, 2006

PIPER JAFFRAY & CO.
The Chrysler Center, 58th Floor
405 Lexington Avenue
New York, NY 10174

CANACCORD ADAMS INC.
99 High St.
Boston, MA 02110

Ladies/Gentlemen:

1. General. XOMA Ltd., a Bermuda company (the "Company"), proposes to offer to exchange (the "Exchange Offer") up to $60,000,000 aggregate principal amount of its outstanding 6.50% Convertible Senior Notes due 2012 (the "Existing Notes") for up to $60,000,000 aggregate principal amount of 6.50% SNAPs$_{sm}$ due 2012 (the "New Notes"). The Existing Notes and New Notes are convertible into common shares, par value $0.0005 per share (the "Shares"), of the Company. The New Notes issued in the Exchange Offer are to be issued pursuant to an Indenture to be executed on the Closing Date (as defined herein) and qualified on or prior to the Expiration Date (as defined herein), as amended or modified from time to time, (the "Indenture"), between the Company and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Capitalized terms used herein without definition shall have their respective meanings set forth in or pursuant to the Exchange Offer Materials (as defined herein), notwithstanding that such terms as used herein are not capitalized in the Exchange Offer Materials.

2. Engagement as Dealer Manager. By this Dealer Manager Agreement (the "Agreement"), the Company hereby engages and appoints you as the exclusive Dealer Managers for the Exchange Offer and authorizes you to act as such in connection with the Exchange Offer.

As Dealer Managers, each of you agree, in accordance with your customary practice, to use reasonable efforts to perform in connection with the Exchange Offer those services as are customarily performed by investment banking concerns in connection with similar offers, including, without limitation, soliciting from individuals and institutions the tender of the Existing Notes pursuant to and in accordance with the terms and conditions of the Exchange Offer. You shall act as an independent contractor in connection with the Exchange Offer with duties solely to the Company, and nothing herein contained shall constitute you as an agent of the Company in connection with the solicitation of the tender of Existing Notes pursuant to and in accordance with the terms and conditions of the Exchange Offer; provided, however, that the Company hereby authorizes the Dealer Managers and/or one or more registered brokers or dealers chosen by the Dealer Managers to act as the Company's agent in making the Exchange Offer to residents of any jurisdiction in which such agent designation may be necessary to comply with applicable law. Nothing in this Agreement shall constitute the Dealer Managers

partners or joint venturers with the Company or any of its subsidiaries. On the basis of the representations and warranties and agreements of the Company contained herein and subject to and in accordance with the terms and conditions hereof and of the Exchange Offer, each of the Dealer Managers agrees to act in such capacity.

3. Registration Statement, Prospectus and Offering Materials.

(a) The Company has prepared and filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), the Trust Indenture Act of 1939, as amended (the "TIA"), and applicable rules and regulations (the "Rules and Regulations") of the Commission under the Securities Act, the TIA and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), a registration statement on Form S-4 (File No. 333-130441), including a prospectus, subject to completion, covering the registration of the offer and sale of the New Notes in the Exchange Offer, the Shares issuable upon conversion of the New Notes issued in the Exchange Offer, and the Shares that may be issued (subject to certain limitations) as payment of additional interest on the New Notes issued in the Exchange Offer (such New Notes and Shares are collectively referred to herein as the "Securities"). The term "Registration Statement" as used in this Agreement shall mean such registration statement, including the financial statements, exhibits and schedules thereto, in the form in which such registration statement originally becomes effective, including the information deemed to be a part thereof at the date and time of such effectiveness pursuant to Rule 430A under the Securities Act, and, in the event of any post-effective amendment thereto or the filing of any abbreviated registration statement pursuant to Rule 462(b) of the Rules and Regulations relating thereto after the original effective date of such registration statement, shall also mean (from and after the effectiveness of such post-effective amendment or the filing of such abbreviated registration statement) such registration statement as so amended, together with any such abbreviated registration statement. The term "Prospectus" as used in this Agreement shall mean the final prospectus included in the Registration Statement. Notwithstanding the foregoing, if any revised or supplemented Prospectus shall be provided to you by the Company for use in connection with the Exchange Offer that differs from the Prospectus referred to in the immediately preceding sentence (whether or not such revised or supplemented Prospectus is required to be filed with the Commission pursuant to the Rules and Regulations), the term "Prospectus" shall refer to each such revised or supplemented Prospectus from and after the time it is first provided to you for such use. The term "Preliminary Prospectus" means each prospectus, subject to completion, included in the Registration Statement at or prior to effectiveness of the Registration Statement used in connection with the Exchange Offer.

All references in this Agreement to the Registration Statement, a Preliminary Prospectus, the Prospectus or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") and shall also be deemed to refer to and include the documents incorporated or deemed to be incorporated by reference therein pursuant to the Securities Act and the Rules and Regulations, in each case not modified or superseded pursuant to Rule 412 under the Securities Act. All references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include (a) the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be,

and (b) in each case, the filing of any prospectus supplement pursuant to Rule 424(b) under the Securities Act.

(b) The Company has prepared and filed, or agrees that prior to or on the date of commencement of the Exchange Offer (the "Commencement Date") it will file, with the Commission under the Exchange Act and the Rules and Regulations of the Commission promulgated thereunder a Statement on Schedule TO with respect to the Exchange Offer, including the exhibits thereto and any documents incorporated by reference therein. The term "Schedule TO" as used in this Agreement shall mean such Schedule TO, including any amendment or supplement thereto.

(c) The Registration Statement, Prospectus, Schedule TO, any Preliminary Prospectus, the related letters from the Dealer Manager to securities brokers, dealers, commercial banks, trust companies and other nominees that have been approved for use by the Company, which approval shall not be unreasonably withheld, letters to beneficial owners of Existing Notes, the letter of transmittal (the "Letter of Transmittal") and any newspaper announcements, if any, press releases and other exchange offer solicitation materials and information the Company may prepare, approve, publicly disseminate, provide to registered or beneficial holders of Existing Notes or authorize for public dissemination or use by registered or beneficial holders of Existing Notes in connection with the Exchange Offer, are collectively referred to as the "Exchange Offer Materials."

4. Use of Exchange Offer Materials.

(a) The Exchange Offer Materials have been or will be prepared and approved by, and are the sole responsibility of, the Company. The Company shall disseminate or, to the extent permitted by law use its reasonable best efforts to disseminate, the Exchange Offer Materials to each registered holder of any Existing Notes, as soon as is practicable on the Commencement Date, pursuant to Rule 13e-4 under the Exchange Act, and comply with its obligations thereunder. Thereafter, to the extent practicable, until three days prior to the expiration date of the Exchange Offer (the "Expiration Date"), the Company shall use its reasonable best efforts to cause copies of such Exchange Offer Materials and a return envelope to be mailed to each person who becomes a holder of record of any Existing Notes. The Company acknowledges and agrees that you may use the Exchange Offer Materials, as specified herein without assuming any responsibility for independent verification on your part other than information about the Dealer Managers supplied by you in writing; and the Company represents and warrants to you that you may rely on the accuracy and completeness of any information delivered to you by or on behalf of the Company without assuming any responsibility for independent verification of such information and without performing or receiving any appraisal or evaluation of the assets or liabilities of the Company.

(b) The Company agrees to provide you with as many copies as you may reasonably request of the Exchange Offer Materials. The Company agrees that within a reasonable time prior to using or filing with the Commission or any governmental or regulatory entity or agency (an "Other Agency"), including the National Association of Securities Dealers, Inc. (the "NASD"), of any Exchange Offer Materials, it will submit copies of such materials to you and your counsel and will give reasonable consideration to your and your counsel's

comments, if any, thereon. The Company agrees prior to the termination of the Exchange Offer, before amending or supplementing the Registration Statement, any Preliminary Prospectus or the Prospectus, to furnish copies of drafts to, and consult with, you and your counsel within a reasonable time in advance of filing with the Commission of any amendment or supplement to the Registration Statement, the Prospectus or the other Exchange Offer Materials and will give reasonable consideration to your and your counsel's comments, if any, thereon.

(c) The Company has furnished or shall use its reasonable best efforts to furnish to you, or cause the transfer agents or registrars for the Existing Notes to furnish to you, as soon as practicable after the date hereof (to the extent not previously furnished), cards or lists in reasonable quantities or copies thereof showing the names of persons who were the holders of record or, to the extent available, the beneficial owners of the Existing Notes as of a recent date, together with their addresses and the aggregate principal amount at maturity of the Existing Notes held by them. Additionally, the Company shall update, or cause the transfer agents or registrars referred to above to update, such information from time to time during the term of this Agreement as may be reasonably requested by you. Except as otherwise provided herein, you agree to use such information only in connection with the Exchange Offer and in connection with the offer of additional New Notes for cash (the "New Money Offering") pursuant to the terms of a placement agreement, dated as of the date hereof, between you and the Company.

(d) The Company authorizes the Dealer Managers to use the Exchange Offer Materials in connection with the Exchange Offer for such period of time as any such materials are required by law to be delivered in connection therewith. The Dealer Managers shall not have any obligation to cause any Exchange Offer Materials to be transmitted generally to the holders of Existing Notes.

(e) The Company authorizes the Dealer Managers to communicate with the information agent identified in the Prospectus (the "Information Agent") or the exchange agent identified in the Prospectus (the "Exchange Agent") appointed by the Company to act in such capacity in connection with the Exchange Offer. The Company will arrange for the Information Agent and/or Exchange Agent to advise you, as necessary and at least daily, as to such matters relating to the Exchange Offer as you may reasonably request.

(f) The Company agrees that any reference to the Dealer Managers in any Exchange Offer Materials or in any newspaper announcement or press release or other document or communication is subject to the Dealer Managers' prior consent, which consent shall not be unreasonably withheld.

5. Withdrawal. In the event that the Company: (i) uses or permits the use of, or files with the Commission or any Other Agency, any Exchange Offer Materials or any amendment or supplement to the Registration Statement or the Prospectus, and such document (a) has not been submitted to you previously for your and your counsel's comments or (b) has been so submitted, and you or your counsel have made comments which have not been reflected in a manner reasonably satisfactory to you or your counsel; (ii) breaches, in any material respect, any of its representations, warranties, agreements or covenants herein; or (iii) amends or revises the Exchange Offer in a manner not reasonably acceptable to you, then each of you shall be entitled to withdraw as a Dealer Manager in connection with the Exchange Offer without any liability or

penalty to you and without loss of any right to indemnification or contribution provided in Section 11 or to the payment of all fees and expenses payable under Sections 6 and 7 below which have accrued to the date of such withdrawal (it being agreed that in the event of any such withdrawal, for the purpose of determining the fees payable to you pursuant to Section 6, the aggregate principal amount of Existing Notes tendered pursuant to the Exchange Offer as of the close of business on the date of such withdrawal that are thereafter acquired by the Company or any of its subsidiaries or affiliates pursuant to the Exchange Offer or otherwise shall be deemed to have been acquired as of the date of such withdrawal if any Existing Notes are ultimately acquired in the Exchange Offer).

6. Fees. As compensation for your services in connection with the Exchange Offer, the Company will pay you an aggregate fee of 1.35% of the aggregate principal amount of any Existing Notes validly tendered and accepted for exchange pursuant to the Exchange Offer, subject to a maximum of $810,000. The total fee due and payable by the Company on the date when the Exchange Offer is consummated (the "Closing Date") will be paid in immediately available funds to an account designated by you.

7. Expenses. The Company agrees that it will pay the costs and expenses incident to the performance of the obligations hereunder whether or not any New Notes are issued in exchange for Existing Notes in the Exchange Offer, including, without limitation (i) all costs and expenses incurred by dealers and brokers (including yourself), commercial banks, trust companies and nominees for their customary mailing and handling expenses incurred in forwarding the Exchange Offer Materials to their customers, (ii) the filing fees and expenses, if any, incurred with respect to any filing with The Nasdaq National Market ("Nasdaq"), (iii) all costs and expenses incident to the preparation, issuance, execution and delivery of the New Notes upon exchange of the Existing Notes, (iv) all costs and expenses incident to the preparation, printing and filing under the Securities Act of the Registration Statement and the Prospectus (including, without limitation, in each case all exhibits, amendments and supplements thereto), (v) all costs and expenses incurred in connection with the registration or qualification of the New Notes issuable upon exchange of the Existing Notes under the laws of such jurisdictions as the Dealer Managers may designate, if any (including, without limitation, reasonable fees of counsel for the Dealer Managers and its reasonable disbursements, subject to a maximum amount of $175,000), (vi) all costs and expenses incurred in connection with the printing (including word processing and duplication costs) and delivery of all Exchange Offer Materials (including, without limitation, any preliminary and supplemental blue sky memoranda) including, without limitation, mailing and shipping, (vii) all reasonable advertising expenses related to the Exchange Offer and the fees and expenses of the Exchange Agent and the Information Agent, (viii) all fees and expenses incurred in marketing the Exchange Offer, including but not limited to road show presentations, if any, and (ix) the fees and disbursements of Cahill Gordon & Reindel LLP, counsel to the Company, and all other counsel to the Company, and Ernst & Young LLP, auditors to the Company. In addition, the Company agrees to reimburse the reasonable out-of-pocket expenses of the Dealer Managers in connection with the Exchange Offer. The Company also agrees to reimburse the reasonable legal fees and expenses of your counsel in connection with the Exchange Offer, subject to the maximum amount of $175,000 set forth in (v) above, not including travel expenses. Such reimbursement of expenses shall be made on the Closing Date, or if the Exchange Offer is not consummated for any reason, within ten days after receipt by the

Company of an invoice submitted by Piper Jaffray for the payment of such expenses with appropriate supporting documentation.

8. Representations, Warranties and Agreements of the Company. The Company represents and warrants to you, and agrees with you, that:

(a) The Registration Statement, including each Preliminary Prospectus and the Prospectus, has been prepared by the Company in conformity with the requirements of the Securities Act and the Rules and Regulations thereunder and has been filed with the Commission; such amendments to such Registration Statement, and each Preliminary Prospectus and Prospectus and such abbreviated registration statements pursuant to Rule 462(b) of the Rules and Regulations as may have been required prior to the date hereof have been similarly prepared and filed with the Commission; and the Company will file such additional amendments to such Registration Statement, Preliminary Prospectuses and Prospectus and such abbreviated registration statements as may hereafter be required. Copies of such Registration Statement, Preliminary Prospectuses and Prospectus, including all amendments thereto, and of any abbreviated registration statement pursuant to Rule 462(b) of the Rules and Regulations have been or, if filed after the Commencement Date, will be, delivered or made available to you and your counsel;

(b) The Schedule TO has been prepared by the Company in conformity with the requirements of the Exchange Act and the Rules and Regulations of the Commission thereunder and has been filed with the Commission; such amendments to such Schedule TO as may have been required prior to the date hereof have been similarly prepared and filed with the Commission; and the Company will file such additional amendments to such Schedule TO as may hereafter be required. Copies of such Schedule TO, including all amendments thereto and all documents incorporated by reference therein have been or, if filed after the Commencement Date will be, delivered made available to you and your counsel;

(c) The Registration Statement, including a Preliminary Prospectus, has been filed as of the Commencement Date and will become effective not later than the Expiration Date; and the Commission has not issued or to the Company's knowledge threatened to issue any order refusing or suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus or Prospectus or instituted or to the Company's knowledge threatened to institute proceedings for that purpose. The Exchange Offer Materials, including the Registration Statement, the Schedule TO, each Preliminary Prospectus and the Prospectus, comply and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act, the Exchange Act and the TIA, and the applicable Rules and Regulations of the Commission thereunder;

(d) At the respective times the Registration Statement (or any post effective amendment thereto, including a registration statement (if any) filed pursuant to Rule 462(b) of the Rules and Regulations increasing the size of the offering registered under the Act) is or was declared effective by the Commission, and at the Closing Date, (i) the Registration Statement (as so amended and/or supplemented) conformed or will conform in all material respects to the requirements of the Act and the Rules and Regulations, and (ii) the Registration Statement (as so amended and/or supplemented) did not or will not include an untrue statement of a material fact

or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; except that the foregoing shall not apply to statements in or omissions from any such document in reliance upon, and in conformity with, written information furnished to the Company by you, specifically for use in the preparation thereof;

(e) None of any Preliminary Prospectus, the Prospectus or other Exchange Offer Materials, or any amendments or supplements thereto, at the time they were or are issued, at the Expiration Date or at the Closing Date contained or will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were or are made, not misleading; except that the foregoing shall not apply to statements in or omissions from any such document in reliance upon, and in conformity with, written information furnished to the Company by you, specifically for use in the preparation thereof. Each Preliminary Prospectus, the Prospectus, the other Exchange Offer Materials and any amendment or supplement thereto conformed or will conform in all material respects to the requirements of the Securities Act, the Exchange Act and the Rules and Regulations, and each Preliminary Prospectus, the Prospectus and other Exchange Offer Materials delivered to you for use in connection with the Exchange Offer was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T;

(f) As of the Applicable Time, neither (A) the Issuer-Represented General Free Writing Prospectus(es) issued at or prior to the Applicable Time, the Statutory Prospectus and the information included on Schedule I hereto, and the Exchange Offer Materials, all considered together (collectively, the "Pricing Disclosure Package"), nor (B) any individual Issuer-Represented Limited-Use Free Writing Prospectus, when considered together with the Pricing Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Prospectus included in the Registration Statement or any Issuer-Represented Free Writing Prospectus based upon and in conformity with written information furnished to the Company by you or by any Dealer Manager through you specifically for use therein. In the event this Agreement is executed before the Applicable Time, the parties agree that Schedule I hereto shall be completed subsequent to the execution of this Agreement and no later than the Applicable Time.

As used in this paragraph and elsewhere in this Agreement:

"Applicable Time" means the time specified on Schedule II hereto, which schedule the parties agree may be completed subsequent to the execution of this Agreement.

"Statutory Prospectus" as of any time means the prospectus that is included in the Registration Statement immediately prior to that time.

"Issuer-Represented Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 under the Securities Act, relating to the Securities that (A) is required to be filed with the Commission by the

Company, or (B) is exempt from filing pursuant to Rule 433(d)(5)(i) under the Securities Act because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g) under the Securities Act.

"Issuer-Represented General Free Writing Prospectus" means any Issuer-Represented Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule III to this Agreement, which schedule the parties agree may be completed subsequent to the execution of this Agreement.

"Issuer-Represented Limited-Use Free Writing Prospectus" means any Issuer-Represented Free Writing Prospectus that is not an Issuer-Represented General Free Writing Prospectus;

(g) (i) Each Issuer-Represented Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the issuer notified or notifies the Dealer Managers as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement. If at any time following issuance of an Issuer-Represented Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer-Represented Free Writing Prospectus included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading, the Company has notified or will notify promptly the Dealer Managers so that any use of such Issuer-Represented Free-Writing Prospectus may cease until it is amended or supplemented. The foregoing two sentences do not apply to statements in or omissions from any Issuer-Represented Free Writing Prospectus based upon and in conformity with written information furnished to the Company by you or by any Dealer Manager through you specifically for use therein; (ii) (1) At the time of filing the Registration Statement, (2) at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Securities and (3) at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405 under the Securities Act nor an "excluded issuer" as defined in Rule 164 under the Securities Act; and (iii) Each Issuer-Represented Free Writing Prospectus satisfied all other conditions to use thereof as set forth in Rules 164 and 433 under the Securities Act;

(h) Except as contemplated in the Registration Statement, the Pricing Disclosure Package and the Prospectus, subsequent to the respective dates as of which information is given in the Pricing Disclosure Package, neither the Company nor any of its subsidiaries has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its share capital; and there has not been any change in the share capital (other than a change in the number of issued and outstanding Shares due to the issuance of Shares upon the exercise of share options or warrants disclosed as outstanding in the Pricing Disclosure Package and the grant of options under existing share option plans described in the Pricing Disclosure Package), or any material change in the short term or long term debt, or any

issuance of options, warrants, convertible securities or other rights to purchase the share capital, of the Company or any of its subsidiaries, or any material adverse change in the financial condition, business, prospects, property, operations or results of operations of the Company and its subsidiaries, taken as a whole ("Material Adverse Change") or any development involving a prospective Material Adverse Change;

(i) All of the issued and outstanding shares of the Company have been duly authorized and validly issued and are fully paid and non-assessable, and have been issued in compliance with all U.S. federal and state securities laws and Bermuda law, and no such issuance constituted a violation by the Company of any preemptive right, resale right, right of first refusal or similar right imposed by any applicable law, rule or regulation, the charter, bye-laws or other organizational documents of the Company or any of the Subsidiaries or any agreement, commitment or instrument to which the Company or any of the Subsidiaries is a party or by which the Company or any of the Subsidiaries is or may be bound;

(j) The Company has been duly continued into and is validly existing as a company in good standing under the laws of Bermuda, with full power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, Pricing Disclosure Package and Prospectus, to execute and deliver this Agreement and to issue, sell and deliver the New Notes and deliver the Shares issuable upon conversion of the New Notes, as contemplated herein;

(k) The Company is duly qualified to do business as a foreign corporation or company and is in good standing in each jurisdiction where the ownership or leasing, of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a material adverse effect upon the business, prospects, properties, operations, financial condition or results of operations of the Company and its subsidiaries, taken as a whole ("Material Adverse Effect");

(l) The Company has no subsidiaries (as defined in the Securities Act) other than those listed on Exhibit C hereto (collectively, the "Subsidiaries"); the Company owns all of the issued and outstanding share capital or other equity interests of each of the Subsidiaries; other than the share capital or other equity interests of the Subsidiaries and except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, association or other entity (other than equity interests held by the Company with an aggregate book value of less than US$500,000); complete and correct copies of the charter or bye-laws or other organizational documents of the Company and the Subsidiaries and all amendments thereto have been made available to you, and except as set forth in the exhibits to the Registration Statement no changes therein will be made subsequent to the date hereof and prior to the Closing Date; each Subsidiary has been duly organized and is validly existing as an entity (or, in the case of XOMA (US) LLC (the "LLC"), as a limited liability company) in good standing under the laws of the jurisdiction of its organization, with full power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, Pricing Disclosure Package and Prospectus; each Subsidiary is duly qualified to do business as a foreign entity (or, in the case of the LLC, as a foreign limited liability company) and is in good standing

in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not individually or in the aggregate, have a Material Adverse Effect; all of the outstanding shares or other equity interests of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company subject to no security interest, other encumbrance or adverse claims, except as would not, individually or in the aggregate, have a Material Adverse Effect, and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into shares or other equity interests in the Subsidiaries are outstanding;

(m) The New Notes to be issued pursuant to the Exchange Offer have been duly and validly authorized, and assuming due authorization, execution and delivery of the Indenture by the Trustee, when executed and authenticated in accordance with the provisions of the Indenture and delivered in accordance with the terms of the Exchange Offer, will be entitled to the benefits of the Indenture, will be duly and validly issued, fully paid and non-assessable and free of preemptive rights, resale rights, rights of first refusal and similar rights imposed by any applicable law, rule or regulation, the charter, bye-laws or other organizational documents of the Company or any of the Subsidiaries or any agreement, commitment or instrument to which the Company or any of the Subsidiaries is a party or by which the Company or any of the Subsidiaries is or may be bound, and will be valid and binding obligations of the Company enforceable in accordance with their terms, except as the enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). The New Notes will conform in all material respects to the description thereof contained in the Registration Statement, Pricing Disclosure Package and Prospectus;

(n) The Indenture has been or will be duly authorized by the Company, has been filed as of the Commencement Date, will be qualified under the TIA not later than the Expiration Date, and when executed and delivered by the Company (assuming the authorization, execution and delivery by the Trustee) will be a valid and binding instrument of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); and the Indenture will conform to the description thereof in the Registration Statement, Pricing Disclosure Package and Prospectus;

(o) The Shares reserved for issuance upon conversion of the New Notes have been duly authorized and reserved and, when issued upon conversion of the New Notes in accordance with the terms of the New Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares upon conversion of the New Notes will not be subject to any preemptive or similar rights;

(p) The share capital of the Company conforms in all material respects to the description thereof contained in the Registration Statement, Pricing Disclosure Package and

Prospectus, the certificates for the Shares are in due and proper form, and the holders of the Shares will not be subject to personal liability for assessments for the indebtedness or obligations of the Company or otherwise solely by reason of being such holders;

(q) This Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding instrument of the Company, enforceable against it in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity);

(r) Neither the Company nor any of the Subsidiaries is in breach or violation of or in default under (nor has any event occurred which with notice, lapse of time or both would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (A) its respective charter or bye-laws or other organizational documents, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their properties may be bound or affected except, in the case of clause (B), to the extent that any such breach, violation or default would not, individually or, in the aggregate, have a Material Adverse Effect; and the execution, delivery and performance of this Agreement, the issuance and sale of the New Notes and the consummation of the transactions contemplated hereby will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which with notice, lapse of time or both would result in any breach or violation of or constitute a default under) (X) the charter or bye-laws or other organizational documents of the Company or any of the Subsidiaries, or (Y) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, or (Z) any U.S. federal, state, provincial, territorial, local or foreign law, regulation or rule or any decree, judgment or order applicable to the Company or any of the Subsidiaries except, in the case of clause (Y) and (Z), to the extent that any such conflict, breach, violation or default would not, individually or in the aggregate, have a Material Adverse Effect;

(s) No approval, authorization, consent or order of or filing with any U.S. federal, state, provincial, territorial, local or foreign governmental or regulatory commission, board, body, authority or agency or any sub-division thereof is required in connection with the issuance and sale of the New Notes or the consummation by the Company of the transactions contemplated by this Agreement or the Indenture, other than (i) as may be required under state securities or blue sky laws in connection with the Exchange Offer, (ii) the consent of the Bermuda Monetary Authority for the issue or transfer of the New Notes and the Shares, which consent has been obtained (iii) the filing of a prospectus with the Registrar of Companies in Bermuda in connection with an offer to the public of the New Notes or the Shares or (iv) under

the rules and regulations of the NASD or (v) which has otherwise been, or will be, granted or obtained prior to the Closing Date;

(t) Each of the Company and the Subsidiaries has all licenses, authorizations, consents and approvals and has made all filings required under any U.S. federal, state, provincial, territorial, local or foreign law, regulation or rule, and has obtained all authorizations, consents and approvals, from other persons, in order to conduct its respective business, except where the failure to have such licenses, authorizations, consents and approvals, to make such filings or to obtain such authorizations, consents and approvals would not, individually or in the aggregate, have a Material Adverse Effect; neither the Company nor any of the Subsidiaries is in violation of, or in default under, or has received notice of any proceedings relating to revocation or modification of any such license, authorization, consent or approval or any U.S. federal, state, provincial, territorial, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company or any of the Subsidiaries, except where such violation, default, revocation or modification would not, individually or in the aggregate, have a Material Adverse Effect;

(u) All legal or governmental proceedings, statutes, rules, regulations, affiliate transactions, off-balance sheet transactions, contracts, licenses, agreements, leases or documents of a character required to be described in any document incorporated by reference in the Registration Statement, Pricing Disclosure Package and Prospectus or required to be filed as an exhibit thereto, have been so described or filed as required;

(v) Except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus and except for applications and ordinary course proceedings relating to regulatory approvals of new drugs or the granting of patents, there are no actions, suits, claims, investigations of which the Company has knowledge, or proceedings pending or, to the Company's knowledge, threatened or contemplated to which the Company or any of the Subsidiaries or any of their respective directors or officers is or would be a party or of which any of their respective properties is or would be subject at law or in equity, before or by any U.S. federal, state, provincial, territorial, local or foreign governmental or regulatory commission, board, body, authority or agency or any subdivision thereof, except any such action, suit, claim, investigation or proceeding which would not result in a judgment, decree or order having, individually or in the aggregate, a Material Adverse Effect;

(w) Ernst & Young LLP, whose report on the consolidated financial statements of the Company and the Subsidiaries is filed with the Commission as part of the Registration Statement, are independent public accountants as required by the Securities Act;

(x) The financial statements contained in or included in any document incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus, together with the related notes and schedules (if any), present fairly in all material respects the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations and cash flows of the Company and the Subsidiaries for the periods specified (in the case of the unaudited interim financial statements, subject to normal year-end adjustments) and have been prepared in compliance with the requirements of the Securities Act and, in the case of the audited financial statements included in

such documents, in conformity with U.S. generally accepted accounting principles applied on a consistent basis during the periods involved; all disclosures regarding Non-GAAP Financial Measures (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10 a Regulation S-K; the other financial and statistical data set forth in the Registration Statement, Pricing Disclosure Package and Prospectus are accurately presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included in any documents incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus that are not included as required; and the Company and the Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus or in the documents incorporated by reference therein;

(y) The Company has obtained for the benefit of the Dealer Managers the agreement (a "Lock-Up Agreement"), in the form set forth as Exhibit A hereto, of each of its directors and executive officers listed in Schedule IV hereto;

(z) The Company is not and, after giving effect to the offering and sale of the New Notes, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act"); the Company believes that it is not a "controlled foreign corporation" within the meaning of the U.S. Internal Revenue Code, as amended (the "IRC"); and the Company believes that it was not a "passive foreign investment company" within the meaning of the IRC for the calendar year 2004 and, based on management's current projections of the Company's future income and asset composition, and the manner in which management currently intends to manage and conduct the Company's business in the future, that it will not become a "passive foreign investment company" in any subsequent year;

(aa) The Company and each of the Subsidiaries has good and marketable title to all property (real and personal) described in the Registration Statement, Pricing Disclosure Package and Prospectus as being owned by each of them, free and clear of all liens, claims, security interests or other encumbrances, subject only to such exceptions as are not material and do not interfere with the use made and proposed to be made of such property by the Company; all the property described in the Registration Statement, Pricing Disclosure Package and Prospectus as being held under lease by the Company or a Subsidiary is held thereby under valid, subsisting and enforceable leases, subject only to such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company;

(bb) To the Company's knowledge, except as would not individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement, Pricing Disclosure Package and Prospectus, (i) the Company, by ownership, license or covenant not to sue, has the right to use all patents, patent applications, trademarks, trademark applications, service marks, trade names and copyrights (other than with respect to Raptiva® brand anti-CD11a, collectively, the "Intellectual Property Rights") which are necessary for use in connection with its business as presently conducted and

as proposed to be conducted; (ii) there is no existing infringement by another party of any of the Intellectual Property Rights which are necessary for use in connection with the Company's business as presently conducted; (iii) there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's rights in or to, or the validity or enforceability of, the Intellectual Property Rights of the Company, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (iv) there is no pending or threatened action, suit, proceeding or claim by others that the business of the Company as described in the Registration Statement, Pricing Disclosure Package and Prospectus infringes or otherwise violates, or that the commercialization of any of the products under development by the Company would infringe or otherwise violate, any patent, trademark, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which would form a reasonable basis for any such claim; and (v) all of the Intellectual Property Rights under the control of the Company were filed and are being or were prosecuted in accordance with the applicable rules and regulations relating thereto;

(cc) To the Company's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus, the Company is unaware of facts which would form a reasonable basis for a finding that (i) the patents owned or co-owned by Genentech, Inc. ("Genentech") and relating to anti-CD11a as listed on Exhibit D attached hereto (the "Anti-CD11a Patents") are unenforceable or invalid, (ii) the Anti-CD11a Patents are infringed by another party or (iii) Genentech's contemplated sales of Raptiva® brand anti-CD11a would infringe patents owned by another party;

(dd) Neither the Company nor any of the Subsidiaries is engaged in any unfair labor practice; except for matters which would not, individually or in the aggregate, have a Material Adverse Effect, (i) there is (A) no unfair labor practice complaint pending or, to the Company's knowledge after due inquiry, threatened against the Company or any of the Subsidiaries before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or threatened (B) no strike, labor dispute, slowdown or stoppage pending or, to the Company's knowledge after due inquiry, threatened against the Company or any of the Subsidiaries and (C) no union representation dispute currently existing concerning the employees of the Company or any of the Subsidiaries, and (ii) to the Company's knowledge after due inquiry, (A) no union organizing activities are currently taking place concerning the employees of the Company or any of the Subsidiaries and (B) there has been no violation of any U.S. federal, state, provincial, territorial, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") or the rules and regulations promulgated thereunder concerning the employees of the Company or any of the Subsidiaries;

(ee) The Company and the Subsidiaries and their properties, assets and operations are in compliance with, and hold all permits, authorizations and approvals required under Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals would not, individually or in the aggregate, have a Material Adverse Effect; there are no past or present events, conditions, activities or practices that would reasonably be expected to give rise to any costs or liabilities to the Company

or the Subsidiaries under, or to prevent compliance by the Company or the Subsidiaries with, applicable Environmental Laws, except as would not, individually or in the aggregate, have a Material Adverse Effect; to the Company's knowledge, there are no reasonably anticipated future plans of the Company or the Subsidiaries that would reasonably be expected to give rise to any capital expenditures under applicable Environmental Laws, except as would not, individually or in the aggregate, have a Material Adverse Effect; except as would not, individually or in the aggregate, have a Material Adverse Effect, neither the Company nor any of the Subsidiaries (i) to the Company's knowledge, is the subject of any investigation, (ii) has received any written notice or claim, (iii) is a party to or, to the Company's knowledge, affected by any pending or threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "Environmental Law" means any law, statute, ordinance, rule, regulation, order, decree, judgment or injunction, or common law, relating to pollution or the protection, cleanup or restoration of the environment or natural resources, or public health (to the extent relating to the environment or exposure to Hazardous Materials) including those relating to the distribution, processing, generation, treatment storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "Hazardous Materials" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or can give rise to liability under any Environmental Law);

(ff) All tax returns required to be filed by the Company and each of the Subsidiaries have been filed, and all taxes and other assessments of a similar nature (whether imposed directly or through withholding) including any interest, additions to tax or penalties applicable thereto due or claimed to be due from such entities have been paid, other than those being contested in good faith and for which adequate reserves have been provided as required by U.S. generally accepted accounting principles;

(gg) The Company and each of the Subsidiaries maintains insurance covering its properties, operations, personnel and businesses as the Company deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Company and the Subsidiaries and their businesses; all such insurance is fully in force on the date hereof and will be fully in force at the Closing Date;

(hh) Neither the Company nor any of the Subsidiaries has sustained since the date of the last audited financial statements incorporated by reference in the Registration Statement, Pricing Disclosure Package and Prospectus any loss or interference with its respective business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, except as would not, individually or in the aggregate, have a Material Adverse Effect;

(ii) Except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Company has not sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in, or filed as an exhibit to, the Registration Statement, Pricing Disclosure Package and

Prospectus, and no such termination or non-renewal has been threatened by the Company or, to the Company's knowledge, any other party to any such contract or agreement;

(jj) The Company and each of the Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(kk) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 and 15d-14 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company's auditors' and the Audit Committee of the Board of Directors have been advised of: (i) any significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls; any material weaknesses in internal controls have been identified for the Company's auditors; and since the date of the most recent evaluation of such disclosure controls and procedures, there, have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses; the principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all certifications required by the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and any related rules and regulations promulgated by the Commission, and the statements contained in any such certification are complete and correct; the Company is otherwise in compliance in all material respects with all applicable effective provisions of the Sarbanes-Oxley Act;

(ll) Since July 30, 2002, the Company has not, directly or indirectly, including through any subsidiary: (i) extended credit; arranged to extend edit, or renewed any extension of credit, in the form of a personal loan, to or for any director or executive officer of the Company, or to or for any family member or affiliate of any director or executive officer of the Company; or (ii) made any material modification, including any renewal thereof to any term of any personal loan to any director or executive officer of the Company, or any family member or affiliate of any director or executive officer, which loan was outstanding on July 30, 2002;

(mm) Any statistical and market related data included in the Registration Statement, Pricing Disclosure Package and Prospectus are based on or derived from sources that the Company believes to be reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources to the extent required;

(nn) Neither the Company nor any of the Subsidiaries nor, to the Company's knowledge after due inquiry, any employee or agent of the Company or the Subsidiaries has made any payment of funds of the Company or the Subsidiaries or received or retained any funds in violation of any law, rule or regulation, which payment, receipt or retention of funds is of a character required to be disclosed in any document incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus;

(oo) Neither the Company nor any of the Subsidiaries nor any of their respective directors, officers, affiliates or controlling persons has taken, and will not take, directly or indirectly, any action resulting in a violation of Rule 102 of Regulation M promulgated under the Exchange Act or designed, or which has constituted or might reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the New Notes;

(pp) The clinical, pre-clinical and other studies and tests that are described in the Registration Statement, Pricing Disclosure Package and Prospectus or the results of which are referred to in the Registration Statement, Pricing Disclosure Package and Prospectus were and, if still pending, are being conducted in all material respects in accordance with standard medical and scientific research procedures; the descriptions in the Registration Statement, Pricing Disclosure Package and Prospectus of the results of such studies and tests are accurate and complete in all material respects and fairly present the data derived from such studies and tests, and the Company has no knowledge of any other studies or tests the results of which are inconsistent with or otherwise call into question the results described or referred to in the Registration Statement, Pricing Disclosure Package or Prospectus; except to the extent disclosed in the Registration Statement, Pricing Disclosure Package or Prospectus, the Company has operated and currently is in compliance in all material respects with all applicable rules, regulations and policies of the U.S. Food and Drug Administration and comparable drug regulatory agencies outside of the United States (collectively, the "Regulatory Authorities"); and except to the extent disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Company has not received any notices or other correspondence from the Regulatory Authorities or any other governmental agency or subdivision thereof requiring the termination, suspension or modification of any clinical or pre-clinical studies or tests that are described in the Registration Statement, Pricing Disclosure Package or Prospectus or the results of which are referred to in the Registration Statement, Pricing Disclosure Package or Prospectus;

(qq) No Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary's capital stock, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of such Subsidiary's property or assets to the Company or any other Subsidiary of the Company;

(rr) Except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Shares are registered pursuant to Section 12(g) of the Exchange Act and are included or approved for inclusion on the Nasdaq National Market, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Shares under the Exchange Act or delisting the Shares from the Nasdaq National Market, nor has

the Company received any notification that the Commission or the National Association of Securities Dealers, Inc. is contemplating terminating such registration or listing. The Company has complied in all material respects with the applicable requirements of the Nasdaq National Market for maintenance of inclusion of the Shares thereon. The Company has filed as application to include the Shares underlying the New Notes on the Nasdaq National Market;

(ss) The Company has not distributed and will not distribute prior to the later of (i) the Closing Date, and (ii) completion of the distribution of the New Notes in exchange for the Existing Notes pursuant to the Exchange Offer, any prospectus or other offering material in connection with the Exchange Offer other than any Preliminary Prospectus, the Prospectus, the Exchange Offer Materials or other materials permitted by the Securities Act to be distributed by the Company; provided, however, that, except as set forth in Schedule III, the Company has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Securities Act;

(tt) There are no documentary stamp or other issuance or transfer taxes or other similar fees or charges under Federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement, and the Indenture or the issuance and sale by the Company of the New Notes. The Company has not paid or agreed to pay any person any compensation for soliciting another to purchase any New Notes (except as contemplated by this Agreement);

(uu) All written communications, in addition to the Schedule TO, made during the period from the first public announcement and to the earlier of either the termination date or the Closing Date of the Exchange Offer, have been or will be filed with the Commission in accordance with the Exchange Act and the Rules and Regulations thereunder, including Rule 13e-4 under the Exchange Act;

(vv) Except as disclosed in the Prospectus, there are no persons with registration rights or other similar rights to have any securities registered pursuant to the Registration Statement or otherwise registered by the Company under the Securities Act;

(ww) The conditions for use of Form S-4, set forth in the General Instructions thereto, have been satisfied; and

(xx) The documents incorporated by reference in the Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and were filed on a timely basis with the Commission and none of such documents contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; any further documents so filed and incorporated by reference in the Prospectus, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In addition, any certificate signed by any officer of the Company or any of the Subsidiaries and delivered to you or your counsel in connection with the offering of the New Notes shall be deemed to be a representation and warranty by the Company or Subsidiary, as the case may be, as to matters covered thereby, to each of you.

9. Further Agreements of the Company. The Company agrees with you that:

(a) The Company will use its reasonable best efforts to cause any Registration Statement as may be required to be filed under Rule 462(b) of the Rules and Regulations subsequent to the date the Registration Statement is declared effective to become effective as promptly as possible; the Company will notify you, promptly after it shall receive notice thereof, of the time when the Registration Statement, any subsequent amendment to the Registration Statement or any abbreviated registration statement has become effective or any Preliminary Prospectus, any supplement to the Prospectus or additional Exchange Offer Materials has been filed; if for any reason the filing of the final form of Prospectus is required under Rule 424(b) of the Rules and Regulations, the Company will provide evidence satisfactory to you that the Prospectus contains such information and has been filed with the Commission within the time period prescribed; the Company will notify you promptly of any request by the Commission for the amending or supplementing of the Registration Statement, any Preliminary Prospectus or the Prospectus or other Exchange Offer Materials or for additional information relating to the Exchange Offer; promptly upon your request, the Company will prepare and file with the Commission any amendments or supplements to the Registration Statement, any Preliminary Prospectus or Prospectus or other Exchange Offer Materials which, in the opinion of your counsel, is necessary in connection with the Exchange Offer; the Company will promptly prepare and file with the Commission, and promptly notify you of the filing of, any amendments or supplements to the Registration Statement, any Preliminary Prospectus or the Prospectus or other Exchange Offer Materials which may be necessary to correct any statements or omissions, if, at any time when any Preliminary Prospectus or a Prospectus relating to the Exchange Offer is required to be delivered under the Securities Act and the Exchange Act, any event shall have occurred as a result of which the Prospectus or any other prospectus relating to the Exchange Offer as then in effect would include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and the Company will file no amendment or supplement to the Registration Statement, any Preliminary Prospectus or the Prospectus or other Exchange Offer Materials which shall not previously have been submitted to you a reasonable time prior to the proposed filing thereof and will give reasonable consideration to your or your counsel's comments, if any, thereon, subject, however, to compliance with the Securities Act and the Rules and Regulations, the Exchange Act and the Rules and Regulations of the Commission thereunder and the provisions of this Agreement.

(b) The Company will advise you, promptly after it shall receive notice or obtain knowledge, of the issuance of any order by the Commission refusing or suspending the effectiveness of the Registration Statement or of the initiation or threat of any proceeding for that purpose; and it will promptly use its reasonable best efforts to prevent the issuance of any refusal or stop order or to obtain its withdrawal at the earliest possible moment if such refusal or stop order should be issued.

(c) The Company will use its reasonable best efforts to qualify the New Notes issuable pursuant to the Exchange Offer under the securities laws of such jurisdictions as you may designate and to continue such qualifications in effect for so long as may be required for purposes of the Exchange Offer, except that the Company shall not be required in connection therewith or as a condition thereof to qualify as a foreign corporation or to execute a general consent to service of process in any jurisdiction in which it is not otherwise required to be so qualified or to so execute a general consent to service of process. In each jurisdiction in which the New Notes shall have been qualified as above provided, the Company will make and file such statements and reports in each year as are or may be required by the laws of such jurisdiction.

(d) The Company will use its reasonable best efforts to have the Shares underlying the New Notes accepted for quotation on Nasdaq.

(e) The Company will make generally available to its security holders and to the Dealer Managers by filing with the Commission as soon as is practicable, an earnings statement covering a twelve-month period beginning not later than the first day of the Company's next fiscal quarter following the effective date of the Registration Statement that satisfies the provisions of Section 11(a) of the Securities Act and the Rules and Regulations of the Commission thereunder.

(f) The Company will use its reasonable best efforts to advise or cause the Exchange Agent to advise the Dealer Managers at 5:00 P.M., New York City time, or promptly thereafter, daily (or more frequently if requested), by telephone or facsimile transmission, with respect to Existing Notes tendered as follows: (i) the aggregate principal amount of Existing Notes validly tendered and represented by confirmations of receipt of book-entry transfer of Existing Notes pursuant to the procedures set forth in the Exchange Offer on such day, (ii) the aggregate principal amount of any Existing Notes properly withdrawn on such day, and (iii) the cumulative totals of the principal amount of Existing Notes in categories (i) through (ii), inclusive, above.

(g) Without limiting Sections 5, 7 and 13 of this Agreement, if the transactions contemplated hereby are not consummated by reason of any failure, refusal or inability on the part of the Company to perform any agreement on its part to be performed hereunder or to fulfill any condition of your obligations hereunder, the Company will reimburse you for all reasonable out-of-pocket expenses incurred by you in connection with the Exchange Offer. The Company will also reimburse you for reasonable fees and disbursements of your counsel incurred by you in connection with the Exchange Offer, subject to a maximum of $175,000 plus travel expenses.

(h) During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of Piper Jaffray & Co., (i) directly or indirectly, issue, sell, contract to sell or otherwise dispose of any Shares or any securities convertible into, exercisable for or exchangeable for Shares or (ii) enter into any transaction (including a derivative transaction) having an economic effect similar to that of an issuance of any Company securities which are substantially similar to the Existing Notes or the New Notes, or which are convertible into or exchangeable for, or represent the right to receive, Shares or securities that

are substantially similar to the Existing Notes or the New Notes, any Shares or any securities which are substantially similar to the New Notes. The foregoing sentence shall not apply to (A) the New Notes sold pursuant to this Agreement or the Placement Agreement between you and the Company, (B) Shares issued or options to purchase Shares granted pursuant to existing equity plans of the Company as described in the Prospectus, (C) Shares issued or options to purchase Shares granted pursuant to the Company's shareholder rights agreement as described in the Prospectus, (D) Shares issuable upon exercise of warrants outstanding as of the date hereof, (E) Shares issuable upon the conversion of any of the Company's outstanding Existing Notes and (F) Shares issuable upon conversion of the Company's Series A Preference Shares or Series B Preference Shares.

10. Conditions of Dealer Managers' Obligations. Your obligations as provided herein shall be subject at all times on and prior to the Closing Date to the accuracy of the representations and warranties of the Company herein, to the accuracy of the statements of officers of the Company made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Registration Statement shall have been filed prior to the Commencement Date and no stop order refusing the effectiveness thereof shall have been issued and the Registration Statement shall become effective prior to the Expiration Date and no stop order suspending the effectiveness thereof shall have been issued and, to the knowledge of the Company or you, no proceedings for either purpose shall have been initiated or threatened by the Commission, and any request of the Commission for additional information (to be included in the Registration Statement, any Preliminary Prospectus, the Prospectus, or other Exchange Offer Materials or otherwise) shall have been complied with to the reasonable satisfaction of your counsel.

(b) After execution and delivery of this Agreement and prior to the Closing Date there shall not have occurred from the respective dates as of which information is given in the Prospectus (exclusive of any supplement thereto) (i) any material adverse change in the financial condition, business, prospects, property, operations or results of operations of the Company whether or not arising in the ordinary course of business, or (ii) any material adverse change in the financial markets in the United States or in the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, which in each case the effect of which is such as to make it, in the judgment of the Dealer Managers, impracticable or inadvisable to market the New Notes or to enforce contracts for the exchange and/or sale of the New Notes, or (iii) any trading suspension or material limitation in trading instituted by the Commission or The Nasdaq National Market, or generally, any trading suspension or material limitation in trading on the American Stock Exchange or the New York Stock Exchange or in The Nasdaq National Market, or the fixing of minimum or maximum prices for trading, or the establishment of required maximum ranges for prices by any of said exchanges or by such system or by order of the Commission, the National Association of Securities Dealers, Inc. or any other governmental authority, or the occurrence of a material disruption in commercial banking or securities settlement or clearance services in the United States, or (iv) the declaration of a banking moratorium by either Federal or New York authorities.

(c) All corporate proceedings and other legal matters in connection with this Agreement, the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package, the Prospectus, other Exchange Offer Materials or otherwise, and the registration, authorization, issue, and delivery of the New Notes issuable in accordance with the Exchange Offer, shall have been executed in a manner reasonably satisfactory to your counsel, and such counsel shall have been furnished with such papers and information as they may reasonably have requested to enable them to pass upon the matters referred to in this Section.

(d) You shall have received the opinion of Cahill Gordon & Riendel LLP, outside counsel for the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-1 hereto.

(e) You shall have received the opinion of Conyers Dill & Pearman, special Bermuda counsel for the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-2 hereto.

(f) You shall have received the opinion of Christopher J. Margolin, Vice President, General Counsel and Secretary of the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-3 hereto.

(g) You shall have received the opinion of McAndrews, Held & Malloy Ltd., special counsel to the Company with respect to patent and proprietary rights, dated the Closing Date addressed to you, substantially in the form of Exhibit B-4 hereto.

(h) You shall have received the opinion of Marshall, Gerstein & Borun, special counsel to the Company with respect to patent and proprietary rights, dated the Closing Date addressed to you, substantially in the form of Exhibit B-5 hereto.

(i) You shall have received the opinion of Anne S. Dollard, Senior Director of Intellectual Property of the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-6 hereto.

(j) You shall have received the opinion of Cahill Gordon & Reindel LLP, special outside tax counsel to the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-7 hereto.

Counsel rendering the foregoing opinions in (d), (e), (f), (g), (h), (i) and (j) may rely as to questions of law not involving the laws of the United States of America (or in the case of (d) and (j), the State of New York) upon opinions of local counsel, and as to questions of fact upon representations or certifications of officers of the Company, and of government officials, in which case their opinion is to state that they are so relying and that they have no knowledge of any material misstatement or inaccuracy in any such opinion, representation or certificate. Copies of any opinion, representation or certificate so relied upon shall be delivered to you, as Dealer Manager, and to your counsel.

(k) You shall have received on the Closing Date an opinion of Shearman & Sterling LLP in form and substance satisfactory to you, with respect to such matters as you may

reasonably request, and the Company shall have furnished to such counsel such documents as they may have requested for the purpose of enabling them to pass upon such matters.

(l) At the time of the execution of this Agreement, you shall have received from Ernst & Young LLP, a letter dated as of such date, in form and substance satisfactory to you containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information for the fiscal years 2000, 2001, 2002, 2003 and 2004 and the nine months ended September 30, 2005 contained in the Prospectus.

(m) You shall have received by or on the effective date of the Registration Statement, on the Expiration Date and by the Applicable Time, a bring-down comfort letter, dated as of the effective date of the Registration Statement (or one business day prior thereto), as of the Expiration Date (or one business day prior thereto) or the Applicable Time (or one business day prior thereto), as the case may be, from Ernst & Young LLP addressed to you which shall reaffirm the statements made in the letter referenced in (l) above.

(n) You shall have received by or on the Closing Date, a letter dated as of the Closing Date (or one business day prior thereto) as the case may be, from Ernst & Young LLP addressed to you substantially in the form of the bring-down comfort letter dated the date of this Agreement, which shall reaffirm the statements made in the letters referenced in (l) and (m) above.

(o) You shall have received a certificate of the Company, dated as of the Closing Date, signed by the Chief Executive Officer and Chief Financial Officer of the Company, certifying that, and you shall be satisfied that:

(i) the representations and warranties of the Company in this Agreement are true and correct in all material respects, as if made on and as of the Closing Date or such other date as of which any representation speaks, as the case may be, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date, as the case may be;

(ii) no stop order refusing or suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or threatened under the Securities Act;

(iii) when the Registration Statement became effective and at the Applicable Time, and at all times subsequent thereto up to the date of such certificate, the Registration Statement, the Pricing Disclosure Package, the Prospectus, and any amendments or supplements thereto, contained all material information required to be included therein by the Securities Act and the Rules and Regulations thereunder or the Exchange Act and the applicable Rules and Regulations of the Commission thereunder, as the case may be, and in all material respects conformed to the requirements of the Securities Act and the Rules and Regulations thereunder or the Exchange Act and the applicable Rules and

Regulations of the Commission thereunder, as the case may be; the Registration Statement, and any amendment or supplement thereto, did not and does not include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; the Pricing Disclosure Package and the Prospectus, and any amendment or supplement thereto, did not and do not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and since the effective date of the Registration Statement, there has occurred no event required to be set forth in an amended or supplemented Prospectus which has not been so set forth; and

(iv) subsequent to the respective dates as of which information is given in the Registration Statement and Prospectus and up to the date of such certificate, and except as disclosed therein, there has not been (a) any material adverse change in the financial condition, business, prospects, property, operations or results of operations of the Company and its subsidiaries considered as one enterprise, (b) any transaction that is material to the Company and its subsidiaries considered as one enterprise, except transactions entered into in the ordinary course of business, (c) any obligation, direct or contingent, that is material to the Company and its subsidiaries considered as one enterprise, incurred by the Company or its subsidiaries, except obligations incurred in the ordinary course of business, (d) any change in the share capital or outstanding indebtedness of the Company that is material to the Company and its subsidiaries considered as one enterprise, (e) any dividend or distribution of any kind declared, paid or made on the share capital of the Company, or (f) any loss or damage (whether or not insured) to the property of the Company or any of its subsidiaries which has been sustained or will have been sustained and which has a Material Adverse Effect.

(p) The Company shall have furnished to you such further certificates and documents as you shall reasonably request (including certificates of officers of the Company) as to the accuracy of the representations and warranties of the Company herein, as to the performance by the Company of its obligations hereunder and as to the other conditions concurrent and precedent to your obligations hereunder.

(q) You shall have received lock-up letters, substantially in the form set forth in Exhibit A hereto, from each of the executive officers and directors of the Company set forth in Schedule IV hereto.

(r) The NASD shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the terms and arrangements in connection with the offering of the New Notes.

All such opinions, certificates, letters and documents will be in compliance with the provisions hereof only if they are reasonably satisfactory to your counsel. The Company will furnish you with such number of conformed copies of such opinions, certificates, letters and documents, as you shall reasonably request.

11. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold you harmless against any losses, claims, damages or liabilities, joint or several, to which you may become subject under the Securities Act, the Exchange Act or otherwise, specifically including, but not limited to, losses, claims, damages or liabilities (or actions in respect thereof) arising out of or based upon (i) any breach of any representation, warranty, agreement or covenant of the Company herein contained, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, the Schedule TO or any Exchange Offer Materials, or any amendments or supplements thereto, 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, or (iii) any untrue statement or alleged untrue statement of any material fact contained in the Pricing Disclosure Package or any Prospectus or any amendment or supplement thereto, or the omission or alleged omission to state therein a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and agrees to reimburse you for any legal or other expenses reasonably incurred by you in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the Prospectus, the Pricing Disclosure Package, the Schedule TO, any other Exchange Offer Materials, or any amendment or supplement thereto, in reliance upon, and in conformity with, written information relating to you furnished to the Company by you, specifically for use in the Registration Statement, the Prospectus, the Pricing Disclosure Package, the Schedule TO or any other Exchange Offer Materials or any amendment or supplement thereto or in the preparation thereof.

The indemnity agreement in this Section 11(a) shall extend upon the same terms and conditions to, and shall inure to the benefit of, you and your affiliates and the partners, directors, officers, employees and agents of you and your affiliates, and each person or entity, if any, who controls or is under common control with, you within the meaning of the Securities Act or the Exchange Act. This indemnity agreement shall be in addition to any liabilities, which the Company may otherwise have.

(b) You agree to indemnify and hold harmless the Company against any losses, claims, damages or liabilities, joint or several, to which the Company may become subject under the Securities Act, the Exchange Act or otherwise, specifically including, but not limited to, losses, claims, damages or liabilities (or actions in respect thereof) arising out of or based upon (i) any breach of any representation, warranty, agreement or covenant of yours herein contained, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, the Schedule TO or any Exchange Offer Materials, or any amendments or supplements thereto, 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, or (iii) any untrue statement or alleged untrue statement of any material fact contained in the Pricing Disclosure Package, the Prospectus or any amendment or supplement thereto, or the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not

misleading, in the case of subparagraphs (ii) and (iii) of this Section 11(b) to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon, and in conformity with, written information furnished to the Company by you specifically for use in the Registration Statement, the Prospectus, the Pricing Disclosure Package, the Schedule TO, any other Exchange Offer Materials or any amendment or supplement thereto or in the preparation thereof, and you agree to reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such loss, claim, damage, liability or action.

The indemnity agreement in this Section 11(b) shall extend upon the same terms and conditions to, and shall inure to the benefit of, each officer of the Company who signed the Registration Statement and each director of the Company, and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act. This indemnity agreement shall be in addition to any liabilities, which you may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 11 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 11, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 11 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 11 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel), approved by the indemnifying party (the Company in the case of Section 11(a) and each of Piper Jaffray & Co. and Canaccord Adams Inc. in the case of Section 11(b)), representing the indemnified parties who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the

indemnified party to represent the indemnified party within a reasonable time after notice of commencement of such action, or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the reasonable fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) The indemnifying party under this Section 11 shall not be liable for any settlement of any proceeding effected without its written consent, unless the indemnifying party shall have approved the terms of settlement; provided that such consent shall not be unreasonably withheld. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes (i) an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(e) In order to provide for just and equitable contribution in any action in which a claim for indemnification is made pursuant to this Section 11 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 11 provides for indemnification in such case, all the parties hereto shall contribute to the aggregate losses, claims, damages or liabilities to which they may be subject (after contribution from others) in such proportion so that you are responsible for the portion represented by the percentage that the maximum Dealer Managers' fee payable to you pursuant to Section 6 hereof bears to the value of the maximum amount of New Notes issuable pursuant to the Exchange Offer, and the Company is responsible for the remaining portion, provided, however, that (i) you shall not be required to contribute any amount in excess of the amount by which the fee paid to you pursuant to Section 6 hereof exceeds the amount of damages which you have been otherwise required to pay and (ii) no person guilty of a fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who is not guilty of such fraudulent misrepresentation. The contribution agreement in this Section 11(d) shall extend upon the same terms and conditions to, and shall inure to the benefit of, each person, if any, who controls you or the Company within the meaning of the Securities Act or the Exchange Act and each officer of the Company who signed the Registration Statement and each director of the Company.

12. Representations, Warranties, Covenants and Agreements to Survive Delivery. All representations, warranties, covenants and agreements of the Company and you herein or in certificates delivered pursuant hereto, and the indemnity and contribution agreements contained in Section 11 hereof shall remain operative and in full force and effect regardless of any investigation made by or on behalf of you or any person controlling you within the meaning of the Securities Act or the Exchange Act, or by or on behalf of the Company or any of its officers,

directors or controlling persons within the meaning of the Securities Act or the Exchange Act, and shall survive the completion of the Exchange Offer or termination of this Agreement.

13. Termination.

(a) This Agreement shall terminate upon the earliest to occur of (i) thirty days after the Expiration Date, (ii) any of the conditions specified in Section 10 has not been fulfilled as of any date such condition is required to be fulfilled pursuant to Section 10 (and the Dealer Managers shall have notified the Company thereof), (iii) the date on which the Company terminates or withdraws the Exchange Offer for any reason, or (iv) any modification to the business terms of the Exchange Offer in the Company's sole and absolute discretion that results in the Dealer Managers withdrawing pursuant to Section 5 hereof, (the earliest to occur of clauses (i), (ii), (iii) or (iv) being referred to as the "Termination Date").

(b) Notwithstanding termination of this Agreement pursuant to subsection (a) above, the obligations of the parties pursuant to Sections 6, 7 and 11 shall survive any termination of this Agreement.

If you elect to terminate this Agreement as provided in this Section 13, you shall promptly notify the Company by telephone, telecopy or telegram, in each case confirmed by letter.

14. Notices. All notices or communications hereunder, except as herein otherwise specifically provided, shall be in writing and if sent to you shall be mailed, delivered, or faxed (and confirmed by letter) to each of you at Piper Jaffray & Co., 345 California Street, 24th Floor, San Francisco, CA 94104, fax number (415) 984-5121 Attention: Hsian Winter and Canaccord Adams Inc., 99 High Street, Boston, MA 02110, fax number (617) 371-3736, Attention General Counsel; if sent to the Company or Christopher J. Margolin, such notice shall be mailed, delivered, faxed (and confirmed by letter) to it or him at XOMA Ltd. , 2910 Seventh Street, Berkeley, CA 94710, fax number (510) 649-7571, Attention: Legal Department, with a copy (which shall not constitute notice) to Cahill Gordon & Reindel LLP, 80 Pine Street, 17th Floor, New York, NY 10005, fax number (212) 269-5420, Attention: Geoffrey E. Liebmann.

15. Absence of Fiduciary Relationship. The Company acknowledges and agrees that: (a) the Dealer Managers have been retained solely to act as a dealer manager in connection with the Exchange Offer and that no fiduciary, advisory or agency relationship between the Company and the Dealer Managers has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Dealer Managers have advised or are advising the Company on other matters; (b) the price and other terms of the New Notes set forth in the indenture related to the New Notes were established by the Company following discussions and arms-length negotiations with the Dealer Managers and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Dealer Managers and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Dealer Managers have no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that the Dealer Managers are acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of the Dealer Managers, and

not on behalf of the Company; (e) it waives to the fullest extent permitted by law, any claims it may have against the Dealer Managers for breach of fiduciary duty or alleged breach of fiduciary duty in respect of any of the transactions contemplated by this Agreement and agrees that the Dealer Managers shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim on behalf of or in right of the Company, including shareholders, employees or creditors of the Company.

16. Parties. This Agreement shall inure to the benefit of and be binding upon the Dealer Managers and the Company and their respective executors, administrators, successors and assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person or entity, other than the parties hereto and their respective executors, administrators, successors and assigns, and the controlling persons within the meaning of the Securities Act or the Exchange Act, officers and directors referred to in Section 11 hereof, any legal or equitable right, remedy or claim in respect of this Agreement or any provisions herein contained. This Agreement, and all conditions and provisions hereof, is intended to be and is for the sole and exclusive benefit of the parties hereto and their respective executors, administrators, successors and assigns and said controlling persons and said officers and directors, and for the benefit of no other person or entity. No Holder of Existing Notes receiving New Notes upon exchange of such Existing Notes shall be construed a successor or assign by reason merely of such exchange.

17. Submission of Jurisdiction. Except as set forth below, no claim may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company consents to the jurisdiction of such courts and personal service with respect thereto. The Company hereby consents to personal jurisdiction, service and venue in any court in which any Claim arising out of or in any way relating to this Agreement is brought by any third party against any Dealer Manager or any other indemnified party. Each of the Dealer Managers and the Company (on its behalf and, to the extent permitted by applicable law, on behalf of its shareholders and affiliates) waives all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement. The Company agrees that a final judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon the Company and may be enforced in any other courts to the jurisdiction of which the Company is or may be subject, by suit upon such judgment. The Company hereby appoints, without power of revocation, Christopher J. Margolin, as its agent to accept and acknowledge on its behalf service of any and all process which maybe served in any action, proceeding or counterclaim in any way relating to or arising out of this Agreement.

18. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

19. Counterparts. This Agreement may be signed in several counterparts, each of which will constitute an original.

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

Very truly yours,

XOMA LTD.

By _____
Name:
Title:

Accepted as of the date first above written:

PIPER JAFFRAY & CO.

By _____
Name:
Title:

CANACCORD ADAMS INC.

By _____
Name:
Title:

Schedule I

1. The Expiration Date is February 8, 2006.

2. Pricing Terms of the New Notes that are Omitted from the Preliminary Prospectus.

Schedule II

For purposes of this Agreement, the term "Applicable Time" means__:00 _.m. (Eastern Time) on _____, 2006.

Schedule III

Issuer-Represented General Free Writing Prospectus

Schedule IV
Persons Subject to Lock-Up

John L. Castello
Patrick J. Scannon MD, PhD
J. David Boyle II
Christopher J. Margolin
James G. Andress
William K. Bowes, Jr.
Arthur Kornberg MD
Peter Barton Hutt
W. Denman Van Ness
Patrick J. Zenner

Exhibit A
Form of Lock-up

Piper Jaffray & Co.
Canaccord Adams Inc.

c/o Piper Jaffray & Co.
The Chrysler Center, 58th Floor
405 Lexington Avenue
New York, NY 10174

Re: XOMA Ltd.

Ladies and Gentlemen:

The undersigned is, or will immediately prior to the Offering (as defined below) be, an owner of record or the beneficial owner of certain common shares of XOMA Ltd. (the "Company"), par value $0.0005 per share (the "Common Shares") or securities convertible into or exchangeable or exercisable for Common Shares. The Company has filed a Registration Statement on Form S-4 and Form S-3 (as may hereafter be amended, the "Registration Statement") pursuant to which the Company will offer to exchange (the "Exchange Offer") up to $60,000,000 aggregate principal amount of its 6.50% Convertible Senior Notes due 2012 (the "Existing Notes") for up to $60,000,000 aggregate principal amount of its 6.50% SNAPs$_{sm}$ due 2012 (the "New Notes"), for which you will act as the dealer managers (the "Dealer Managers"); and pursuant to which it will propose a public offering of up to an additional $10,000,000 aggregate principal amount of New Notes (the "New Money Offering," and together with the Exchange Offer, the "Offering") for which you will act as the placement agents (the "Placement Agents"). The undersigned recognizes that the Offering will be of benefit to the undersigned and will benefit the Company by, among other things, raising additional capital for its operations. The undersigned acknowledges that you will be relying on this letter in carrying out the Offering and in entering into placement and dealer manager arrangements with the Company with respect to the Offering.

In consideration of the foregoing, the undersigned hereby agrees that the undersigned will not, without the prior written consent of Piper Jaffray & Co. (which consent may be withheld in its sole discretion), directly or indirectly, sell, offer, contract or grant any option to sell (including, without limitation, any short sale), pledge (including margin stock), transfer, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Securities Exchange Act of 1934, as amended, or otherwise dispose of or transfer, or commence the offering of, any Common Shares, options or warrants to acquire Common Shares, or securities exchangeable or exercisable for or convertible into Common Shares currently or hereafter owned either of record or beneficially by the undersigned, or publicly announce an intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 90 days after the date of the final prospectus relating to

the Offering (the "Prospectus"). If (i) the Company issues an earnings release or material news, or a material event relating to the Company occurs, during the last 17 days of the lock-up period, or (ii) prior to the expiration of the lock-up period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the lock-up period, then, in each case, the restrictions imposed by this agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. The foregoing sentences shall not apply to transfers of Common Shares (a) by bona fide gift, will or operation of law (such as intestacy), including without limitation, transfers by bona fide gift will or intestacy to family members of the undersigned or to a settlement or trust established under the laws of any country, (b) the exercise of any option which would otherwise expire during the lock-up period, (c) the exercise of options (including a cashless exercise) or conversion of convertible securities outstanding as of the date of the Prospectus, provided that the shares received upon such conversion or exercise shall be subject to the terms of this agreement or (d) dispositions of not more than 50,000 Common Shares in the aggregate held by the undersigned on the date of the Prospectus or issued to the undersigned upon exercise of options or conversion of convertible securities outstanding on such date; *provided, however,* that in any transfer made pursuant to clause (a) it shall be a condition to such transfer that the transferee executes and delivers to Piper Jaffray & Co. an agreement stating that the transferee is receiving and holding the Common Shares subject to the provisions of this letter agreement, and there shall be no further transfer of such Common Shares except in accordance with this letter.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of Common Shares or securities convertible into or exchangeable or exercisable for Common Shares held by the undersigned except in compliance with the foregoing restrictions.

With respect to the Offering only, the undersigned waives any registration rights relating to registration under the Securities Act of 1933, as amended, of any Common Shares owned either of record or beneficially by the undersigned, including any rights to receive notice of the Offering. In addition, during the period through the close of trading on the date 90 days after the date of the Prospectus, as such 90-day period may be extended pursuant to the second paragraph of this letter agreement, the undersigned will not make any demand for, or exercise any right with respect to, the registration of Common Shares or any securities convertible into or exercisable or exchangeable for Common Shares without the prior written consent of Piper Jaffray & Co. (which consent may be withheld in its sole discretion).

This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives and assigns of the undersigned. This agreement shall automatically terminate upon the earliest to occur, if any, of: (a) either Piper Jaffray & Co., on the one hand, or the Company, on the other hand, advising the other in writing, prior to the execution of either the Dealer Manager Agreement or Placement Agreement, that it has determined not to proceed with the Offering or (b) termination of the Dealer Manager Agreement or Placement Agreement entered into between the Company and you before the issuance of any New Notes.

Printed Name of Holder

By: _____
Signature

_____
Printed Name of Person Signing
(and indicate capacity of person signing if signing as custodian, trustee, or on behalf of an entity)

Exhibit B-1
Form of opinion of Cahill Gordon & Reindel LLP
to be delivered pursuant to Section 10(d)

(i) XOMA (US) LLC has been duly organized and is validly existing as a limited liability company in good standing under the laws of the State of Delaware, with full power and authority to own, lease and operate its properties and to conduct its business as currently conducted.

(ii) All of the outstanding membership or other equity interests of XOMA (US) LLC have been duly authorized and validly issued, are fully paid and non-assessable, and, to such counsel's knowledge, are owned by the Company, subject to no security interest, or adverse claim.

(iii) Each of the documents incorporated by reference in the Registration Statement and the Prospectus, at the time it became effective or was filed with the Commission, complied as to form in all material respects with the requirement of the Exchange Act (except as to the financial statements and the notes thereto and the schedules and other financial and accounting data, and the statistical data derived therefrom, included or incorporated by reference therein, as to all of which such counsel need express no opinion and make no comment).

(iv) Each of this Agreement, the Indenture, the New Notes and the Shares conform in all material respects to the description thereof contained in Prospectus.

(v) Assuming the due authorization, execution and delivery of the New Notes by the Company under Bermuda law, the New Notes, when authenticated in accordance with the provisions of the Indenture and delivered to and paid for pursuant to the Exchange Offer, will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and general principles of equity, and will be entitled to the benefits of the Indenture.

(vi) Assuming the due authorization, execution and delivery of the Indenture under Bermuda law by the Company, the Indenture will be a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and general principles of equity. Notwithstanding the foregoing, Cahill Gordon & Reindel LLP need not express an opinion as to the validity, legally binding effect or enforceability of Section 3.05 of the Indenture or any related provisions in the Indenture or the New Notes that require or relate to payment of a "Make whole amount" or any additional interest, in each case upon conversion of the New Notes at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture.

(vii) Assuming (i) the representations of the Company contained in this Agreement are true, correct and complete and (ii) compliance by the Company with their respective covenants set forth in this Agreement, no approval, authorization, consent or order of or filing with any U.S. federal, or New York or Delaware state governmental or regulatory commission, board, body, authority, agency or subdivision is required in connection with the issuance and sale of the New Notes and the issuance of the Shares or the consummation by the Company of the transactions contemplated by this Agreement or the Indenture (other than federal securities laws, as to which such counsel expresses no opinion in this paragraph, and state securities or blue sky laws and the rules and regulations of the NASD, as to which such counsel expresses no opinion).

(x) The execution, delivery and performance of this Agreement by the Company, the issuance and sale of the New Notes and the issuance of the Shares by the Company and the consummation by the Company of the transactions contemplated by this Agreement and the Indenture by the Company and the consummation, do not and will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which with notice, lapse of time or both would result in any breach or violation of or constitute a default under) the charter or bylaws or other organizations documents of XOMA (US) LLC or any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument filed as an exhibit to a document incorporated by reference in the Registration Statement and Prospectus to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, or, assuming (i) the representations of the Company contained in this Agreement are true, correct and complete and (ii) compliance by the Company with their respective covenants set forth in this Agreement, any U.S. federal or New York or Delaware state law, regulation or rule or any decree, judgment or order applicable to the Company or any Subsidiary and known to such counsel.

(xi) To such counsel's knowledge, there are no contracts, licenses, agreements, leases or documents of a character which are required to be described in any document incorporated by reference in the Registration Statement and Prospectus which have not been so described or filed.

(xii) To such counsel's knowledge, there are no actions, suits, claims, investigations or proceedings pending, threatened or contemplated to which the Company or any of the Subsidiaries or any of their respective directors or officers is or would be a party or to which any of their respective properties is or would be subject at law or in equity, before or by any governmental or regulatory commission, board, body, authority, agency or subdivision which are required to be described in any document incorporated by reference in the Registration Statement and Prospectus but are not so described.

(xiii) Each of the Company and the Subsidiaries is not and, after giving effect to the offering and sale of the New Notes and the application of the proceeds thereof as described in the Prospectus, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act.

(xiv) The information in (A) the Registration Statement and Prospectus under the captions "United States Federal Income Tax Considerations," "Plan of Distribution," "Description of the Existing Notes," "Description of the New Notes," "The Exchange Offer" and "Description of Share Capital," (B) the Company's annual report for the year ended December 31, 2004 on Form 10-K under the captions "Item 1. Business—Financial and Legal Arrangements of Product Collaborations and Licensing Arrangements—Current Agreements," "—Recently Terminated Agreements—Onyx, " and "Recently Terminated Agreements—Baxter," (C) the Company's current report on Form 8-K dated March 30, 2005, (D) the Company's current report on Form 8-K dated May 20, 2005, (E) the Company's current report on Form 8-K dated June 17, 2005, (F) the Company's current report on Form 8-K dated July 21, 2005, and (G) the Company's current report on Form 8-K dated September 20, 2005, insofar as such statements constitute a summary of documents or matters of law, are descriptions of contracts, agreements or other legal documents or of legal proceedings, or refer to statements of law or legal conclusions, are accurate in all material respects and present fairly the information required to be shown.

(xv) The Registration Statement has become effective under the Securities Act and, to such counsel's knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been instituted or, to the knowledge of such counsel, threatened by the Commission.

(xvi) The Registration Statement and the Prospectus, and any amendment thereof or supplement thereto (including any term sheet within the meaning of Rule 434 of the Rules and Regulations), comply as to form in all material respects with the requirements of the Securities Act and the Rules and Regulations thereunder; the conditions for use of form S-3/S-4, set forth in the General Instructions thereto, have been satisfied.

(xvii) The Schedule TO, and each amendment or supplement thereto, and the documents required by Item 12 thereof (other than the financial statements, including supporting schedules, and the financial data derived therefrom as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Exchange Act and the Rules and Regulations thereunder;

(xviii) [In addition, such counsel shall state that such counsel has participated in conferences with officers and other representatives of the Company, other counsel for the Company, counsel for the Placement Agents, representatives of the Placement Agents and representatives of the independent public accountants of the Company at which the contents of the Registration Statement and Prospectus and related matters were discussed, and although such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement and Prospectus (except as set forth in paragraphs (iv) and (xiv) above), on the basis of the foregoing (relying as to materiality to the extent such counsel deems appropriate upon the opinions of officers and other representatives of the Company), no facts have come to such counsel's attention that lead such counsel to believe that the Registration Statement or any amendment thereof, at the

time the Registration Statement became effective (including any Registration Statement filed under Rule 462(b) of the Rules and Regulations) and as of such Closing Date contains, an untrue statement of a material fact or omitted or omits to state a material fact requited to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except as to the financial statements and the notes thereto and the schedules and other financial and accounting data, and the statistical data derived therefrom, included or incorporated by reference therein, as to all of which such counsel need express no opinion and make no comment).]

In rendering such opinions, such counsel may rely (A) as to matters involving the application of laws other than the laws of the United States, the State of New York and the State of Delaware, to the extent such counsel deems proper and to the extent specified in such opinion, if at all, upon an opinion or opinions (reasonably satisfactory to the Dealer Managers' counsel) of other counsel reasonably acceptable to the Dealer Managers' counsel, familiar with the applicable laws; and (B) as to matters of fact, to the extent such counsel deems proper, on certificates of responsible officers of the Company and certificates or other written statements of officials of jurisdictions having custody of documents respecting the corporate existence or good standing of the Company. The opinion of such counsel for the Company shall state that the opinion of any such other counsel is in form satisfactory to such counsel and, in such counsel's opinion, the Dealer Manager and they are justified in relying thereon. With respect to the matters to be covered in subparagraph (xv) above, counsel may state their opinion and belief is based upon their participation in the preparation of the Registration Statement and Prospectus and any amendment or supplement thereto but is without independent check or verification except as specified.

Exhibit B-2
Form of opinion of Conyers Dill & Pearman
to be delivered pursuant to Section 10(e)

(i) The Company has been duly continued to Bermuda and is existing under the laws of Bermuda in good standing (meaning solely that it has not failed to make any filing with any Bermuda governmental authority, or to pay any Bermuda government fee or tax, which would make it liable to be struck off the Register of Companies and thereby cease to exist under the laws of Bermuda), with full corporate power to own, lease and operate its properties and conduct its business as described under the heading "Summary" in the Prospectus.

(ii) Each of XOMA (Bermuda) Ltd. And XOMA Technology Ltd. (each a "Bermuda Subsidiary" and collectively, the "Bermuda Subsidiaries") is duly incorporated and is existing under the laws of Bermuda in good standing (meaning solely that it has not failed to make any filing with any Bermuda governmental authority, or to pay any Bermuda government fee or tax, which would make it liable to be struck off the Register of Companies and thereby cease to exist under the laws of Bermuda), with full corporate power to own, lease and operate its properties and conduct its business as described under the heading "Summary" in the Prospectus.

(iii) The Company has the necessary corporate power and authority to enter into and perform its obligations under this Agreement and the Indenture, including the issuance, sale and delivery of the New Notes and the issuance of the Shares as contemplated herein. The execution and delivery of this Agreement and the Indenture by the Company and the performance by the Company of its obligations hereunder and under the Indenture will not violate the memorandum of continuance or bye-laws of the Company nor any applicable law, regulation, order or decree in Bermuda.

(iv) The Company has taken all corporate action required to authorize its execution, delivery and performance of this Agreement and the Indenture. Each of this Agreement and the Indenture, have been duly executed and delivered by or on behalf of the Company and this Agreement and the Indenture (assuming the due authorization, execution and delivery thereof by the Trustee) constitute the valid and binding obligations of the Company in accordance with the terms thereof.

(v) No order, consent, approval, license, authorization or validation of or exemption by any government or public body or authority of Bermuda or any sub-division thereof is required to authorise or is required in connection with the execution, delivery, performance and enforcement of this Agreement or the Indenture, except such as have been duly obtained in accordance with Bermuda law.

(vi) It is not necessary or desirable to ensure the enforceability in Bermuda of this Agreement or the Indenture that any of them be registered in any register kept by, or filed with, any governmental authority or regulatory body in Bermuda. However, to the extent that this Agreement or the Indenture create a charge over assets of the Company, it may be desirable to ensure the priority in Bermuda of the charge that it

be registered in the Register of Charges in accordance with Section 55 of the Companies Act 1981.

(vii) Neither this Agreement nor the Indenture will be subject to*ad valorem* stamp duty in Bermuda and no registration, documentary, recording transfer or other similar tax, fee or charge is payable in Bermuda in connection with the execution, delivery, filing, registration or performance of this Agreement and the Indenture, other than in connection with a registration described in paragraph (vi) above and in connection with the filing of the Prospectus with the Registrant of Companies.

(viii) There is no income or other tax of Bermuda imposed by withholding or otherwise on (i) any payment to be made to or by the Company pursuant to this Agreement or the Indenture or (ii) any interest or dividend to be paid by the Company to the holders of the New Notes or the Shares or by a Bermuda Subsidiary to the Company.

(ix) The choice of the laws of the State of New York (the "Foreign Laws") as the governing law of this Agreement and the Indenture is a valid choice of law and would be recognized and given effect to in any action brought before a court of competent jurisdiction in Bermuda, except for those laws (i) which such court considers to be procedural in nature, (ii) which are revenue or penal laws or (iii) the application of which would be inconsistent with public policy, as such term is interpreted under the laws of Bermuda. The submission in this Agreement and the Indenture to the jurisdiction of the courts referred to in Section 17 hereof (the "Foreign Courts") is valid and binding upon the Company.

(x) The courts of Bermuda would recognize as a valid judgment, a final and conclusive judgment*in personam* obtained in the Foreign Courts against the Company based upon this Agreement or the Indenture under which a sum of money is payable (other than a sum of money payable in respect of multiple damages, taxes or other charges of a like nature or in respect of a fine or other penalty) and would give a judgment bared thereon, provided that (a) such courts had proper jurisdiction over the parties subject to such judgment, (b) such courts did not contravene the rules of natural justice of Bermuda, (c) such judgment was not obtained by fraud, (d) the enforcement of the judgment would not be contrary to the public policy of Bermuda, (e) no new admissible evidence relevant to the action is submitted prior to the rendering of the judgment by the courts of Bermuda and (f) there is due compliance with the correct procedures under the laws of Bermuda.

(xi) None of the Dealer Managers will be deemed to be resident, domiciled or carrying an business in Bermuda by reason only of the execution, performance and/or enforcement of this Agreement by such Dealer Manager.

(xi) Each of the Dealer Managers has standing to bring an action or proceedings before the appropriate courts in Bermuda for the enforcement of this Agreement. It is not necessary or advisable in order for any Dealer Manager to enforce

its rights under this Agreement, including the exercise of remedies thereunder, that it be licensed, qualified or otherwise entitled to carry on business in Bermuda.

(xiii) The Company and each of the Bermuda Subsidiaries has been designated as non-resident of Bermuda for the purposes of the Exchange Control Act, 1972 and, as such, is free to acquire, hold and sell foreign currency and securities, and to pay dividends on their respective shares, without restriction.

(xiv) Neither the Company nor either of the Bermuda Subsidiaries is entitled to any immunity under the laws of Bermuda, whether characterized as sovereign immunity or otherwise, from any legal proceedings to enforce this Agreement in respect of itself or its property.

(xv) Based solely upon a review of the register of members of the Company dated as of a date as close as practicable to the date of the opinion, certified by the Secretary of the Company on as of a date as close as practicable to the date of the opinion, the issued share capital of the Company consists of _____ common shares par value US$0.0005 and 2,959 Series B preference shares par value US$0.05, each of which is validly issued, fully paid and non-assessable (which term when used herein means that no further sums are required to be paid by the holders thereof in connection with the issue thereof). The New Notes have been duly authorised, and will not be subject to any statutory pre-emptive rights or similar rights under the memorandum of continuance or bye-laws of the Company, and when executed and delivered by the Company and otherwise validly issued in accordance with the Indenture and paid for in accordance with this Agreement and the Indenture, the New Notes will be validly issued, fully paid and non-assessable. The Shares reserved for issuance upon conversion of the New Notes have been duly authorised, and, when issued upon the conversion of the New Notes in accordance with the terms of the New Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any statutory pre-emptive rights or similar rights under the memorandum of continuance or bye-laws of the Company.

(xvi) Based solely upon a review of the register of members of each Bermuda Subsidiary dated as of a date as close as practicable to the date of the opinion, certified by the Assistant Secretary of the respective Bermuda Subsidiary on such date, the issued share capital of each Bermuda Subsidiary consists of 12,000 common shares par value US$1.00, each of which is validly issued, fully paid and non-assessable and registered in the name of the Company.

(xvii) The statements contained in the Prospectus and Registration Statement under the captions “Risk Factors – If you were to obtain a judgment against us, it may be difficult to enforce against us because we are a foreign entity,” “Risk Factors – Our shareholder rights agreement or bye-laws may prevent transactions that could be beneficial to our shareholders and may insulate our management from removal,” “Description of Share Capital” (other than under the caption “—Preference share purchase rights”), “Description of Existing Notes” and “Description of New Notes” to the

extent that they constitute statements of Bermuda law, are accurate in all material respects.

(xvii) The Company has received consent from the Bermuda Monetary Authority for (i) the issue of the Company's shares up to the amount of its authorised capital from time to time, to persons non-resident of Bermuda for exchange control purposes and the subsequent free transferability of such shares to and between persons non-resident of Bermuda for exchange control purposes without prior approval; (ii) the issue or transfer of up to 20% of the Company's shares in issue from time to time to persons resident in Bermuda for exchange control purposes without prior approval; and (iii) the issue of options, warrants, depository receipts, rights, loan notes and other securities of the Company and the subsequent free transferability thereof without prior approval, provided in each case that shares of the Company are listed on an appointed stock exchange (as defined in the Companies Act 1981).

(xix) Pursuant to section 16 of the Companies Act 1981, the bye-laws of the Company bind the Company and its shareholders to the same extent as if such bye-laws had been signed and sealed by each such shareholder and contained covenants on the part of each such shareholder to observe all the provisions of the bye-laws of the Company. However, no shareholder of the Company will be bound by an alteration made in the bye-laws of the Company after the date on which he became a shareholder if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise pay money to, the Company (unless such shareholder agrees in writing, either before or after the alteration is made, to be bound thereby).

(xx) The Company can sue and be sued in its own name under the laws of Bermuda.

(xxi) The procedure for the service of process on the Company through Christopher J. Margolin in New York, New York, United States of America, acting as agent for the Company, as provided in Section 17 of this Agreement, is and would be effective, insofar as Bermuda law is concerned, to constitute valid service of process on the Company in connection with proceedings before the Foreign Courts.

Exhibit B-3
Form of opinion of Christopher J. Margolin
to be delivered pursuant to Section 10(f)

(i) The Company and each of the Subsidiaries is duly qualified to do business as a foreign corporation or company and is in good standing in each U.S. jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect.

(ii) No options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into membership or other equity interests of the Subsidiaries, are outstanding. To such counsel's knowledge, all of the outstanding share capital or other equity interests of each of the Bermuda Subsidiaries are owned by the Company, in each case subject to no security interest, encumbrance or adverse claim.

(iii) This Agreement and the Indenture have been duly delivered by the Company.

(iv) The execution, delivery and performance of this Agreement and the Indenture by the Company, the issuance and sale of the New Notes and the Shares by the Company and the consummation by the Company of the transactions contemplated hereby and the Indenture do not and will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which with notice, lapse of time or both would result in any breach or violation of or constitute a default under) (A) the charter or bye-laws or other organizational documents of the Company or any of the Subsidiaries, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, or (C) any state or local law, regulation or rule or any decree, judgment or order known by such counsel to be applicable to the Company or any of the Subsidiaries, except, in the case of clause (B), to the extent that any such breach, violation or default would not, individually or in the aggregate, have a Material Adverse Effect.

(v) Except as described in the Registration Statement and Prospectus, no person has the right, pursuant to the terms of any contract, agreement or other instrument described in the Registration Statement or Prospectus or any documents incorporated by reference therein or otherwise known to such counsel, to cause the Company to register under the Securities Act any common shares or any other shares or other equity interest of the Company, or to include any such shares or other equity interest in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of any Registration Statement or the sale of the New Notes or the Shares as contemplated thereby or otherwise.

(vi) The Company's common shares are listed for trading on The Nasdaq National Market.

(vii) To such counsel's knowledge, there are no affiliate transactions or off-balance sheet transactions of a character which are required to be described in any documents incorporated by reference in the Registration Statement and Prospectus, which are not so described.

(viii) The information in (A) the Company's proxy statement pursuant to Section 14(a) of the Exchange Act on Schedule 14A filed with the Commission on April 13, 2005 under the captions "Employment Contracts and Termination of Employment and Change-in-Control Arrangements," (B) the Company's annual report for the year ended December 31, 2004 on Form 10-K under the caption "Part I. Item 3. Legal Proceedings," (C) the Company's quarterly report for the quarter ended March 31, 2005 on Form 10-Q under the caption "Part II. Item 1. Legal Proceedings," (D) the Company's quarterly report for the quarter ended June 30, 2005 on Form 10-Q under the caption "Part II. Item 1. Legal Proceedings," and (E) the Company's quarterly report for the quarter ended September 30, 2005 on Form 10-Q under the caption "Part II. Item 1. Legal Proceedings," insofar as such statements constitute a summary of documents or matters of law, are descriptions of contracts, agreements or other legal documents or of legal proceedings, or refer to statements of law or legal conclusions, are accurate in all material respects and present fairly the information required to be shown.

Exhibit B-4
Form of opinion of McAndrews, Heid & Malloy, Ltd.
to be delivered pursuant to Section 10(g)

(i) To such counsel's knowledge, the statements relating to the Patents and Applications in the Prospectus as of its date were, and as of the date such opinion is delivered are, accurate and complete statements or summaries of the matters therein set forth. Such counsel is unaware of facts that cause such counsel to believe that the above-described portions of the Prospectus contained as of this Agreement, or contain as of the date such opinion is delivered, an untrue statement of a material fact or omitted as of the date of this Agreement, or omit as of the date such opinion is delivered, a material fact required to be stated therein or necessary to make the statements therein not misleading.

(iii) To such counsel's knowledge, other than those disclosed in the Registration Statement and Prospectus, (A) there are no legal or governmental proceedings pending relating to the Patents and Applications, other than proceedings in the U.S. and foreign patent offices relating to the prosecution of pending patent applications, and (B) no such proceedings are threatened or contemplated by governmental authorities or others.

(iii) To such counsel's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement and Prospectus, such counsel is unaware of facts which would form a reasonable basis for a finding that: (i) the Patents are infringed by another party; or (ii) the commercialization of the products described in the Registration Statement and Prospectus as being under development by the Company and relating to the Patents would infringe patents owned by another party.

(iv) To such counsel's knowledge, such counsel is unaware of facts which (i) would preclude the Company from having valid license rights or clear title to the Patents and Applications; (ii) would cause such counsel to believe that the Company lacks or will be unable to obtain the rights or licenses to patents necessary to conduct the business now conducted or Proposed to be conducted by the Company as described in the Registration Statement and Prospectus; or (iii) would form a reasonable basis for a finding of unenforceability or invalidity of the Patents.

(v) To such counsel's knowledge, the Patents and Applications were filed and are being or have been prosecuted in accordance with applicable rules and regulations relating thereto. However, there is no assurance that patents will issue from the Applications, or that claims will be allowed without amendment or appeal to boards of appeal or higher courts.

Exhibit B-5
Form of opinion of Marshall, Gerstein & Borun
to be delivered pursuant to Section 10(h)

(i) To such counsel's knowledge, the statements relating to the Patents and Applications in the Prospectus as of its date were, and as of the date such opinion is delivered are, accurate and complete statements or summaries of the matters therein set forth. Such counsel is unaware of facts that cause such counsel to believe that the above-described portions of the Prospectus contained as of the date of this Agreement, or contain as of the date such opinion is delivered, an untrue statement of a material fact or omitted as of the date of this Agreement, or omit as of the date such opinion is delivered, a material fact required to be stated therein or necessary to make the statements therein not misleading.

(ii) To such counsel's knowledge, other than those disclosed in the Registration Statement and Prospectus, (A) there are no legal or governmental proceedings pending relating to the Patents and Applications, other than proceedings in the U.S. and foreign patent offices relating to the prosecution of pending patent applications, and (B) no such proceedings are threatened or contemplated by governmental authorities or others.

(iii) To such counsel's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement and Prospectus, such counsel is unaware of facts which would form a reasonable basis for a finding that: (i) the Patents are infringed by another party; or (ii) the commercialization of the products described in the Registration Statement and Prospectus as being under development by the Company and relating to the Patents would infringe patents owned by another party.

(iv) To such counsel's knowledge, such counsel is unaware of facts which (i) would preclude the Company from having valid license rights or clear title to the Patents and Applications; (ii) would cause such counsel to believe that the Company lacks or will be unable to obtain the rights or licenses to patents necessary to conduct the business now conducted or proposed to be conducted by the Company as described in the Registration Statement and Prospectus; or (iii) would form a reasonable basis for a finding of unenforceability or invalidity of the Patents.

(v) To such counsel's knowledge, the Patents and Applications were filed and are being or have been prosecuted in accordance with applicable rules and regulations relating thereto. However, there is no assurance that patents will issue from the Applications, or that claims will be allowed without amendment or appeal to boards of appeal or higher courts.

Exhibit B-6
Form of opinion of Anne S. Dollard
to be delivered pursuant to Section 10(i)

(i) To such counsel's knowledge, the statements relating to the Patent and Applications in the Prospectus as of its date were, and as of the date such opinion is delivered are, accurate and complete statements or summaries of the matters therein set forth. Such counsel is unaware of facts that cause such counsel to believe that the above-described portions of the Prospectus contained as of the Agreement, or contain as of the date such opinion is delivered, an untrue statement of a material fact or omitted as of the date of this Agreement, or omit as of the date such opinion is delivered, a material fact required to be stated therein or necessary to make the statements therein not misleading.

(ii) To such counsel's knowledge, other than those disclosed in the Registration Statement and Prospectus, (A) there are no legal or governmental proceedings pending relating to the Patents and Applications, other than proceedings in the U.S. and foreign patent offices relating to the prosecution of pending patent applications, and (B) no such proceedings are threatened or contemplated by governmental authorities or others.

(iii) To such counsel's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement and Prospectus, such counsel is unaware of facts which would form a reasonable basis for a finding that: (i) the Patents are infringed by another party; or (ii) the commercialization of the products described in the Registration Statement and Prospectus as being under development by the Company and relating to the Patents would infringe patents owned by another party.

(iv) To such counsel's knowledge, such counsel is unaware of facts which (i) would preclude the Company from having valid license rights or clear title to the Patents and Applications; (ii) would cause such counsel to believe that the Company lacks or will be unable to obtain the rights or licenses to patents necessary to conduct the business now conducted or proposed to be conducted by the Company as described in the Registration Statement and Prospectus; or (iii) would form a reasonable basis for a finding of unenforceability or invalidity of the Patents.

(v) To such counsel's knowledge, the Patents and Applications were filed and are being or have been prosecuted in accordance with applicable rules and regulations relating thereto. However, there is no assurance that patents will issue from the Applications, or that claims will be allowed without amendment or appeal to boards of appeal or higher courts.

Exhibit B-7
Form of opinion of Cahill Gordon & Reindel LLP
to be delivered pursuant to Section 10(j)

(i) Based upon and subject to the assumptions and qualifications set forth in such opinion, Cahill Gordon & Reindel LLP is of the opinion that XOMA Ltd should not be considered a "passive foreign investment company" within the meaning of Section 1297(a) of the Code (a "PFIC") for calendar year 2005.

Exhibit C

Subsidiaries

Name of Subsidiary	Jurisdiction of Incorporation
XOMA Limited	United Kingdom
XOMA (US) LLC	Delaware
XOMA (Bermuda) Ltd.	Bermuda
XOMA Technology Ltd.	Bermuda
XOMA Ireland Limited	Ireland

Exhibit D

1. Genentech – U.S. Patent No. 5,622,700
2. Genentech – U.S. Patent No. 6,037,454
3. Genentech/XOMA – U.S. Patent No. 6,582,698

Exhibit 1.2

PLACEMENT AGREEMENT

January 11, 2006

PIPER JAFFRAY & CO.
The Chrysler Center, 58th Floor
405 Lexington Avenue
New York, NY 10174

CANACCORD ADAMS INC.
99 High St.
Boston, MA 02110

Ladies/Gentlemen:

1. General. XOMA Ltd., a Bermuda company (the "Company"), proposes to offer for cash (the "New Money Offering") up to $10,000,000 aggregate principal amount of 6.50% Convertible SNAPs$_{sm}$ due February 1, 2012 (the "New Notes") that are convertible into common shares, par value $0.0005 per share (the "Shares") of the Company.

In the event indications of interest are submitted for more than $10,000,000 aggregate principal amount in the New Money Offering, the New Notes will be allocated at the discretion of the Placement Agents (as defined below) based on the amount of each person's indication in the New Money Offering. The New Notes issued in the New Money Offering are to be issued pursuant to an Indenture to be executed on the Closing Date (as defined herein) and qualified on or prior to the Expiration Date (as defined herein), as amended or modified from time to time, (the "Indenture"), between the Company and Wells Fargo Bank, National Association, as trustee (the "Trustee"). Capitalized terms used herein without definition shall have their respective meanings set forth in or pursuant to the Registration Statement (as defined herein), notwithstanding that such terms as used herein are not capitalized in the Registration Statement.

2. Appointment as Agent. By this Placement Agreement (the "Agreement"), the Company hereby engages and appoints you as exclusive Placement Agents (the "Placement Agents") for the New Money Offering and authorizes you to act as such in connection with the New Money Offering.

(a) Subject to the terms and conditions stated herein, the Company hereby agrees that the New Notes to be issued in the New Money Offering will be sold exclusively through the Placement Agents.

(b) The Company shall not sell or approve the solicitation of offers for the purchase of New Notes in excess of the amount which shall be authorized by the Company or in excess of the aggregate offering price of the New Notes registered pursuant to the Registration Statement.

3. Registration Statement, Prospectus and Offering Materials. The Company has

prepared and filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), the Trust Indenture Act of 1939, as amended (the "TIA"), and applicable rules and regulations (the "Rules and Regulations") of the Commission under the Securities Act, the TIA and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), a registration statement on Form S-3 (File No. 333-130442), including a prospectus, subject to completion, covering the registration of the offer and sale of the New Notes in the New Money Offering, the Shares issuable upon conversion of the New Notes issued in the New Money Offering, and the Shares that may be issued (subject to certain limitations) as payment of additional interest or as a make-whole payment on the New Notes issued in the New Money Offering (such New Notes and Shares are collectively referred to herein as the "Securities"). The term "Registration Statement" as used in this Agreement shall mean such registration statement, including the financial statements, exhibits and schedules thereto, in the form in which such registration statement originally becomes effective, including the information deemed to be a part thereof at the date and time of such effectiveness pursuant to Rule 430A under the Securities Act, and, in the event of any post-effective amendment thereto or the filing of any abbreviated registration statement pursuant to Rule 462(b) of the Rules and Regulations relating thereto after the original effective date of such registration statement, shall also mean (from and after the effectiveness of such post-effective amendment or the filing of such abbreviated registration statement) such registration statement as so amended, together with any such abbreviated registration statement. The term "Prospectus" as used in this Agreement shall mean the final prospectus included in the Registration Statement. Notwithstanding the foregoing, if any revised or supplemented Prospectus shall be provided to you by the Company for use in connection with the New Money Offering that differs from the Prospectus referred to in the immediately preceding sentence (whether or not such revised or supplemented Prospectus is required to be filed with the Commission pursuant to the Rules and Regulations), the term "Prospectus" shall refer to each such revised or supplemented Prospectus from and after the time it is first provided to you for such use. The term "Preliminary Prospectus" means each prospectus, subject to completion, included in the Registration Statement at or prior to effectiveness of the Registration Statement used in connection with the New Money Offering.

All references in this Agreement to the Registration Statement, a Preliminary Prospectus, the Prospectus or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") and shall also be deemed to refer to and include the documents incorporated or deemed to be incorporated by reference therein pursuant to the Securities Act and the Rules and Regulations, in each case not modified or superseded pursuant to Rule 412 under the Securities Act. All references in this Agreement to amendments or supplements to the Registration Statement or the Prospectus shall be deemed to mean and include (a) the filing of any document under the Exchange Act which is or is deemed to be incorporated by reference in the Registration Statement or the Prospectus, as the case may be, and (b) in each case, the filing of any prospectus supplement pursuant to Rule 424(b) under the Securities Act.

4. Use of the Prospectus and Registration Statement. The Company authorizes the Placement Agents to use the Prospectus and Registration Statement in connection with the New Money Offering for such period of time as any such materials are required by law to be delivered in connection therewith.

5. Withdrawal. In the event that the Company: (i) uses or permits the use of, or files with the Commission or any other governmental or regulatory entity of agency (an "Other Agency"), including the National Association of Securities Dealers (the "NASD"), or any amendment or supplement to the Registration Statement or the Prospectus, and such document (a) has not been submitted to you previously for your and your counsel's comments or (b) has been so submitted, and you or your counsel have made comments which have not been reflected in a manner reasonably satisfactory to you or your counsel; (ii) breaches, in any material respect, any of its representations, warranties, agreements or covenants herein; or (iii) amends or revises the New Money Offering in a manner not reasonably acceptable to you, then each of you shall be entitled to withdraw as a Placement Agent in connection with the New Money Offering without any liability or penalty to you and without loss of any right to indemnification or contribution provided in Section 11 or to the payment of all fees and expenses payable under Sections 6 and 7 below which have accrued to the date of such withdrawal.

6. Fees. The fee for the New Money Offering will be paid in cash on the date when the New Money Offering is consummated (the "Closing Date"). The fee will be 3.5% of the aggregate principal amount of the New Notes sold in the New Money Offering.

7. Expenses. The Company agrees that it will pay the costs and expenses incident to the performance of the obligations hereunder whether or not any New Notes are offered or sold pursuant to the New Money Offering, including, without limitation (i) all costs and expenses incurred by dealers and brokers (including yourself), commercial banks, trust companies and nominees for their customary mailing and handling expenses incurred in forwarding the Prospectus to their customers, (ii) the filing fees and expenses, if any, incurred with respect to any filing with The Nasdaq National Market ("Nasdaq"), (iii) all costs and expenses incident to the preparation, issuance, execution and delivery of the New Notes, (iv) all costs and expenses incident to the preparation, printing and filing under the Securities Act of the Registration Statement and the Prospectus (including, without limitation, in each case all exhibits, amendments and supplements thereto), (v) all costs and expenses incurred in connection with the registration or qualification of the New Notes issuable under the laws of such jurisdictions as the Placement Agents may designate, if any (including, without limitation, reasonable fees of counsel for the Placement Agents and its reasonable disbursements), (vi) all costs and expenses incurred in connection with the printing (including word processing and duplication costs) and delivery of the Prospectus and Registration Statement (including, without limitation, any preliminary and supplemental blue sky memoranda) including, without limitation, mailing and shipping, (vii) all advertising expenses related to the New Money Offering, (viii) all fees and expenses incurred in marketing the New Money Offering, including but not limited to road show presentations, if any, and (ix) the fees and disbursements of Cahill Gordon & Reindel LLP, counsel to the Company, all other counsel to the Company, and Ernst & Young LLP, auditors to the Company. In addition, the Company agrees to reimburse the reasonable out-of-pocket expenses of the Placement Agents in connection with the New Money Offering, including, without limitation, the reasonable legal fees and expenses of your counsel in connection with the New Money Offering.

8. Representations, Warranties and Agreements of the Company. The Company represents and warrants to you, and agrees with you, that:

(a) The Registration Statement, including each Preliminary Prospectus and the Prospectus, has been prepared by the Company in conformity with the requirements of the Securities Act and the Rules and Regulations thereunder and has been filed with the Commission; such amendments to such Registration Statement, and each Preliminary Prospectus and Prospectus and such abbreviated registration statements pursuant to Rule 462(b) of the Rules and Regulations as may have been required prior to the date hereof have been similarly prepared and filed with the Commission; and the Company will file such additional amendments to such Registration Statement, Preliminary Prospectuses and Prospectus and such abbreviated registration statements as may hereafter be required. Copies of such Registration Statement, Preliminary Prospectuses and Prospectus, including all amendments thereto, and of any abbreviated registration statement pursuant to Rule 462(b) of the Rules and Regulations have been or, if filed after the Commencement Date, will be, delivered or made available to you and your counsel;

(b) The Registration Statement, including a Preliminary Prospectus, has been filed with the Commission and will become effective not later than the Expiration Date of the Exchange Offer; and the Commission has not issued or to the Company's knowledge threatened to issue any order refusing or suspending the effectiveness of the Registration Statement or preventing or suspending the use of any Preliminary Prospectus or Prospectus or instituted or to the Company's knowledge threatened to institute proceedings for that purpose;

(c) At the respective times the Registration Statement (or any post effective amendment thereto, including a registration statement (if any) filed pursuant to Rule 462(b) of the Rules and Regulations increasing the size of the offering registered under the Act) is or was declared effective by the Commission, and at the Closing Date, (i) the Registration Statement (as so amended and/or supplemented) conformed or will conform in all material respects to the requirements of the Act and the Rules and Regulations, and (ii) the Registration Statement (as so amended and/or supplemented) did not or will not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; except that the foregoing shall not apply to statements in or omissions from any such document in reliance upon, and in conformity with, written information furnished to the Company by you, specifically for use in the preparation thereof;

(d) None of any Preliminary Prospectus or the Prospectus, or any amendments or supplements thereto, at the time they were or are issued, contained or will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were or are made, not misleading; except that the foregoing shall not apply to statements in or omissions from any such document in reliance upon, and in conformity with, written information furnished to the Company by you, specifically for use in the preparation thereof. Each Preliminary Prospectus, the Prospectus and any amendment or supplement thereto conformed or will conform in all material respects to the requirements of the Securities Act, the Exchange Act and the Rules and Regulations, and each Preliminary Prospectus and the Prospectus delivered to you for use in connection with the New Money Offering was or will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T;

(e) As of the Applicable Time, neither (A) the Issuer-Represented General Free Writing Prospectus(es) issued at or prior to the Applicable Time, the Statutory Prospectus and the information included on Schedule I hereto, and the Exchange Offer Materials all considered together (collectively, the "Pricing Disclosure Package"), nor (B) any individual Issuer-Represented Limited-Use Free Writing Prospectus, when considered together with the Pricing Disclosure Package, included any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from any Prospectus included in the Registration Statement or any Issuer-Represented Free Writing Prospectus based upon and in conformity with written information furnished to the Company by you or by any Placement Agent through you specifically for use therein. In the event this Agreement is executed before the Applicable Time, the parties agree that Schedule I hereto shall be completed subsequent to the execution of this Agreement and no later than the Applicable Time.

As used in this paragraph and elsewhere in this Agreement:

"Applicable Time" means the time specified on Schedule II hereto, which schedule the parties agree may be completed subsequent to the execution of this Agreement.

"Statutory Prospectus" as of any time means the prospectus that is included in the Registration Statement immediately prior to that time.

"Exchange Offer Materials" means the Registration Statement, Prospectus, Schedule TO, any Preliminary Prospectus, the related letters from the dealer manager to securities brokers, dealers, commercial banks, trust companies and other nominees that have been approved for use by the Company, letters to beneficial owners of Existing Notes, the letter of transmittal and any newspaper announcements, if any, press releases and other exchange offer solicitation materials and information the Company may prepare, approve, publicly disseminate, provide to registered or beneficial holders of Existing Notes or authorize for public dissemination or use by registered or beneficial holders of Existing Notes in connection with the Exchange Offer.

"Issuer-Represented Free Writing Prospectus" means any "issuer free writing prospectus," as defined in Rule 433 under the Securities Act, relating to the Securities that (A) is required to be filed with the Commission by the Company, or (B) is exempt from filing pursuant to Rule 433(d)(5)(i) under the Securities Act because it contains a description of the Securities or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company's records pursuant to Rule 433(g) under the Securities Act.

"Issuer-Represented General Free Writing Prospectus" means any Issuer-Represented Free Writing Prospectus that is intended for general distribution to prospective investors, as evidenced by its being specified in Schedule III to this

Agreement, which schedule the parties agree may be completed subsequent to the execution of this Agreement.

"Issuer-Represented Limited-Use Free Writing Prospectus" means any Issuer-Represented Free Writing Prospectus that is not an Issuer-Represented General Free Writing Prospectus;

(f) (i) Each Issuer-Represented Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the issuer notified or notifies the Placement Agents as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement. If at any time following issuance of an Issuer-Represented Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer-Represented Free Writing Prospectus included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading, the Company has notified or will notify promptly the Placement Agents so that any use of such Issuer-Represented Free-Writing Prospectus may cease until it is amended or supplemented. The foregoing two sentences do not apply to statements in or omissions from any Issuer-Represented Free Writing Prospectus based upon and in conformity with written information furnished to the Company by you or by any Placement Agent through you specifically for use therein; (ii) (1) At the time of filing the Registration Statement, (2) at the earliest time thereafter that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Securities and (3) at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405 under the Securities Act nor an "excluded issuer" as defined in Rule 164 under the Securities Act; and (iii) Each Issuer-Represented Free Writing Prospectus satisfied all other conditions to use thereof as set forth in Rules 164 and 433 under the Securities Act;

(g) Except as contemplated in the Registration Statement, the Pricing Disclosure Package and the Prospectus, subsequent to the respective dates as of which information is given in the Pricing Disclosure Package, neither the Company nor any of its subsidiaries has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its share capital; and there has not been any change in the share capital (other than a change in the number of issued and outstanding Shares due to the issuance of Shares upon the exercise of share options or warrants disclosed as outstanding in the Pricing Disclosure Package and the grant of options under existing share option plans described in the Pricing Disclosure Package), or any material change in the short term or long term debt, or any issuance of options, warrants, convertible securities or other rights to purchase the share capital, of the Company or any of its subsidiaries, or any material adverse change in the financial condition, business, prospects, property, operations or results of operations of the Company and its subsidiaries, taken as a whole ("Material Adverse Change") or any development involving a prospective Material Adverse Change;

(h) All of the issued and outstanding shares of the Company have been duly authorized and validly issued and are fully paid and non-assessable, and have been issued in compliance with all U.S. federal and state securities laws and Bermuda law, and no such

issuance constituted a violation by the Company of any preemptive right, resale right, right of first refusal or similar right imposed by any applicable law, rule or regulation, the charter, bye-laws or other organizational documents of the Company or any of the Subsidiaries (as defined below) or any agreement, commitment or instrument to which the Company or any of the Subsidiaries is a party or by which the Company or any of the Subsidiaries is or may be bound;

(i) The Company has been duly continued into and is validly existing as a company in good standing under the laws of Bermuda, with full power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, Pricing Disclosure Package and Prospectus, to execute and deliver this Agreement and to issue, sell and deliver the New Notes and deliver the Shares issuable upon conversion of the New Notes, as contemplated herein;

(j) The Company is duly qualified to do business as a foreign corporation or company and is in good standing in each jurisdiction where the ownership or leasing, of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a material adverse effect upon the business, prospects, properties, operations, financial condition or results of operations of the Company and its subsidiaries, taken as a whole ("Material Adverse Effect");

(k) The Company has no subsidiaries (as defined in the Securities Act) other than those listed on Exhibit C hereto (collectively, the "Subsidiaries"); the Company owns all of the issued and outstanding share capital or other equity interests of each of the Subsidiaries; other than the share capital or other equity interests of the Subsidiaries and except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, association or other entity (other than equity interests held by the Company with an aggregate book value of less than US$500,000); complete and correct copies of the charter or bye-laws or other organizational documents of the Company and the Subsidiaries and all amendments thereto have been made available to you, and except as set forth in the exhibits to the Registration Statement no changes therein will be made subsequent to the date hereof and prior to the Closing Date; each Subsidiary has been duly organized and is validly existing as an entity (or, in the case of XOMA (US) LLC (the "LLC"), as a limited liability company) in good standing under the laws of the jurisdiction of its organization, with full power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, Pricing Disclosure Package and Prospectus; each Subsidiary is duly qualified to do business as a foreign entity (or, in the case of the LLC, as a foreign limited liability company) and is in good standing in each jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not individually or in the aggregate, have a Material Adverse Effect; all of the outstanding shares or other equity interests of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company subject to no security interest, other encumbrance or adverse claims, except as would not, individually or in the aggregate, have a Material Adverse Effect, and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into shares or other equity interests in the Subsidiaries are outstanding;

(l) The New Notes to be issued pursuant to the New Money Offering have been duly and validly authorized, and assuming due authorization, execution and delivery of the Indenture by the Trustee, when executed and authenticated in accordance with the provisions of the Indenture and delivered in accordance with the terms of the New Money Offering, will be entitled to the benefits of the Indenture, will be duly and validly issued, fully paid and non-assessable and free of preemptive rights, resale rights, rights of first refusal and similar rights imposed by any applicable law, rule or regulation, the charter, bye-laws or other organizational documents of the Company or any of the Subsidiaries or any agreement, commitment or instrument to which the Company or any of the Subsidiaries is a party or by which the Company or any of the Subsidiaries is or may be bound, and will be valid and binding obligations of the Company enforceable in accordance with their terms, except as the enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity). The New Notes will conform in all material respects to the description thereof contained in the Registration Statement, Pricing Disclosure Package and Prospectus;

(m) The Indenture has been or will be duly authorized by the Company, has been filed as of the Commencement Date, will be qualified under the TIA not later than the Expiration Date, and when executed and delivered by the Company (assuming the authorization, execution and delivery by the Trustee) will be a valid and binding instrument of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); and the Indenture will conform to the description thereof in the Registration Statement, Pricing Disclosure Package and Prospectus;

(n) The Shares reserved for issuance upon conversion of the New Notes have been duly authorized and reserved and, when issued upon conversion of the New Notes in accordance with the terms of the New Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares upon conversion of the New Notes will not be subject to any preemptive or similar rights;

(o) The share capital of the Company conforms in all material respects to the description thereof contained in the Registration Statement, Pricing Disclosure Package and Prospectus, the certificates for the Shares are in due and proper form, and the holders of the Shares will not be subject to personal liability for assessments for the indebtedness or obligations of the Company or otherwise solely by reason of being such holders;

(p) This Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding instrument of the Company, enforceable against it in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of

commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity);

(q) Neither the Company nor any of the Subsidiaries is in breach or violation of or in default under (nor has any event occurred which with notice, lapse of time or both would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (A) its respective charter or bye-laws or other organizational documents, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their properties may be bound or affected except, in the case of clause (B), to the extent that any such breach, violation or default would not, individually or, in the aggregate, have a Material Adverse Effect; and the execution, delivery and performance of this Agreement, the issuance and sale of the New Notes and the consummation of the transactions contemplated hereby will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which with notice, lapse of time or both would result in any breach or violation of or constitute a default under) (X) the charter or bye-laws or other organizational documents of the Company or any of the Subsidiaries, or (Y) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, or (Z) any U.S. federal, state, provincial, territorial, local or foreign law, regulation or rule or any decree, judgment or order applicable to the Company or any of the Subsidiaries except, in the case of clause (Y) and (Z), to the extent that any such conflict, breach, violation or default would not, individually or in the aggregate, have a Material Adverse Effect;

(r) No approval, authorization, consent or order of or filing with any U.S. federal, state, provincial, territorial, local or foreign governmental or regulatory commission, board, body, authority or agency or any sub-division thereof is required in connection with the issuance and sale of the New Notes or the consummation by the Company of the transactions contemplated by this Agreement or the Indenture, other than (i) as may be required under state securities or blue sky laws in connection with the New Money Offering, (ii) the consent of the Bermuda Monetary Authority for the issue or transfer of the New Notes and the Shares, which consent has been obtained (iii) the filing of a prospectus with the Registrar of Companies in Bermuda in connection with an offer to the public of the New Notes or the Shares or (iv) under the rules and regulations of the NASD or (v) which has otherwise been, or will be, granted or obtained prior to the Closing Date;

(s) Each of the Company and the Subsidiaries has all licenses, authorizations, consents and approvals and has made all filings required under any U.S. federal, state, provincial, territorial, local or foreign law, regulation or rule, and has obtained all authorizations, consents and approvals, from other persons, in order to conduct its respective business, except where the failure to have such licenses, authorizations, consents and approvals, to make such filings or to obtain such authorizations, consents and approvals would not, individually or in the aggregate, have a Material Adverse Effect; neither the Company nor any of the Subsidiaries is in

violation of, or in default under, or has received notice of any proceedings relating to revocation or modification of any such license, authorization, consent or approval or any U.S. federal, state, provincial, territorial, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company or any of the Subsidiaries, except where such violation, default, revocation or modification would not, individually or in the aggregate, have a Material Adverse Effect;

(t) All legal or governmental proceedings, statutes, rules, regulations, affiliate transactions, off-balance sheet transactions, contracts, licenses, agreements, leases or documents of a character required to be described in any document incorporated by reference in the Registration Statement, Pricing Disclosure Package and Prospectus or required to be filed as an exhibit thereto, have been so described or filed as required;

(u) Except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus and except for applications and ordinary course proceedings relating to regulatory approvals of new drugs or the granting of patents, there are no actions, suits, claims, investigations of which the Company has knowledge, or proceedings pending or, to the Company's knowledge, threatened or contemplated to which the Company or any of the Subsidiaries or any of their respective directors or officers is or would be a party or of which any of their respective properties is or would be subject at law or in equity, before or by any U.S. federal, state, provincial, territorial, local or foreign governmental or regulatory commission, board, body, authority or agency or any subdivision thereof, except any such action, suit, claim, investigation or proceeding which would not result in a judgment, decree or order having, individually or in the aggregate, a Material Adverse Effect;

(v) Ernst & Young LLP, whose report on the consolidated financial statements of the Company and the Subsidiaries is filed with the Commission as part of the Registration Statement, are independent public accountants as required by the Securities Act;

(w) The financial statements contained in or included in any document incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus, together with the related notes and schedules (if any), present fairly in all material respects the consolidated financial position of the Company and the Subsidiaries as of the dates indicated and the consolidated results of operations and cash flows of the Company and the Subsidiaries for the periods specified (in the case of the unaudited interim financial statements, subject to normal year-end adjustments) and have been prepared in compliance with the requirements of the Securities Act and, in the case of the audited financial statements included in such documents, in conformity with U.S. generally accepted accounting principles applied on a consistent basis during the periods involved; all disclosures regarding Non-GAAP Financial Measures (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10 a Regulation S-K; the other financial and statistical data set forth in the Registration Statement, Pricing Disclosure Package and Prospectus are accurately presented in all material respects and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included in any documents incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus that are not included as required; and the Company and the Subsidiaries do not have any material liabilities

or obligations, direct or contingent (including any off-balance sheet obligations), not disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus or in the documents incorporated by reference therein;

(x) The Company has obtained for the benefit of the Placement Agents the agreement (a "Lock-Up Agreement"), in the form set forth as Exhibit A hereto, of each of its directors and executive officers listed in Schedule IV hereto;

(y) The Company is not and, after giving effect to the offering and sale of the New Notes, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act"); the Company believes that it is not a "controlled foreign corporation" within the meaning of the U.S. Internal Revenue Code, as amended (the "IRC"); and the Company believes that it was not a "passive foreign investment company" within the meaning of the IRC for the calendar year 2004 and, based on management's current projections of the Company's future income and asset composition, and the manner in which management currently intends to manage and conduct the Company's business in the future, that it will not become a "passive foreign investment company" in any subsequent year;

(z) The Company and each of the Subsidiaries has good and marketable title to all property (real and personal) described in the Registration Statement, Pricing Disclosure Package and Prospectus as being owned by each of them, free and clear of all liens, claims, security interests or other encumbrances, subject only to such exceptions as are not material and do not interfere with the use made and proposed to be made of such property by the Company; all the property described in the Registration Statement, Pricing Disclosure Package and Prospectus as being held under lease by the Company or a Subsidiary is held thereby under valid, subsisting and enforceable leases, subject only to such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company;

(aa) To the Company's knowledge, except as would not individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement, Pricing Disclosure Package and Prospectus, (i) the Company, by ownership, license or covenant not to sue, has the right to use all patents, patent applications, trademarks, trademark applications, service marks, trade names and copyrights (other than with respect to Raptiva® brand anti-CD11a, collectively, the "Intellectual Property Rights") which are necessary for use in connection with its business as presently conducted and as proposed to be conducted; (ii) there is no existing infringement by another party of any of the Intellectual Property Rights which are necessary for use in connection with the Company's business as presently conducted; (iii) there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's rights in or to, or the validity or enforceability of, the Intellectual Property Rights of the Company, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (iv) there is no pending or threatened action, suit, proceeding or claim by others that the business of the Company as described in the Registration Statement, Pricing Disclosure Package and Prospectus infringes or otherwise violates, or that the commercialization of any of the products under development by the Company would infringe or otherwise violate, any patent, trademark, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which would form a

reasonable basis for any such claim; and (v) all of the Intellectual Property Rights under the control of the Company were filed and are being or were prosecuted in accordance with the applicable rules and regulations relating thereto;

(bb) To the Company's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus, the Company is unaware of facts which would form a reasonable basis for a finding that (i) the patents owned or co-owned by Genentech, Inc. ("Genentech") and relating to anti-CD11a as listed on Exhibit D attached hereto (the "Anti-CD11a Patents") are unenforceable or invalid, (ii) the Anti-CD11a Patents are infringed by another party or (iii) Genentech's contemplated sales of Raptiva® brand anti-CD11a would infringe patents owned by another party;

(cc) Neither the Company nor any of the Subsidiaries is engaged in any unfair labor practice; except for matters which would not, individually or in the aggregate, have a Material Adverse Effect, (i) there is (A) no unfair labor practice complaint pending or, to the Company's knowledge after due inquiry, threatened against the Company or any of the Subsidiaries before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending or threatened (B) no strike, labor dispute, slowdown or stoppage pending or, to the Company's knowledge after due inquiry, threatened against the Company or any of the Subsidiaries and (C) no union representation dispute currently existing concerning the employees of the Company or any of the Subsidiaries, and (ii) to the Company's knowledge after due inquiry, (A) no union organizing activities are currently taking place concerning the employees of the Company or any of the Subsidiaries and (B) there has been no violation of any U.S. federal, state, provincial, territorial, local or foreign law relating to discrimination in the hiring, promotion or pay of employees, any applicable wage or hour laws or any provision of the Employee Retirement Income Security Act of 1974 ("ERISA") or the rules and regulations promulgated thereunder concerning the employees of the Company or any of the Subsidiaries;

(dd) The Company and the Subsidiaries and their properties, assets and operations are in compliance with, and hold all permits, authorizations and approvals required under Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals would not, individually or in the aggregate, have a Material Adverse Effect; there are no past or present events, conditions, activities or practices that would reasonably be expected to give rise to any costs or liabilities to the Company or the Subsidiaries under, or to prevent compliance by the Company or the Subsidiaries with, applicable Environmental Laws, except as would not, individually or in the aggregate, have a Material Adverse Effect; to the Company's knowledge, there are no reasonably anticipated future plans of the Company or the Subsidiaries that would reasonably be expected to give rise to any capital expenditures under applicable Environmental Laws, except as would not, individually or in the aggregate, have a Material Adverse Effect; except as would not, individually or in the aggregate, have a Material Adverse Effect, neither the Company nor any of the Subsidiaries (i) to the Company's knowledge, is the subject of any investigation, (ii) has received any written notice or claim, (iii) is a party to or, to the Company's knowledge, affected by any pending or threatened action, suit or proceeding, (iv) is bound by any judgment, decree or order or (v) has entered into any agreement, in each case relating to any alleged violation of any

Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "Environmental Law" means any law, statute, ordinance, rule, regulation, order, decree, judgment or injunction, or common law, relating to pollution or the protection, cleanup or restoration of the environment or natural resources, or public health (to the extent relating to the environment or exposure to Hazardous Materials) including those relating to the distribution, processing, generation, treatment storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "Hazardous Materials" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or can give rise to liability under any Environmental Law);

(ee) All tax returns required to be filed by the Company and each of the Subsidiaries have been filed, and all taxes and other assessments of a similar nature (whether imposed directly or through withholding) including any interest, additions to tax or penalties applicable thereto due or claimed to be due from such entities have been paid, other than those being contested in good faith and for which adequate reserves have been provided as required by U.S. generally accepted accounting principles;

(ff) The Company and each of the Subsidiaries maintains insurance covering its properties, operations, personnel and businesses as the Company deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Company and the Subsidiaries and their businesses; all such insurance is fully in force on the date hereof and will be fully in force at the Closing Date;

(gg) Neither the Company nor any of the Subsidiaries has sustained since the date of the last audited financial statements incorporated by reference in the Registration Statement, Pricing Disclosure Package and Prospectus any loss or interference with its respective business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, except as would not, individually or in the aggregate, have a Material Adverse Effect;

(hh) Except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Company has not sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in, or filed as an exhibit to, the Registration Statement, Pricing Disclosure Package and Prospectus, and no such termination or non-renewal has been threatened by the Company or, to the Company's knowledge, any other party to any such contract or agreement;

(ii) The Company and each of the Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(jj) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 and 15d-14 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company's auditors' and the Audit Committee of the Board of Directors have been advised of: (i) any significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls; any material weaknesses in internal controls have been identified for the Company's auditors; and since the date of the most recent evaluation of such disclosure controls and procedures, there, have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses; the principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all certifications required by the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and any related rules and regulations promulgated by the Commission, and the statements contained in any such certification are complete and correct; the Company is otherwise in compliance in all material respects with all applicable effective provisions of the Sarbanes-Oxley Act;

(kk) Since July 30, 2002, the Company has not, directly or indirectly, including through any subsidiary: (i) extended credit; arranged to extend edit, or renewed any extension of credit, in the form of a personal loan, to or for any director or executive officer of the Company, or to or for any family member or affiliate of any director or executive officer of the Company; or (ii) made any material modification, including any renewal thereof to any term of any personal loan to any director or executive officer of the Company, or any family member or affiliate of any director or executive officer, which loan was outstanding on July 30, 2002;

(ll) Any statistical and market related data included in the Registration Statement, Pricing Disclosure Package and Prospectus are based on or derived from sources that the Company believes to be reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources to the extent required;

(mm) Neither the Company nor any of the Subsidiaries nor, to the Company's knowledge after due inquiry, any employee or agent of the Company or the Subsidiaries has made any payment of funds of the Company or the Subsidiaries or received or retained any funds in violation of any law, rule or regulation, which payment, receipt or retention of funds is of a character required to be disclosed in any document incorporated by reference in the Registration Statement, Pricing Disclosure Package or Prospectus;

(nn) Neither the Company nor any of the Subsidiaries nor any of their respective directors, officers, affiliates or controlling persons has taken, and will not take, directly or indirectly, any action resulting in a violation of Rule 102 of Regulation M promulgated under the Exchange Act or designed, or which has constituted or might reasonably be expected to cause or

result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the New Notes;

(oo) The clinical, pre-clinical and other studies and tests that are described in the Registration Statement, Pricing Disclosure Package and Prospectus or the results of which are referred to in the Registration Statement, Pricing Disclosure Package and Prospectus were and, if still pending, are being conducted in all material respects in accordance with standard medical and scientific research procedures; the descriptions in the Registration Statement, Pricing Disclosure Package and Prospectus of the results of such studies and tests are accurate and complete in all material respects and fairly present the data derived from such studies and tests, and the Company has no knowledge of any other studies or tests the results of which are inconsistent with or otherwise call into question the results described or referred to in the Registration Statement, Pricing Disclosure Package or Prospectus; except to the extent disclosed in the Registration Statement, Pricing Disclosure Package or Prospectus, the Company has operated and currently is in compliance in all material respects with all applicable rules, regulations and policies of the U.S. Food and Drug Administration and comparable drug regulatory agencies outside of the United States (collectively, the "Regulatory Authorities"); and except to the extent disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Company has not received any notices or other correspondence from the Regulatory Authorities or any other governmental agency or subdivision thereof requiring the termination, suspension or modification of any clinical or pre-clinical studies or tests that are described in the Registration Statement, Pricing Disclosure Package or Prospectus or the results of which are referred to in the Registration Statement, Pricing Disclosure Package or Prospectus;

(pp) No Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary's capital stock, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of such Subsidiary's property or assets to the Company or any other Subsidiary of the Company;

(qq) Except as disclosed in the Registration Statement, Pricing Disclosure Package and Prospectus, the Shares is registered pursuant to Section 12(g) of the Exchange Act and has been quoted on Nasdaq, and the Company has taken no action designed to terminate, or likely to have the effect of terminating, the registration of the Shares under the Exchange Act or delisting the Shares from Nasdaq, nor has the Company received any notification that the Commission or Nasdaq is contemplating terminating such registration or listing;

(rr) The Company has not distributed and will not distribute prior to the later of (i) the Closing Date, and (ii) completion of the distribution of the New Notes in exchange for the Existing Notes pursuant to the Exchange Offer, any prospectus or other offering material in connection with the Exchange Offer other than any Preliminary Prospectus, the Prospectus, the Exchange Offer Materials or other materials permitted by the Securities Act to be distributed by the Company; provided, however, that, except as set forth in Schedule III, the Company has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the Securities Act;

(ss) There are no documentary stamp or other issuance or transfer taxes or other similar fees or charges under Federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement, and the Indenture or the issuance and sale by the Company of the New Notes. The Company has not paid or agreed to pay any person any compensation for soliciting another to purchase any New Notes (except as contemplated by this Agreement);

(tt) Except as disclosed in the Prospectus, there are no persons with registration rights or other similar rights to have any securities registered pursuant to the Registration Statement or otherwise registered by the Company under the Securities Act;

(uu) The conditions for use of Form S-3, set forth in the General Instructions thereto, have been satisfied; and

(vv) The documents incorporated by reference in the Prospectus, when they became effective or were filed with the Commission, as the case may be, conformed in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and were filed on a timely basis with the Commission and none of such documents contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; any further documents so filed and incorporated by reference in the Prospectus, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act, and will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In addition, any certificate signed by any officer of the Company or any of the Subsidiaries and delivered to you or your counsel in connection with the offering of the New Notes shall be deemed to be a representation and warranty by the Company or Subsidiary, as the case may be, as to matters covered thereby, to each of you.

9. Further Agreements of the Company. The Company agrees with you that:

(a) The Company will use its reasonable best efforts to cause any Registration Statement as may be required to be filed under Rule 462(b) of the Rules and Regulations subsequent to the date the Registration Statement is declared effective to become effective as promptly as possible; the Company will notify you, promptly after it shall receive notice thereof, of the time when the Registration Statement, any subsequent amendment to the Registration Statement or any abbreviated registration statement has become effective or any Preliminary Prospectus or any supplement to the Prospectus has been filed; if for any reason the filing of the final form of Prospectus is required under Rule 424(b) of the Rules and Regulations, the Company will provide evidence satisfactory to you that the Prospectus contains such information and has been filed with the Commission within the time period prescribed; the Company will notify you promptly of any request by the Commission for the amending or supplementing of the Registration Statement, any Preliminary Prospectus or the Prospectus or for additional information relating to the New Money Offering; promptly upon your request, the Company will prepare and file with the Commission any amendments or supplements to the Registration

Statement, any Preliminary Prospectus or Prospectus which, in the opinion of your counsel, is necessary in connection with the New Money Offering; the Company will promptly prepare and file with the Commission, and promptly notify you of the filing of, any amendments or supplements to the Registration Statement, any Preliminary Prospectus or the Prospectus which may be necessary to correct any statements or omissions, if, at any time when a Prospectus relating to the Exchange Offer is required to be delivered under the Securities Act and the Exchange Act, any event shall have occurred as a result of which the Prospectus or any other prospectus relating to the New Money Offering as then in effect would include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and the Company will file no amendment or supplement to the Registration Statement, any Preliminary Prospectus or the Prospectus which shall not previously have been submitted to you a reasonable time prior to the proposed filing thereof and will give reasonable consideration to your or your counsel's comments, if any, thereon, subject, however, to compliance with the Securities Act and the Rules and Regulations, the Exchange Act and the Rules and Regulations of the Commission thereunder and the provisions of this Agreement.

(b) The Company will advise you, promptly after it shall receive notice or obtain knowledge, of the issuance of any order by the Commission refusing or suspending the effectiveness of the Registration Statement or of the initiation or threat of any proceeding for that purpose; and it will promptly use its reasonable best efforts to prevent the issuance of any refusal or stop order or to obtain its withdrawal at the earliest possible moment if such refusal or stop order should be issued.

(c) The Company will use its reasonable best efforts to qualify the New Notes issuable pursuant to the New Money Offering under the securities laws of such jurisdictions as you may designate and to continue such qualifications in effect for so long as may be required for purposes of the New Money Offering, except that the Company shall not be required in connection therewith or as a condition thereof to qualify as a foreign corporation or to execute a general consent to service of process in any jurisdiction in which it is not otherwise required to be so qualified or to so execute a general consent to service of process. In each jurisdiction in which the New Notes shall have been qualified as above provided, the Company will make and file such statements and reports in each year as are or may be required by the laws of such jurisdiction.

(d) The Company will use its reasonable best efforts to have the Shares underlying the New Notes accepted for quotation on Nasdaq.

(e) The Company will make generally available to its security holders and to the Placement Agents by filing with the Commission as soon as is practicable, an earnings statement covering a twelve-month period beginning not later than the first day of the Company's next fiscal quarter following the effective date of the Registration Statement that satisfies the provisions of Section 11(a) of the Securities Act and the Rules and Regulations of the Commission thereunder.

(f) Without limiting Sections 5, 7 and 13 of this Agreement, if the transactions contemplated hereby are not consummated by reason of any failure, refusal or inability on the

part of the Company to perform any agreement on its part to be performed hereunder or to fulfill any condition of your obligations hereunder, the Company will reimburse you for all out-of-pocket expenses (including fees and disbursements of your counsel) incurred by you in connection with the New Money Offering.

(g) During a period of 90 days from the date of the Prospectus, the Company will not, without the prior written consent of Piper Jaffray & Co., (i) directly or indirectly, issue, sell, contract to sell or otherwise dispose of any Shares or any securities convertible into, exercisable for or exchangeable for Shares or (ii) enter into any transaction (including a derivative transaction) having an economic effect similar to that of an issuance of any Company securities which are substantially similar to the Existing Notes or the New Notes, or which are convertible into or exchangeable for, or represent the right to receive, Shares or securities that are substantially similar to the Existing Notes or the New Notes, any Shares or any securities which are substantially similar to the New Notes. The foregoing sentence shall not apply to (A) the New Notes sold pursuant to this Agreement or the Dealer Manager Agreement between you and the Company, (B) Shares issued or options to purchase Shares granted pursuant to existing equity plans of the Company as described in the Prospectus, (C) Shares issued or options to purchase Shares granted pursuant to the Company's shareholder rights agreement as described in the Prospectus, (D) Shares issuable upon exercise of warrants outstanding as of the date hereof, (E) Shares issuable upon the conversion of any of the Company's outstanding Existing Notes and (F) Shares issuable upon conversion of the Company's Series A Preference Shares or Series B Preference Shares.

10. Conditions of Placement Agents' Obligations. Your obligations as provided herein shall be subject at all times on and prior to the Closing Date to the accuracy of the representations and warranties of the Company herein, to the accuracy of the statements of officers of the Company made pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Registration Statement shall have been filed and no stop order refusing the effectiveness thereof shall have been issued and the Registration Statement shall become effective as promptly as possible but in no event later than the Closing Date and no stop order suspending the effectiveness thereof shall have been issued and, to the knowledge of the Company or you, no proceedings for either purpose shall have been initiated or threatened by the Commission, and any request of the Commission for additional information (to be included in the Registration Statement, any Preliminary Prospectus, the Prospectus, or otherwise) shall have been complied with to the reasonable satisfaction of your counsel.

(b) After execution and delivery of this Agreement and prior to the Closing Date there shall not have occurred from the respective dates as of which information is given in the Prospectus (exclusive of any supplement thereto) (i) any material adverse change in the financial condition, business, prospects, property, operations or results of operations of the Company whether or not arising in the ordinary course of business, or (ii) any material adverse change in the financial markets in the United States or in the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, which, in each case the effect of which is such as to make it, in the judgment of the

Placement Agents, impracticable or inadvisable to market the New Notes or to enforce contracts for the exchange and/or sale of the New Notes, or (iii) any trading suspension or material limitation in trading instituted by the Commission or The Nasdaq National Market, or generally, any trading suspension or material limitation in trading on the American Stock Exchange or the New York Stock Exchange or in The Nasdaq National Market, or the fixing of minimum or maximum prices for trading, or the establishment of required maximum ranges for prices by any of said exchanges or by such system or by order of the Commission, the National Association of Securities Dealers, Inc. or any other governmental authority, or the occurrence of a material disruption in commercial banking or securities settlement or clearance services in the United States, or (iv) the declaration of a banking moratorium by either Federal or New York authorities.

(c) All corporate proceedings and other legal matters in connection with this Agreement, the Registration Statement, any Preliminary Prospectus, the Pricing Disclosure Package, the Prospectus, and the registration, authorization, issue, and delivery of the New Notes issuable in accordance with the New Money Offering, shall have been executed in a manner reasonably satisfactory to your counsel, and such counsel shall have been furnished with such papers and information as they may reasonably have requested to enable them to pass upon the matters referred to in this Section.

(d) You shall have received the opinion of Cahill Gordon & Riendel LLP, outside counsel for the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-1 hereto.

(e) You shall have received the opinion of Conyers Dill & Pearman, special Bermuda counsel for the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-2 hereto.

(f) You shall have received the opinion of Christopher J. Margolin, Vice President, General Counsel and Secretary of the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-3 hereto.

(g) You shall have received the opinion of McAndrews, Held & Malloy Ltd., special counsel to the Company with respect to patent and proprietary rights, dated the Closing Date addressed to you, substantially in the form of Exhibit B-4 hereto.

(h) You shall have received the opinion of Marshall, Gerstein & Borun, special counsel to the Company with respect to patent and proprietary rights, dated the Closing Date addressed to you, substantially in the form of Exhibit B-5 hereto.

(i) You shall have received the opinion of Anne S. Dollard, Senior Director of Intellectual Property of the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-6 hereto.

(j) You shall have received the opinion of Cahill Gordon & Reindel LLP, special outside tax counsel to the Company, dated the Closing Date addressed to you, substantially in the form of Exhibit B-7 hereto.

Counsel rendering the foregoing opinions in (d), (e), (f), (g), (h), (i) and (j) may rely as to questions of law not involving the laws of the United States of America (or in the case of (d) and (j), the State of New York) upon opinions of local counsel, and as to questions of fact upon representations or certifications of officers of the Company, and of government officials, in which case their opinion is to state that they are so relying and that they have no knowledge of any material misstatement or inaccuracy in any such opinion, representation or certificate. Copies of any opinion, representation or certificate so relied upon shall be delivered to you, as Placement Agents, and to your counsel.

(k) You shall have received on the Closing Date an opinion of Shearman & Sterling LLP in form and substance satisfactory to you, with respect to such matters as you may reasonably request, and the Company shall have furnished to such counsel such documents as they may have requested for the purpose of enabling them to pass upon such matters.

(l) At the time of the execution of this Agreement, you shall have received from Ernst & Young LLP, a letter dated as of such date, in form and substance satisfactory to you containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information for the fiscal years 2000, 2001, 2002, 2003 and 2004 and the nine months ended September 30, 2005 contained in the Prospectus.

(m) You shall have received by or on the effective date of the Registration Statement and by the Applicable Time, a bring-down comfort letter, dated as of the effective date of the Registration Statement (or one business day prior thereto) or as of the Applicable Time (or one business day prior thereto) as the case may be, from Ernst & Young LLP addressed to you which shall reaffirm the statements made in the letter referenced in (l) above.

(n) You shall have received by or on the Closing Date, a letter dated as of the Closing Date (or one business day prior thereto) as the case may be, from Ernst & Young LLP addressed to you substantially in the form of the bring-down comfort letter dated the date of this Agreement, which shall reaffirm the statements made in the letters referenced in (l) and (m) above.

(o) You shall have received a certificate of the Company, dated as of the Closing Date, signed by the Chief Executive Officer and Chief Financial Officer of the Company, certifying that, and you shall be satisfied that:

(i) the representations and warranties of the Company in this Agreement are true and correct in all material respects, as if made on and as of the Closing Date or such other date as of which any representation speaks, as the case may be, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date, as the case may be;

(ii) no stop order refusing or suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or are pending or threatened under the Securities Act;

(iii) when the Registration Statement became effective and at the Applicable Time, and at all times subsequent thereto up to the date of such certificate, the Registration Statement, the Pricing Disclosure Package, the Prospectus, and any amendments or supplements thereto, contained all material information required to be included therein by the Securities Act and the Rules and Regulations thereunder or the Exchange Act and the applicable Rules and Regulations of the Commission thereunder, as the case may be, and in all material respects conformed to the requirements of the Securities Act and the Rules and Regulations thereunder or the Exchange Act and the applicable Rules and Regulations of the Commission thereunder, as the case may be; the Registration Statement, and any amendment or supplement thereto, did not and does not include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; the Pricing Disclosure Package and the Prospectus, and any amendment or supplement thereto, did not and do not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and since the effective date of the Registration Statement, there has occurred no event required to be set forth in an amended or supplemented Prospectus which has not been so set forth; and

(iv) subsequent to the respective dates as of which information is given in the Registration Statement and Prospectus and up to the date of such certificate, and except as disclosed therein, there has not been (a) any material adverse change in the financial condition, business, prospects, property, operations or results of operations of the Company and its subsidiaries considered as one enterprise, (b) any transaction that is material to the Company and its subsidiaries considered as one enterprise, except transactions entered into in the ordinary course of business, (c) any obligation, direct or contingent, that is material to the Company and its subsidiaries considered as one enterprise, incurred by the Company or its subsidiaries, except obligations incurred in the ordinary course of business, (d) any change in the share capital or outstanding indebtedness of the Company that is material to the Company and its subsidiaries considered as one enterprise, (e) any dividend or distribution of any kind declared, paid or made on the share capital of the Company, or (f) any loss or damage (whether or not insured) to the property of the Company or any of its subsidiaries which has been sustained or will have been sustained and which has a Material Adverse Effect.

(p) The Company shall have furnished to you such further certificates and documents as you shall reasonably request (including certificates of officers of the Company) as to the accuracy of the representations and warranties of the Company herein, as to the performance by the Company of its obligations hereunder and as to the other conditions concurrent and precedent to your obligations hereunder.

(q) You shall have received lock-up letters, substantially in the form set forth inExhibit A hereto, from each of the executive officers and directors of the Company set forth on Schedule IV hereto.

(r) The NASD shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the terms and arrangements in connection with the offering of the New Notes.

All such opinions, certificates, letters and documents will be in compliance with the provisions hereof only if they are reasonably satisfactory to your counsel. The Company will furnish you with such number of conformed copies of such opinions, certificates, letters and documents as you shall reasonably request.

11. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold you harmless against any losses, claims, damages or liabilities, joint or several, to which you may become subject under the Securities Act, the Exchange Act or otherwise, specifically including, but not limited to, losses, claims, damages or liabilities (or actions in respect thereof) arising out of or based upon (i) any breach of any representation, warranty, agreement or covenant of the Company herein contained; (ii) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, or any amendments or supplements thereto, 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, or (iii) any untrue statement or alleged untrue statement of any material fact contained in the Pricing Disclosure Package, any Prospectus or any amendment or supplement thereto, or the omission or alleged omission to state therein a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and agrees to reimburse you for any legal or other expenses reasonably incurred by you in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, or Pricing Disclosure Package, or Prospectus or any such amendment or supplement thereto, in reliance upon, and in conformity with, written information relating to you furnished to the Company by you, specifically for use in the Registration Statement, the Pricing Disclosure Package, the Prospectus or any amendment or supplement thereto or in the preparation thereof.

The indemnity agreement in this Section 11(a) shall extend upon the same terms and conditions to, and shall inure to the benefit of, you and your affiliates and the partners, directors, officers, employees and agents of you and your affiliates, and each person or entity, if any, who controls or is under common control with, you within the meaning of the Securities Act or the Exchange Act. This indemnity agreement shall be in addition to any liabilities, which the Company may otherwise have.

(b) You agree to indemnify and hold harmless the Company against any losses, claims, damages or liabilities, joint or several, to which the Company may become subject under the Securities Act, the Exchange Act or otherwise, specifically including, but not limited to, losses, claims, damages or liabilities (or actions in respect thereof) arising out of or based upon (i) any breach of any representation, warranty, agreement or covenant of yours herein contained, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, or any amendments or supplements thereto, 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, or (iii) any untrue statement or alleged untrue statement of any material fact contained in the Pricing Disclosure Package, the Prospectus or any amendment or supplement thereto, or the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in the case of subparagraphs (ii) and (iii) of this Section 11(b) to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon, and in conformity with, written information furnished to the Company by you specifically for use in the Registration Statement, the Pricing Disclosure Package, the Prospectus or any amendment or supplement thereto or in the preparation thereof, and you agree to reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending any such loss, claim, damage, liability or action.

The indemnity agreement in this Section 11(b) shall extend upon the same terms and conditions to, and shall inure to the benefit of, each officer of the Company who signed the Registration Statement and each director of the Company, and each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act. This indemnity agreement shall be in addition to any liabilities, which you may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 11 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 11, notify the indemnifying party in writing of the commencement thereof, but the omission so to notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party for contribution or otherwise than under the indemnity agreement contained in this Section 11 or to the extent it is not prejudiced as a proximate result of such failure. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in, and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 11 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the next preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local

counsel), approved by the indemnifying party (the Company in the case of Section 11(a) and each of Piper Jaffray & Co. and Canaccord Adams Inc. in the case of Section 11(b)), representing the indemnified parties who are parties to such action), (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of such action, or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party, in each of which cases the reasonable fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) The indemnifying party under this Section 11 shall not be liable for any settlement of any proceeding effected without its written consent, unless the indemnifying party shall have approved the terms of settlement, provided that such consent shall not be unreasonably withheld. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent includes (i) an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(e) In order to provide for just and equitable contribution in any action in which a claim for indemnification is made pursuant to this Section 11 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 11 provides for indemnification in such case, all the parties hereto shall contribute to the aggregate losses, claims, damages or liabilities to which they may be subject (after contribution from others) in such proportion so that you are responsible for the portion represented by the percentage that the maximum Placement Agents' fee payable to the Placement Agent pursuant to Section 6 hereof bears to the value of the maximum amount of New Notes issuable pursuant to the New Money Offering, and the Company is responsible for the remaining portion, provided, however, that (i) you shall not be required to contribute any amount in excess of the amount by which the fee paid to you pursuant to Section 6 hereof exceeds the amount of damages which you have been otherwise required to pay and (ii) no person guilty of a fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who is not guilty of such fraudulent misrepresentation. The contribution agreement in this Section 11(d) shall extend upon the same terms and conditions to, and shall inure to the benefit of, each person, if any, who controls you or the Company within the meaning of the Securities Act or the Exchange Act and each officer of the Company who signed the Registration Statement and each director of the Company.

12. Representations, Warranties, Covenants and Agreements to Survive Delivery. All representations, warranties, covenants and agreements of the Company and you herein or in certificates delivered pursuant hereto, and the indemnity and contribution agreements contained in Section 11 hereof shall remain operative and in full force and effect regardless of any investigation made by or on behalf of you or any person controlling you within the meaning of the Securities Act or the Exchange Act, or by or on behalf of the Company or any of its officers, directors or controlling persons within the meaning of the Securities Act or the Exchange Act, and shall survive the completion of the New Money Offering or termination of this Agreement.

13. Termination.

(a) This Agreement shall terminate upon the earliest to occur of (i) thirty days after the Expiration Date, (ii) any of the conditions specified in Section 10 has not been fulfilled as of any date such condition is required to be fulfilled pursuant to Section 10 (and the Placement Agents shall have notified the Company thereof), (iii) the date on which the Company terminates or withdraws the New Money Offering for any reason, or (iv) any modification to the business terms of the New Money Offering in the Company's sole and absolute discretion that results in the Placement Agents withdrawing pursuant to Section 5 hereof, (the earliest to occur of clauses (i), (ii), (iii) or (iv) being referred to as the "Termination Date").

(b) Notwithstanding termination of this Agreement pursuant to subsection (a) above, the obligations of the parties pursuant to Sections 6, 7 and 11 shall survive any termination of this Agreement.

If you elect to terminate this Agreement as provided in this Section 13, you shall promptly notify the Company by telephone, telecopy or telegram, in each case confirmed by letter.

14. Notices. All notices or communications hereunder, except as herein otherwise specifically provided, shall be in writing and if sent to you shall be mailed, delivered, or faxed (and confirmed by letter) to each of you at Piper Jaffray & Co., 345 California Street, 24th Floor, San Francisco, CA 94104, fax number (415) 984-5121, Attention: Hsian Winter and Canaccord Adams Inc., 99 High Street, Boston, MA 02110, fax number (617) 371-3736, Attention: General Counsel; if sent to the Company or Christopher J. Margolin, such notice shall be mailed, delivered, faxed (and confirmed by letter) to it or him at XOMA Ltd. , 2910 Seventh Street, Berkeley, CA 94710, fax number (510) 649-7571, Attention: Legal Department, with a copy (which shall not constitute notice) to Cahill Gordon & Reindel LLP, 80 Pine Street, 17th Floor, New York, NY 10005, fax number (212) 269-5420, Attention: Geoffrey E. Liebmann.

15. Submission of Jurisdiction. Except as set forth below, no claim may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company consents to the jurisdiction of such courts and personal service with respect thereto. The Company hereby consents to personal jurisdiction, service and venue in any court in which any Claim arising out of or in any way relating to this Agreement is brought by any third party against any Placement Agent or any other indemnified party. Each of the

Placement Agents and the Company (on its behalf and, to the extent permitted by applicable law, on behalf of its shareholders and affiliates) waives all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement. The Company agrees that a final judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon the Company and may be enforced in any other courts to the jurisdiction of which the Company is or may be subject, by suit upon such judgment. The Company hereby appoints, without power of revocation, Christopher J. Margolin, as its agent to accept and acknowledge on its behalf service of any and all process which maybe served in any action, proceeding or counterclaim in any way relating to or arising out of this Agreement.

16. Absence of Fiduciary Relationship. The Company acknowledges and agrees that: (a) the Placement Agents have been retained solely to act as a placement agent in connection with the New Money Offering and that no fiduciary, advisory or agency relationship between the Company and the Placement Agents has been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Placement Agents have advised or are advising the Company on other matters; (b) the price and other terms of the New Notes set forth in this Agreement and the indenture related to the New Notes were established by the Company following discussions and arms-length negotiations with the Placement Agents and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Placement Agents and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Placement Agents have no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that the Placement Agents are acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of the Placement Agents, and not on behalf of the Company; (e) it waives to the fullest extent permitted by law, any claims it may have against the Placement Agents for breach of fiduciary duty or alleged breach of fiduciary duty in respect of any of the transactions contemplated by this Agreement and agrees that the Placement Agents shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim on behalf of or in right of the Company, including shareholders, employees or creditors of the Company.

17. Parties. This Agreement shall inure to the benefit of and be binding upon the Placement Agents and the Company and their respective executors, administrators, successors and assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person or entity, other than the parties hereto and their respective executors, administrators, successors and assigns, and the controlling persons within the meaning of the Securities Act or the Exchange Act, officers and directors referred to in Section 11 hereof, any legal or equitable right, remedy or claim in respect of this Agreement or any provisions herein contained. This Agreement, and all conditions and provisions hereof, is intended and is for the sole and exclusive benefit of the parties hereto and their respective executors, administrators, successors and assigns and said controlling persons and said officers and directors, and for the benefit of no other person or entity.

18. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

19. Counterparts. This Agreement may be signed in several counterparts, each of which will constitute an original.

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

Very truly yours,

XOMA LTD.

By _____
Name:
Title:

Accepted as of the date first above written:

PIPER JAFFRAY & CO.

By _____
Name:
Title:

CANACCORD ADAMS INC.

By _____
Name:
Title:

Schedule I

1. The Expiration Date is February 8, 2006.

2. Pricing Terms of New Notes that are Omitted from the Preliminary Prospectus.

Schedule II

For purposes of the Agreement, the term "Applicable Time" means __:00 _.m. (Eastern Time) on _____, 2006.

Schedule III

Issuer-Represented General Free Writing Prospectus

Schedule IV

Persons Subject to Lock-Up

John L. Castello
Patrick J. Scannon MD, PhD
J. David Boyle II
Christopher J. Margolin
James G. Andress
William K. Bowes, Jr.
Arthur Kornberg MD
Peter Barton Hutt
W. Denman Van Ness
Patrick J. Zenner

Exhibit A

Form of Lock-up

Piper Jaffray & Co.
Canaccord Adams Inc.

c/o Piper Jaffray & Co.
The Chrysler Center, 58th Floor
405 Lexington Avenue
New York, NY 10174

Re: XOMA Ltd.

Ladies and Gentlemen:

The undersigned is, or will immediately prior to the Offering (as defined below) be, an owner of record or the beneficial owner of certain common shares of XOMA Ltd. (the "Company"), par value $0.0005 per share (the "Common Shares") or securities convertible into or exchangeable or exercisable for Common Shares. The Company has filed a Registration Statement on Form S-4 and Form S-3 (as may hereafter be amended, the "Registration Statement") pursuant to which the Company will offer to exchange (the "Exchange Offer") up to $60,000,000 aggregate principal amount of its 6.50% Convertible Senior Notes due 2012 (the "Existing Notes") for up to $60,000,000 aggregate principal amount of its 6.50% SNAPs$_{sm}$ due 2012 (the "New Notes"), for which you will act as the dealer managers (the "Dealer Managers"); and pursuant to which it will propose a public offering of up to an additional $10,000,000 aggregate principal amount of New Notes (the "New Money Offering," and together with the Exchange Offer, the "Offering") for which you will act as the placement agents (the "Placement Agents"). The undersigned recognizes that the Offering will be of benefit to the undersigned and will benefit the Company by, among other things, raising additional capital for its operations. The undersigned acknowledges that you will be relying on this letter in carrying out the Offering and in entering into placement and dealer manager arrangements with the Company with respect to the Offering.

In consideration of the foregoing, the undersigned hereby agrees that the undersigned will not, without the prior written consent of Piper Jaffray & Co. (which consent may be withheld in its sole discretion), directly or indirectly, sell, offer, contract or grant any option to sell (including, without limitation, any short sale), pledge (including margin stock), transfer, establish an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Securities Exchange Act of 1934, as amended, or otherwise dispose of or transfer, or commence the offering of, any Common Shares, options or warrants to acquire Common Shares, or securities exchangeable or exercisable for or convertible into Common Shares currently or hereafter owned either of record or beneficially by the undersigned, or publicly announce an intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 90 days after the date of the final prospectus relating to

the Offering (the "Prospectus"). If (i) the Company issues an earnings release or material news, or a material event relating to the Company occurs, during the last 17 days of the lock-up period, or (ii) prior to the expiration of the lock-up period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the lock-up period, then, in each case, the restrictions imposed by this agreement shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. The foregoing sentences shall not apply to transfers of Common Shares (a) by bona fide gift, will or operation of law (such as intestacy), including without limitation, transfers by bona fide gift will or intestacy to family members of the undersigned or to a settlement or trust established under the laws of any country, (b) the exercise of any option which would otherwise expire during the lock-up period, (c) the exercise of options (including a cashless exercise) or conversion of convertible securities outstanding as of the date of the Prospectus, provided that the shares received upon such conversion or exercise shall be subject to the terms of this agreement or (d) dispositions of not more than 50,000 Common Shares in the aggregate held by the undersigned on the date of the Prospectus or issued to the undersigned upon exercise of options or conversion of convertible securities outstanding on such date; *provided, however,* that in any transfer made pursuant to clause (a) it shall be a condition to such transfer that the transferee executes and delivers to Piper Jaffray & Co. an agreement stating that the transferee is receiving and holding the Common Shares subject to the provisions of this letter agreement, and there shall be no further transfer of such Common Shares except in accordance with this letter.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of Common Shares or securities convertible into or exchangeable or exercisable for Common Shares held by the undersigned except in compliance with the foregoing restrictions.

With respect to the Offering only, the undersigned waives any registration rights relating to registration under the Securities Act of 1933, as amended, of any Common Shares owned either of record or beneficially by the undersigned, including any rights to receive notice of the Offering. In addition, during the period through the close of trading on the date 90 days after the date of the Prospectus, as such 90-day period may be extended pursuant to the second paragraph of this letter agreement, the undersigned will not make any demand for, or exercise any right with respect to, the registration of Common Shares or any securities convertible into or exercisable or exchangeable for Common Shares without the prior written consent of Piper Jaffray & Co. (which consent may be withheld in its sole discretion).

This agreement is irrevocable and will be binding on the undersigned and the respective successors, heirs, personal representatives and assigns of the undersigned. This agreement shall automatically terminate upon the earliest to occur, if any, of: (a) either Piper Jaffray & Co., on the one hand, or the Company, on the other hand, advising the other in writing, prior to the execution of either the Dealer Manager Agreement or Placement Agreement, that it has determined not to proceed with the Offering or (b) termination of the Dealer Manager Agreement or Placement Agreement entered into between the Company and you before the issuance of any New Notes.

Printed Name of Holder

By: _____
Signature

Printed Name of Person Signing
(and indicate capacity of person signing if signing as custodian, trustee, or on behalf of an entity)

Exhibit B-1

Form of opinion of Cahill Gordon & Reindel LLP
to be delivered pursuant to Section 10(d)

(i) XOMA (US) LLC has been duly organized and is validly existing as a limited liability company in good standing under the laws of the State of Delaware, with full power and authority to own, lease and operate its properties and to conduct its business as currently conducted.

(ii) All of the outstanding membership or other equity interests of XOMA (US) LLC have been duly authorized and validly issued, are fully paid and non-assessable, and, to such counsel's knowledge, are owned by the Company, subject to no security interest, or adverse claim.

(iii) Each of the documents incorporated by reference in the Registration Statement and the Prospectus, at the time it became effective or was filed with the Commission, complied as to form in all material respects with the requirement of the Exchange Act (except as to the financial statements and the notes thereto and the schedules and other financial and accounting data, and the statistical data derived therefrom, included or incorporated by reference therein, as to all of which such counsel need express no opinion and make no comment).

(iv) Each of this Agreement, the Indenture, the New Notes and the Shares conform in all material respects to the description thereof contained in Prospectus.

(v) Assuming the due authorization, execution and delivery of the New Notes by the Company under Bermuda law, the New Notes, when authenticated in accordance with the provisions of the Indenture and delivered to and paid for pursuant to the New Money Offering, will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and general principles of equity, and will be entitled to the benefits of the Indenture.

(vi) Assuming the due authorization, execution and delivery of the Indenture under Bermuda law by the Company, the Indenture will be a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and general principles of equity. Notwithstanding the foregoing, Cahill Gordon & Reindel LLP need not express an opinion as to the validity, legally binding effect or enforceability of Section 3.05 of the Indenture or any related provisions in the Indenture or the New Notes that require or relate to payment of a "Make whole amount" or any additional interest, in each case upon conversion of the New Notes at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture.

(vii) Assuming (i) the representations of the Company contained in this Agreement are true, correct and complete and (ii) compliance by the Company with their respective covenants set forth in this Agreement, no approval, authorization, consent or order of or filing with any U.S. federal, or New York or Delaware state governmental or regulatory commission, board, body, authority, agency or subdivision is required in connection with the issuance and sale of the New Notes and the issuance of the Shares or the consummation by the Company of the transactions contemplated by this Agreement or the Indenture (other than federal securities laws, as to which such counsel expresses no opinion in this paragraph, and state securities or blue sky laws and the rules and regulations of the NASD, as to which such counsel expresses no opinion).

(x) The execution, delivery and performance of this Agreement by the Company, the issuance and sale of the New Notes and the issuance of the Shares by the Company and the consummation by the Company of the transactions contemplated by this Agreement and the Indenture by the Company and the consummation, do not and will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which with notice, lapse of time or both would result in any breach or violation of or constitute a default under) the charter or bylaws or other organizations documents of XOMA (US) LLC or any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument filed as an exhibit to a document incorporated by reference in the Registration Statement and Prospectus to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, or, assuming (i) the representations of the Company contained in this Agreement are true, correct and complete and (ii) compliance by the Company with their respective covenants set forth in this Agreement, any U.S. federal or New York or Delaware state law, regulation or rule or any decree, judgment or order applicable to the Company or any Subsidiary and known to such counsel.

(xi) To such counsel's knowledge, there are no contracts, licenses, agreements, leases or documents of a character which are required to be described in any document incorporated by reference in the Registration Statement and Prospectus which have not been so described or filed.

(xii) To such counsel's knowledge, there are no actions, suits, claims, investigations or proceedings pending, threatened or contemplated to which the Company or any of the Subsidiaries or any of their respective directors or officers is or would be a party or to which any of their respective properties is or would be subject at law or in equity, before or by any governmental or regulatory commission, board, body, authority, agency or subdivision which are required to be described in any document incorporated by reference in the Registration Statement and Prospectus but are not so described.

(xiii) Each of the Company and the Subsidiaries is not and, after giving effect to the offering and sale of the New Notes and the application of the proceeds thereof as described in the Prospectus, will not be an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act.

(xiv) The information in (A) the Registration Statement and Prospectus under the captions "United States Federal Income Tax Considerations," "Plan of Distribution," "Description of the Existing Notes," "Description of the New Notes," "The Exchange Offer" and "Description of Share Capital," (B) the Company's annual report for the year ended December 31, 2004 on Form 10-K under the captions "Item 1. Business—Financial and Legal Arrangements of Product Collaborations and Licensing Arrangements—Current Agreements," "—Recently Terminated Agreements—Onyx, " and "Recently Terminated Agreements—Baxter," (C) the Company's current report on Form 8-K dated March 30, 2005, (D) the Company's current report on Form 8-K dated May 20, 2005, (E) the Company's current report on Form 8-K dated June 17, 2005, (F) the Company's current report on Form 8-K dated July 21, 2005, and (G) the Company's current report on Form 8-K dated September 20, 2005, insofar as such statements constitute a summary of documents or matters of law, are descriptions of contracts, agreements or other legal documents or of legal proceedings, or refer to statements of law or legal conclusions, are accurate in all material respects and present fairly the information required to be shown.

(xv) The Registration Statement has become effective under the Securities Act and, to such counsel's knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been instituted or, to the knowledge of such counsel, threatened by the Commission.

(xvi) The Registration Statement and the Prospectus, and any amendment thereof or supplement thereto (including any term sheet within the meaning of Rule 434 of the Rules and Regulations), comply as to form in all material respects with the requirements of the Securities Act and the Rules and Regulations thereunder; the conditions for use of form S-3/S-4, set forth in the General Instructions thereto, have been satisfied.

(xvii) [In addition, such counsel shall state that such counsel has participated in conferences with officers and other representatives of the Company, other counsel for the Company, counsel for the Placement Agents, representatives of the Placement Agents and representatives of the independent public accountants of the Company at which the contents of the Registration Statement and Prospectus and related matters were discussed, and although such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement and Prospectus (except as set forth in paragraphs (iv) and (xiv) above), on the basis of the foregoing (relying as to materiality to the extent such counsel deems appropriate upon the opinions of officers and other representatives of the Company), no facts have come to such counsel's attention that lead such counsel to believe that the Registration Statement or any amendment thereof, at the time the Registration Statement became effective (including any Registration Statement filed under Rule 462(b) of the Rules and Regulations) and as of such Closing Date contains, an untrue statement of a material fact or omitted or omits to state a material fact requited to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except as to the financial statements and the notes thereto and the schedules and other financial and accounting

data, and the statistical data derived therefrom, included or incorporated by reference therein, as to all of which such counsel need express no opinion and make no comment).]

In rendering such opinions, such counsel may rely (A) as to matters involving the application of laws other than the laws of the United States, the State of New York and the State of Delaware, to the extent such counsel deems proper and to the extent specified in such opinion, if at all, upon an opinion or opinions (reasonably satisfactory to the Placement Agents' counsel) of other counsel reasonably acceptable to the Placement Agents' counsel, familiar with the applicable laws; and (B) as to matters of fact, to the extent such counsel deems proper, on certificates of responsible officers of the Company and certificates or other written statements of officials of jurisdictions having custody of documents respecting the corporate existence or good standing of the Company. The opinion of such counsel for the Company shall state that the opinion of any such other counsel is in form satisfactory to such counsel and, in such counsel's opinion, the Placement Agent and they are justified in relying thereon. With respect to the matters to be covered in subparagraph (xv) above, counsel may state their opinion and belief is based upon their participation in the preparation of the Registration Statement and Prospectus and any amendment or supplement thereto but is without independent check or verification except as specified.

Exhibit B-2

Form of opinion of Conyers Dill & Pearman
to be delivered pursuant to Section 10(e)

(i) The Company has been duly continued to Bermuda and is existing under the laws of Bermuda in good standing (meaning solely that it has not failed to make any filing with any Bermuda governmental authority, or to pay any Bermuda government fee or tax, which would make it liable to be struck off the Register of Companies and thereby cease to exist under the laws of Bermuda), with full corporate power to own, lease and operate its properties and conduct its business as described under the heading "Summary" in the Prospectus.

(ii) Each of XOMA (Bermuda) Ltd. And XOMA Technology Ltd. (each a "Bermuda Subsidiary" and collectively, the "Bermuda Subsidiaries") is duly incorporated and is existing under the laws of Bermuda in good standing (meaning solely that it has not failed to make any filing with any Bermuda governmental authority, or to pay any Bermuda government fee or tax, which would make it liable to be struck off the Register of Companies and thereby cease to exist under the laws of Bermuda), with full corporate power to own, lease and operate its properties and conduct its business as described under the heading "Summary" in the Prospectus.

(iii) The Company has the necessary corporate power and authority to enter into and perform its obligations under this Agreement and the Indenture, including the issuance, sale and delivery of the New Notes and the issuance of the Shares as contemplated herein. The execution and delivery of this Agreement and the Indenture by the Company and the performance by the Company of its obligations hereunder and under the Indenture will not violate the memorandum of continuance or bye-laws of the Company nor any applicable law, regulation, order or decree in Bermuda.

(iv) The Company has taken all corporate action required to authorize its execution, delivery and performance of this Agreement and the Indenture. Each of this Agreement and the Indenture, have been duly executed and delivered by or on behalf of the Company and this Agreement and the Indenture (assuming the due authorization, execution and delivery thereof by the Trustee) constitute the valid and binding obligations of the Company in accordance with the terms thereof.

(v) No order, consent, approval, license, authorization or validation of or exemption by any government or public body or authority of Bermuda or any sub-division thereof is required to authorise or is required in connection with the execution, delivery, performance and enforcement of this Agreement or the Indenture, except such as have been duly obtained in accordance with Bermuda law.

(vi) It is not necessary or desirable to ensure the enforceability in Bermuda of this Agreement or the Indenture that any of them be registered in any register kept by, or filed with, any governmental authority or regulatory body in Bermuda. However, to the extent that this Agreement or the Indenture create a charge over assets of

the Company, it may be desirable to ensure the priority in Bermuda of the charge that it be registered in the Register of Charges in accordance with Section 55 of the Companies Act 1981.

(vii) Neither this Agreement nor the Indenture will be subject to *ad valorem* stamp duty in Bermuda and no registration, documentary, recording transfer or other similar tax, fee or charge is payable in Bermuda in connection with the execution, delivery, filing, registration or performance of this Agreement and the Indenture, other than in connection with a registration described in paragraph (vi) above and in connection with the filing of the Prospectus with the Registrant of Companies.

(viii) There is no income or other tax of Bermuda imposed by withholding or otherwise on (i) any payment to be made to or by the Company pursuant to this Agreement or the Indenture or (ii) any interest or dividend to be paid by the Company to the holders of the New Notes or the Shares or by a Bermuda Subsidiary to the Company.

(ix) The choice of the laws of the State of New York (the "Foreign Laws") as the governing law of this Agreement and the Indenture is a valid choice of law and would be recognized and given effect to in any action brought before a court of competent jurisdiction in Bermuda, except for those laws (i) which such court considers to be procedural in nature, (ii) which are revenue or penal laws or (iii) the application of which would be inconsistent with public policy, as such term is interpreted under the laws of Bermuda. The submission in this Agreement and the Indenture to the jurisdiction of the courts referred to in Section 15 hereof (the "Foreign Courts") is valid and binding upon the Company.

(x) The courts of Bermuda would recognize as a valid judgment, a final and conclusive judgment *in personam* obtained in the Foreign Courts against the Company based upon this Agreement or the Indenture under which a sum of money is payable (other than a sum of money payable in respect of multiple damages, taxes or other charges of a like nature or in respect of a fine or other penalty) and would give a judgment bared thereon, provided that (a) such courts had proper jurisdiction over the parties subject to such judgment, (b) such courts did not contravene the rules of natural justice of Bermuda, (c) such judgment was not obtained by fraud, (d) the enforcement of the judgment would not be contrary to the public policy of Bermuda, (e) no new admissible evidence relevant to the action is submitted prior to the rendering of the judgment by the courts of Bermuda and (f) there is due compliance with the correct procedures under the laws of Bermuda.

(xi) None of the Placement Agents will be deemed to be resident, domiciled or carrying an business in Bermuda by reason only of the execution, performance and/or enforcement of this Agreement by such Placement Agent.

(xi) Each of the Placement Agents has standing to bring an action or proceedings before the appropriate courts in Bermuda for the enforcement of this Agreement. It is not necessary or advisable in order for any Placement Agent to enforce

its rights under this Agreement, including the exercise of remedies thereunder, that it be licensed, qualified or otherwise entitled to carry on business in Bermuda.

(xiii) The Company and each of the Bermuda Subsidiaries has been designated as non-resident of Bermuda for the purposes of the Exchange Control Act, 1972 and, as such, is free to acquire, hold and sell foreign currency and securities, and to pay dividends on their respective shares, without restriction.

(xiv) Neither the Company nor either of the Bermuda Subsidiaries is entitled to any immunity under the laws of Bermuda, whether characterized as sovereign immunity or otherwise, from any legal proceedings to enforce this Agreement in respect of itself or its property.

(xv) Based solely upon a review of the register of members of the Company dated as of a date as close as practicable to the date of the opinion, certified by the Secretary of the Company on as of a date as close as practicable to the date of the opinion, the issued share capital of the Company consists of _____ common shares par value US$0.0005 and 2,959 Series B preference shares par value US$0.05, each of which is validly issued, fully paid and non-assessable (which term when used herein means that no further sums are required to be paid by the holders thereof in connection with the issue thereof). The New Notes have been duly authorised, and will not be subject to any statutory pre-emptive rights or similar rights under the memorandum of continuance or bye-laws of the Company, and when executed and delivered by the Company and otherwise validly issued in accordance with this Agreement and the Indenture and paid for in accordance with the Indenture, the New Notes will be validly issued, fully paid and non-assessable. The Shares reserved for issuance upon conversion of the New Notes have been duly authorised, and, when issued upon the conversion of the New Notes in accordance with the terms of the New Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any statutory pre-emptive rights or similar rights under the memorandum of continuance or bye-laws of the Company.

(xvi) Based solely upon a review of the register of members of each Bermuda Subsidiary dated as of a date as close as practicable to the date of the opinion, certified by the Assistant Secretary of the respective Bermuda Subsidiary on such date, the issued share capital of each Bermuda Subsidiary consists of 12,000 common shares par value US$1.00, each of which is validly issued, fully paid and non-assessable and registered in the name of the Company.

(xvii) The statements contained in the Prospectus and Registration Statement under the captions “Risk Factors – If you were to obtain a judgment against us, it may be difficult to enforce against us because we are a foreign entity,” “Risk Factors – Our shareholder rights agreement or bye-laws may prevent transactions that could be beneficial to our shareholders and may insulate our management from removal,” “Description of Share Capital” (other than under the caption “—Preference share purchase rights”), “Description of Existing Notes” and “Description of New Notes” to the

extent that they constitute statements of Bermuda law, are accurate in all material respects.

(xvii) The Company has received consent from the Bermuda Monetary Authority for (i) the issue of the Company's shares up to the amount of its authorised capital from time to time, to persons non-resident of Bermuda for exchange control purposes and the subsequent free transferability of such shares to and between persons non-resident of Bermuda for exchange control purposes without prior approval; (ii) the issue or transfer of up to 20% of the Company's shares in issue from time to time to persons resident in Bermuda for exchange control purposes without prior approval; and (iii) the issue of options, warrants, depository receipts, rights, loan notes and other securities of the Company and the subsequent free transferability thereof without prior approval, provided in each case that shares of the Company are listed on an appointed stock exchange (as defined in the Companies Act 1981).

(xix) Pursuant to section 16 of the Companies Act 1981, the bye-laws of the Company bind the Company and its shareholders to the same extent as if such bye-laws had been signed and sealed by each such shareholder and contained covenants on the part of each such shareholder to observe all the provisions of the bye-laws of the Company. However, no shareholder of the Company will be bound by an alteration made in the bye-laws of the Company after the date on which he became a shareholder if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise pay money to, the Company (unless such shareholder agrees in writing, either before or after the alteration is made, to be bound thereby).

(xx) The Company can sue and be sued in its own name under the laws of Bermuda.

(xxi) The procedure for the service of process on the Company through Christopher J. Margolin in New York, New York, United States of America, acting as agent for the Company, as provided in Section 15 of this Agreement, is and would be effective, insofar as Bermuda law is concerned, to constitute valid service of process on the Company in connection with proceedings before the Foreign Courts.

Exhibit B-3

Form of opinion of Christopher J. Margolin
to be delivered pursuant to Section 10(f)

(i) The Company and each of the Subsidiaries is duly qualified to do business as a foreign corporation or company and is in good standing in each U.S. jurisdiction where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, have a Material Adverse Effect.

(ii) No options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into membership or other equity interests of the Subsidiaries, are outstanding. To such counsel's knowledge, all of the outstanding share capital or other equity interests of each of the Bermuda Subsidiaries are owned by the Company, in each case subject to no security interest, encumbrance or adverse claim.

(iii) This Agreement and the Indenture have been duly delivered by the Company.

(iv) The execution, delivery and performance of this Agreement and the Indenture by the Company, the issuance and sale of the New Notes and the Shares by the Company and the consummation by the Company of the transactions contemplated hereby and the Indenture do not and will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which with notice, lapse of time or both would result in any breach or violation of or constitute a default under) (A) the charter or bye-laws or other organizational documents of the Company or any of the Subsidiaries, or (B) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, or (C) any state or local law, regulation or rule or any decree, judgment or order known by such counsel to be applicable to the Company or any of the Subsidiaries, except, in the case of clause (B), to the extent that any such breach, violation or default would not, individually or in the aggregate, have a Material Adverse Effect.

(v) Except as described in the Registration Statement and Prospectus, no person has the right, pursuant to the terms of any contract, agreement or other instrument described in the Registration Statement or Prospectus or any documents incorporated by reference therein or otherwise known to such counsel, to cause the Company to register under the Securities Act any common shares or any other shares or other equity interest of the Company, or to include any such shares or other equity interest in the Registration Statement or the offering contemplated thereby, whether as a result of the filing or effectiveness of any Registration Statement or the sale of the New Notes or the Shares as contemplated thereby or otherwise.

(vi) The Company's common shares are listed for trading on The Nasdaq National Market.

(vii) To such counsel's knowledge, there are no affiliate transactions or off-balance sheet transactions of a character which are required to be described in any documents incorporated by reference in the Registration Statement and Prospectus, which are not so described.

(viii) (viii) The information in (A) the Company's proxy statement pursuant to Section 14(a) of the Exchange Act on Schedule 14A filed with the Commission on April 13, 2005 under the captions "Employment Contracts and Termination of Employment and Change-in-Control Arrangements," (B) the Company's annual report for the year ended December 31, 2004 on Form 10-K under the caption "Part I. Item 3. Legal Proceedings," (C) the Company's quarterly report for the quarter ended March 31, 2005 on Form 10-Q under the caption "Part II. Item 1. Legal Proceedings," (D) the Company's quarterly report for the quarter ended June 30, 2005 on Form 10-Q under the caption "Part II. Item 1. Legal Proceedings," and (E) the Company's quarterly report for the quarter ended September 30, 2005 on Form 10-Q under the caption "Part II. Item 1. Legal Proceedings," insofar as such statements constitute a summary of documents or matters of law, are descriptions of contracts, agreements or other legal documents or of legal proceedings, or refer to statements of law or legal conclusions, are accurate in all material respects and present fairly the information required to be shown.

Exhibit B-4

Form of opinion of McAndrews, Heid & Malloy, Ltd.
to be delivered pursuant to Section 10(g)

(i) To such counsel's knowledge, the statements relating to the Patents and Applications in the Prospectus as of its date were, and as of the date such opinion is delivered are, accurate and complete statements or summaries of the matters therein set forth. Such counsel is unaware of facts that cause such counsel to believe that the above-described portions of the Prospectus contained as of this Agreement, or contain as of the date such opinion is delivered, an untrue statement of a material fact or omitted as of the date of this Agreement, or omit as of the date such opinion is delivered, a material fact required to be stated therein or necessary to make the statements therein not misleading.

(iii) To such counsel's knowledge, other than those disclosed in the Registration Statement and Prospectus, (A) there are no legal or governmental proceedings pending relating to the Patents and Applications, other than proceedings in the U.S. and foreign patent offices relating to the prosecution of pending patent applications, and (B) no such proceedings are threatened or contemplated by governmental authorities or others.

(iii) To such counsel's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement and Prospectus, such counsel is unaware of facts which would form a reasonable basis for a finding that: (i) the Patents are infringed by another party; or (ii) the commercialization of the products described in the Registration Statement and Prospectus as being under development by the Company and relating to the Patents would infringe patents owned by another party.

(iv) To such counsel's knowledge, such counsel is unaware of facts which (i) would preclude the Company from having valid license rights or clear title to the Patents and Applications; (ii) would cause such counsel to believe that the Company lacks or will be unable to obtain the rights or licenses to patents necessary to conduct the business now conducted or Proposed to be conducted by the Company as described in the Registration Statement and Prospectus; or (iii) would form a reasonable basis for a finding of unenforceability or invalidity of the Patents.

(v) To such counsel's knowledge, the Patents and Applications were filed and are being or have been prosecuted in accordance with applicable rules and regulations relating thereto. However, there is no assurance that patents will issue from the Applications, or that claims will be allowed without amendment or appeal to boards of appeal or higher courts.

Exhibit B-5

Form of opinion of Marshall, Gerstein & Borun
to be delivered pursuant to Section 10(h)

(i) To such counsel's knowledge, the statements relating to the Patents and Applications in the Prospectus as of its date were, and as of the date such opinion is delivered are, accurate and complete statements or summaries of the matters therein set forth. Such counsel is unaware of facts that cause such counsel to believe that the above-described portions of the Prospectus contained as of the date of this Agreement, or contain as of the date such opinion is delivered, an untrue statement of a material fact or omitted as of the date of this Agreement, or omit as of the date such opinion is delivered, a material fact required to be stated therein or necessary to make the statements therein not misleading.

(ii) To such counsel's knowledge, other than those disclosed in the Registration Statement and Prospectus, (A) there are no legal or governmental proceedings pending relating to the Patents and Applications, other than proceedings in the U.S. and foreign patent offices relating to the prosecution of pending patent applications, and (B) no such proceedings are threatened or contemplated by governmental authorities or others.

(iii) To such counsel's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement and Prospectus, such counsel is unaware of facts which would form a reasonable basis for a finding that: (i) the Patents are infringed by another party; or (ii) the commercialization of the products described in the Registration Statement and Prospectus as being under development by the Company and relating to the Patents would infringe patents owned by another party.

(iv) To such counsel's knowledge, such counsel is unaware of facts which (i) would preclude the Company from having valid license rights or clear title to the Patents and Applications; (ii) would cause such counsel to believe that the Company lacks or will be unable to obtain the rights or licenses to patents necessary to conduct the business now conducted or proposed to be conducted by the Company as described in the Registration Statement and Prospectus; or (iii) would form a reasonable basis for a finding of unenforceability or invalidity of the Patents.

(v) To such counsel's knowledge, the Patents and Applications were filed and are being or have been prosecuted in accordance with applicable rules and regulations relating thereto. However, there is no assurance that patents will issue from the Applications, or that claims will be allowed without amendment or appeal to boards of appeal or higher courts.

Exhibit B-6

Form of opinion of Anne S. Dollard
to be delivered pursuant to Section 10(i)

(i) To such counsel's knowledge, the statements relating to the Patent and Applications in the Prospectus as of its date were, and as of the date such opinion is delivered are, accurate and complete statements or summaries of the matters therein set forth. Such counsel is unaware of facts that cause such counsel to believe that the above-described portions of the Prospectus contained as of the Agreement, or contain as of the date such opinion is delivered, an untrue statement of a material fact or omitted as of the date of this Agreement, or omit as of the date such opinion is delivered, a material fact required to be stated therein or necessary to make the statements therein not misleading.

(ii) To such counsel's knowledge, other than those disclosed in the Registration Statement and Prospectus, (A) there are no legal or governmental proceedings pending relating to the Patents and Applications, other than proceedings in the U.S. and foreign patent offices relating to the prosecution of pending patent applications, and (B) no such proceedings are threatened or contemplated by governmental authorities or others.

(iii) To such counsel's knowledge, except as would not, individually or in the aggregate, have a Material Adverse Effect and other than as disclosed or incorporated by reference in the Registration Statement and Prospectus, such counsel is unaware of facts which would form a reasonable basis for a finding that: (i) the Patents are infringed by another party; or (ii) the commercialization of the products described in the Registration Statement and Prospectus as being under development by the Company and relating to the Patents would infringe patents owned by another party.

(iv) To such counsel's knowledge, such counsel is unaware of facts which (i) would preclude the Company from having valid license rights or clear title to the Patents and Applications; (ii) would cause such counsel to believe that the Company lacks or will be unable to obtain the rights or licenses to patents necessary to conduct the business now conducted or proposed to be conducted by the Company as described in the Registration Statement and Prospectus; or (iii) would form a reasonable basis for a finding of unenforceability or invalidity of the Patents.

(v) To such counsel's knowledge, the Patents and Applications were filed and are being or have been prosecuted in accordance with applicable rules and regulations relating thereto. However, there is no assurance that patents will issue from the Applications, or that claims will be allowed without amendment or appeal to boards of appeal or higher courts.

Exhibit B-7

Form of opinion of Cahill Gordon & Reindel LLP
to be delivered pursuant to Section 10(j)

(i) Based upon and subject to the assumptions and qualifications set forth in such opinion, Cahill Gordon & Reindel LLP is of the opinion that XOMA Ltd should not be considered a "passive foreign investment company" within the meaning of Section 1297(a) of the Code (a "PFIC") for calendar year 2005.

Exhibit C

Subsidiaries

Name of Subsidiary	Jurisdiction of Incorporation
XOMA Limited	United Kingdom
XOMA (US) LLC	Delaware
XOMA (Bermuda) Ltd.	Bermuda
XOMA Technology Ltd.	Bermuda
XOMA Ireland Limited	Ireland

Exhibit D

1. Genentech – U.S. Patent No. 5,622,700
2. Genentech – U.S. Patent No. 6,037,454
3. Genentech/XOMA – U.S. Patent No. 6,582,698

Exhibit 4.6

XOMA LTD.

6.50% Convertible SNAPs$_{sm}$ due 2012

INDENTURE

Dated as of February ____, 2006

WELLS FARGO BANK, NATIONAL ASSOCIATION

TRUSTEE

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CROSS REFERENCE TABLE*

TIA SECTION	INDENTURE SECTION
310(a)(1)	7.09
(a)(2)	7.09
(a)(3)	N.A.
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(a)(5)	7.09
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313(a)	7.14(a)
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314(a)	4.02; 4.03; 11.02
(c)(1)	11.04
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(c)(3)	N.A.
(e)	11.05
(f)	N.A.
315(a)	7.01
(b)	7.15; 11.02
(c)	7.01
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316(a) (last sentence)	2.09
(a)(1)(A)	6.05
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(a)(2)	N.A.
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317(a)(1)	6.08
(a)(2)	6.09
(b)	2.05
318(a)	11.01

N.A. means Not Applicable

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

INDENTURE dated as of February ____, 2006 between XOMA LTD., a Bermuda company (the "**Company**") and Wells Fargo Bank, National Association, as Trustee hereunder (the "**Trustee**").

RECITALS OF THE COMPANY

The Company has duly authorized the creation of an issue of its 6.50% Convertible SNAPs$_{sm}$ due 2012 (herein called the "**Notes**") of substantially the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture.

All things necessary to make the Notes, when the Notes are executed by the Company and authenticated and delivered hereunder, the valid and legally binding obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done. Further, all things necessary to duly authorize the issuance of the Common Shares of the Company issuable upon the conversion of the Notes, and to duly reserve for issuance the number of Common Shares issuable upon such conversion, have been done.

This Indenture is subject to, and shall be governed by, the provisions of the Trust Indenture Act of 1939, as amended, that are required to be a part of and to govern indentures qualified under the Trust Indenture Act of 1939, as amended.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 *Definitions*. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

(2) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

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

"**Additional Interest Payment**" means the additional interest to be paid by the Company upon an Automatic Conversion or upon a Voluntary Conversion, as the case may be, in an amount equal to four full years of interest on the Notes, less any interest paid or provided for on

the Notes prior to such Automatic Conversion or Voluntary Conversion, as the case may be. The Company may, at its option, pay the Additional Interest Payment in cash, Common Shares or a combination thereof, subject to the restrictions set forth in Section 10.16. In the event that the Company elects to pay the Additional Interest Payment in Common Shares, the Common Shares will be valued at the Conversion Price then in effect immediately prior to the Automatic Conversion Date or Voluntary Conversion Date (as defined in Section 10.14(a) or Section 10.15(a), as applicable).

"**Additional Notes**" means an unlimited principal amount of Notes (other than the Initial Notes) issued from time to time with the same terms and conditions, except for any differences in the issue price and interest accrued prior to the issue date of the Additional Notes, and the same CUSIP number as the Initial Notes under this Indenture in accordance with Section 2.01 hereof.

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

"**Board of Directors**" means either the board of directors of the Company, or any duly authorized committee of such board.

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

"**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which the banking institutions in The City of New York or the city in which the Corporate Trust Office is located are authorized or obligated by law or executive order to close or be closed.

"**Capital Stock**" of any corporation means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that corporation.

"**Closing Price**" of any security on any date of determination means:

(1) the closing sale price (or, if no closing sale price is reported, the last reported sale price) of such security on the NASDAQ National Market on such date;

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

(3) if such security is not so listed on a U.S. national or regional securities exchange, the closing sale price as reported by the NASDAQ OTC Bulletin Board Service (f/k/a Over-the-Counter Bulletin Board);

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

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

"**Common Shares**" means the common shares, par value $0.0005 per share, of the Company.

"**common shares**" means any share of any class of capital stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer.

"**Company**" means the party named as the "**Company**" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

"**Company Order**" means a written order signed in the name of the Company by any two Officers of the Company;*provided that* the Company Order regarding authentication delivered to the Trustee in connection with the closing on February [10], 2006 may be signed by one Officer, *provided further that* this one Officer will be either the Chief Executive Officer of the Chief Financial Officer of the Company.

"**Conversion Agent**" means any person authorized by the Company to convert Notes in accordance with Article 10 hereof.

"**Conversion Price**" as of any day will equal $1,000 divided by the Conversion Rate as of such date and rounded to the nearest cent. The Conversion Price shall initially be approximately $1.87 per Common Share.

"**Conversion Rate**" has the meaning specified in Section 10.01.

"**Corporate Trust Office**" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 707 Wilshire Boulevard, 17th Floor, Los Angeles, California 90017, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

"**Default**" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"**Depositary**" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in 2.07(b) as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Existing Notes**" means the 6.50% Convertible Senior Notes due 2012 issued under the Existing Notes Indenture.

"**Existing Notes Indenture**" the means the indenture, dated as of February 7, 2005, between the Company and Wells Fargo Bank, National Association.

"**GAAP**" means United States generally accepted accounting principles as in effect from time to time.

"**Holder**" or "**Noteholder**" as applied to any Note, or other similar terms (but excluding the term "**beneficial holder**"), means any Person in whose name at the time a particular Note is registered on the Note Registrar's books.

"**Indenture**" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

"**Initial Notes**" means Notes in an aggregate principal amount not to exceed $70,000,000 issued under this Indenture.

"**Interest Payment Date**" means the Stated Maturity of an installment of interest on the Notes.

"**Issue Date**" of any Note means the date on which the Note was originally issued or deemed issued as set forth on the face of the Note.

"**Notes**" has the meaning ascribed to it in the first paragraph under the caption "**Recitals of the Company**." The Initial Notes and any Additional Notes will rank equally and ratably and shall be treated as a single class for all purposes under this Indenture.

"**Note or Notes**" means any Initial Note or Additional Note or Notes, as the case may be, issued, authenticated and delivered under this Indenture.

"**Officer**" means the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary or any Assistant Treasurer or Assistant Secretary of the Company.

"**Officers' Certificate**" means a written certificate containing the information specified in Sections 11.04 and 11.05, signed in the name of the Company by any two Officers of the Company, and delivered to the Trustee. An Officers' Certificate given pursuant to Section 4.03 shall be signed by an authorized financial or accounting Officer of the Company but need not contain the information specified in Sections 11.04 and 11.05.

"**Opinion of Counsel**" means a written opinion containing the information specified in Sections 11.04 and 11.05, from legal counsel. The counsel may be an employee of, or counsel to, the Company.

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

"**principal**" of a Note means the principal amount due on the Stated Maturity as set forth on the face of the Note or the amount of any Fundamental Change Purchase Price payable pursuant to Section 3.05(a), whichever is applicable.

"**Regular Record Date**" means, with respect to the interest payable on any Interest Payment Date, the close of business on January 15 or July 15 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject, and who shall have direct responsibility for the administration of this Indenture.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the United States Securities Act of 1933 (or any successor statute), as amended from time to time.

"**Share Price**" means the price per Common Share paid in connection with a Fundamental Change transaction pursuant to which Additional Shares are issuable as set forth in Section 3.05(a) hereof, which shall be equal to (i) if holders of Common Shares receive only cash in such Fundamental Change transaction, the cash amount paid per Common Share and (ii) in all other cases, the average of the Closing Prices of the Common Shares on the five Trading Days prior to, but not including, the effective date of such Fundamental Change transaction.

"**Significant Subsidiary**" means any direct or indirect Subsidiary of the Company that meets any of the following conditions:

(1) the Company's and its other Subsidiaries' investments in and advances to such Subsidiary exceed 10% of the total assets of the Company and its Subsidiaries consolidated as of the end of the most recently completed fiscal year;

(2) the Company's and its other Subsidiaries' proportionate share of the total assets (after intercompany eliminations) of such Subsidiary exceed 10% of the total assets of the Company and its Subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) the Company's and its other Subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of such Subsidiary exceed 10% of such income of the Company and its Subsidiaries consolidated for the most recently completed fiscal year.

"**Stated Maturity**," when used with respect to any Note or any installment of interest thereon, means the date specified in such Note as the fixed date on which the principal of such Note or such installment of interest is due and payable.

"**Subsidiary**" means (i) a corporation, a majority of whose Capital Stock with voting power, under ordinary circumstances, to elect directors is, at the date of determination, directly or indirectly owned by the Company, by one or more Subsidiaries of the Company or by the Company and one or more Subsidiaries of the Company, (ii) a partnership in which the Company or a Subsidiary of the Company holds a majority interest in the equity capital or profits of such partnership, or (iii) any other person (other than a corporation) in which the Company, a Subsidiary of the Company or the Company and one or more Subsidiaries of the Company, directly or indirectly, at the date of determination, has (x) at least a majority ownership interest or (y) the power to elect or direct the election of a majority of the directors or other governing body of such person.

"**TIA**" means the Trust Indenture Act of 1939 as in effect on the date of this Indenture;*provided, however*, that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

"**Trading Day**" means a day during which trading in Common Shares generally occurs on the NASDAQ National Market or, if the Common Shares are not listed on the NASDAQ National Market, on the principal other national or regional securities exchange on which the Common Shares are then listed or, if the Common Shares are not listed on a national or regional securities exchange, on the principal other market on which the Common Shares are then traded.

"**Trustee**" means the party named as the "Trustee" in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

"**United States**" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (its "**possessions**" including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands).

"**Voting Stock**" means with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors of such Person.

Section 1.02 *Other Definitions*.

Term	Defined in Section
"Act"	1.05(a)
"Accepted Purchased Shares"	10.04(g)(i)
"Additional Shares"	3.05(a)
"Adjustment Event"	10.04(k)
"Agent Members"	2.07(b)
"Authenticating Agent"	11.14
"Automatic Conversion"	10.14(a)
"Automatic Conversion Date"	10.14(a)
"Automatic Conversion Notice"	10.14(b)
"Bankruptcy Law"	6.01
"beneficial ownership"	3.05(a)
"Certificated Notes"	2.07(b)
"Change of Control"	3.05(a)
"Conversion Obligation"	10.01
"Current Market Price"	10.04(h)
"Custodian"	6.01
"Determination Date"	10.04(k)
"Event of Default"	6.01
"Ex-Dividend Date"	10.04(d)
"Exchange Act"	3.05(a)
"Expiration Time"	10.04(f)
"Fair Market Value"	10.04(g)
"Fundamental Change"	3.05(a)
"Fundamental Change Purchase Date"	3.05(a)
"Fundamental Change Purchase Notice"	3.05(d)
"Fundamental Change Purchase Price"	3.05(a)
"Global Note"	2.07(b)
"Legal Holiday"	11.08
"Non-Electing Share"	10.11
"Note Register"	2.04
"Note Registrar"	2.04
"Notice of Default"	6.01
"Offer Expiration Time"	10.04(g)
"Paying Agent"	2.04
"Principal Amount"	2.07(b)
"Public Acquirer Change of Control"	3.05(b)
"Public Acquirer Common Stock"	3.05(b)
"Purchased Shares"	10.04(f)
"Record Date"	10.04(h)
"Redemption Date"	3.02
"Redemption Notice"	3.02
"Redemption Price"	3.01
"Rule 144A Information"	4.06
"Securities"	10.04(d)
"Trigger Event"	10.04(d)
"Voluntary Conversion"	10.15(a)
"Voluntary Conversion Date"	10.15(a)

Section 1.03 *Incorporation by Reference of Trust Indenture Act.* Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

"**Commission**" means the SEC.

"**indenture Notes**" means the Notes.

"**indenture Note holder**" means a Noteholder.

"**indenture to be qualified**" means this Indenture.

"**indenture trustee**" or "**institutional trustee**" means the Trustee.

"**obligor**" on the indenture Notes means the Company.

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

Section 1.04 *Rules of Construction.* Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles as in effect from time to time;

(c) "**or**" is not exclusive;

(d) "**including**" means including, without limitation; and

(e) words in the singular include the plural, and words in the plural include the singular.

Section 1.05 *Acts of Holders.* (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "**Act**" of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer's individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer's authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

The ownership of Notes shall be proved by the Note Register or by a certificate of the Note Registrar.

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

If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a resolution of the Board of Directors, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for purposes of determining whether Holders of the requisite proportion of outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

ARTICLE 2
THE NOTES

Section 2.01 *Designation Amount and Issue of Notes*. The Notes shall be designated as "**6.50% Convertible Senior Notes with Automatic Conversion Provision due 2012** or "**6.50% Convertible SNAPs$_{sm}$ due 2012"**. Except pursuant to Sections 2.07, 2.08, 3.08, 10.02, 10.14 and 10.15 hereof, Initial Notes not to exceed the aggregate principal amount of $70,000,000, upon the execution of this Indenture, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Initial Notes upon a Company Order, without any further action by the Company hereunder. In addition, the Trustee shall authenticate and deliver Additional Notes in aggregate principal amounts specified by the Company, without the consent of the Holders.

Section 2.02 *Form of Notes*. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A, which is incorporated in and made a part of this Indenture.

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

Any Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal of and interest and premium, if any, on any Global Note shall be made to the holder of such Note.

The terms and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 2.03 *Execution and Authentication*. The Notes shall be executed on behalf of the Company by an Officer of the Company. The signatures of such Officer on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at the time of the execution of the Notes the proper Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of authentication of such Notes. Notes shall be dated the date of their authentication.

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

The Notes shall be issued only in registered form without coupons and only in denominations of $1,000 in principal amount and any whole multiple thereof.

Section 2.04 *Note Registrar, Paying Agent and Conversion Agent.* The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for

exchange ("**Note Registrar**"), an office or agency where Notes may be presented for purchase or payment ("**Paying Agent**") and an office or agency where Notes may be presented for conversion ("**Conversion Agent**"). The Note Registrar shall keep a register (the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe it shall provide for the registration and transfer of the Notes. The Company may have one or more co-registrars, one or more additional paying agents and one or more additional conversion agents. The term Paying Agent includes any additional paying agent, including any named pursuant to Section 4.05. The term Conversion Agent includes any additional conversion agent, including any named pursuant to Section 4.05.

The Company shall notify the Trustee of the name and address of any such agent. If the Company fails to maintain a Note Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Company or any Subsidiary or an Affiliate of either of them may act as Paying Agent, Note Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Note Registrar, Conversion Agent and Paying Agent in connection with the Notes.

Section 2.05 *Paying Agent to Hold Money and Notes in Trust.* Except as otherwise provided herein, on or prior to each due date of payments in respect of any Note, the Company shall deposit with the Paying Agent a sum of money (in immediately available funds if deposited on the due date) or, to the extent applicable, Common Shares sufficient to make such payments when so becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Noteholders or the Trustee all money and Common Shares held by the Paying Agent for the making of payments in respect of the Notes and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any such default, the Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all money and Common Shares so held in trust. If the Company, a Subsidiary or an Affiliate of the Company acts as Paying Agent, it shall segregate the money and Common Shares held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money and Common Shares held by it to the Trustee and to account for any funds and Common Shares disbursed by it. Upon doing so, the Paying Agent shall have no further liability for the money or Common Shares.

Section 2.06 *Noteholder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Noteholders. If the Trustee is not the Note Registrar, the Company shall cause to be furnished to the Trustee at least semiannually on January 15 and July 15 a listing of Noteholders dated within 15 days of the date on which the list is furnished and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Noteholders.

Section 2.07 *Transfer and Exchange; Restrictions on Transfer; Depositary*. (a) Upon surrender for registration of transfer of any Note, together with a written instrument of transfer satisfactory to the Note Registrar duly executed by the Noteholder or such Noteholder's attorney

duly authorized in writing, at the office or agency of the company designated as Note Registrar or co-registrar pursuant to Section 2.04, and satisfaction of the requirements of such transfer set forth in this Section 2.07, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations, of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture. The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Notes from the Noteholder requesting such transfer or exchange.

At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations, of a like aggregate principal amount, upon surrender of the Notes to be exchanged, together with a written instrument of transfer satisfactory to the Note Registrar duly executed by the Noteholder or such Noteholder's attorney duly authorized in writing, at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

The Company shall not be required to make, and the Note Registrar need not register, transfers or exchanges of any Notes in respect of which a Fundamental Change Purchase Notice (as defined in Section 3.05(d)) has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Notes to be purchased in part, the portion thereof not to be purchased).

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, all Notes will be represented by one or more Notes in global form registered in the name of the Depositary or the nominee of the Depositary (the "**Global Note**"), except as otherwise specified below. The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depositary in accordance with this Indenture and the procedures of the Depositary therefor. The Trustee shall make appropriate endorsements to reflect increases or decreases in the principal amounts of any such Global Note as set forth on the face of the Note ("**Principal Amount**") to reflect any such transfers. Except as provided below, beneficial owners of a Global Note shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form ("**Certificated Notes**") and will not be considered holders of such Global Note.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Trustee, the Depositary or by the National Association of Securities Dealers, Inc. in order for the Notes to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the

Notes may be listed or traded or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Notwithstanding any other provisions of this Indenture, a Global Note may not be transferred as a whole or in part except by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

Neither any members of, or participants in, the Depositary (collectively, the "**Agent Members**"), nor any other Persons on whose behalf Agent Members may act, shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Note.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to the Notes in global form. Initially, the Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee, as custodian for Cede & Co.

If at any time the Depositary for a Global Note notifies the Company that it is unwilling or unable to continue as Depositary for such Note, the Company may appoint a successor Depositary with respect to such Note. If a successor Depositary is not appointed by the Company within ninety (90) days after the Company receives such notice, the Company will execute, and the Trustee, upon receipt of an Officers' Certificate for the authentication and delivery of Notes, will authenticate and deliver, Certificated Notes, in aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note.

If a Certificated Note is issued in exchange for any portion of a Global Note after the close of business at the office or agency where such exchange occurs on any Regular Record Date and before the opening of business at such office or agency on the next succeeding Interest Payment Date, interest will not be payable on such Interest Payment Date in respect of such Certificated Note, but will be payable on such Interest Payment Date only to the Person to whom interest in respect of such portion of such Global Note is payable in accordance with the provisions of this Indenture.

Certificated Notes issued in exchange for all or a part of a Global Note pursuant to this Section 2.07 shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall

instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Certificated Notes to the Persons in whose names such Certificated Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, exchanged for Certificated Notes, or transferred to a transferee who receives Certificated Notes thereof, such Global Note shall, upon receipt thereof, be canceled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the Trustee. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Certificated Notes, converted, repurchased or canceled, or transferred to a transferee who receives Certificated Notes therefor or any Certificated Note is exchanged or transferred for part of a Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Trustee, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee to reflect such reduction or increase.

Section 2.08 *Replacement Notes*. If (a) any mutilated Note is surrendered to the Trustee, or (b) the Company, the Trustee and, if applicable, the Authenticating Agent receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Company, the Trustee and, if applicable, the Authenticating Agent such Note or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company, the Trustee or, if applicable, the Authenticating Agent that such Note has been acquired by a bona fide purchaser, the Company shall execute and upon its written request the Trustee or the Authenticating Agent shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, or is about to be purchased by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Note, pay or purchase such Note, as the case may be.

Upon the issuance of any new Notes under this Section 2.08, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee and any Authenticating Agent) connected therewith.

Every new Note issued pursuant to this Section 2.08 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 2.09 *Outstanding Notes; Determination of Holders' Action.* Notes outstanding at any time are all the Notes authenticated by the Trustee except for those cancelled by it or delivered to it for cancellation, those paid pursuant to Section 2.08 and those described in this Section 2.09 as not outstanding. A Note does not cease to be outstanding because the Company or an Affiliate thereof holds the Note; provided, however, that in determining whether the Holders of the requisite principal amount of the outstanding Notes have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Subject to the foregoing, only Notes outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 6 and 9).

If a Note is replaced pursuant to Section 2.08, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser.

If the Paying Agent holds, in accordance with this Indenture, on the Business Day following the Fundamental Change Purchase Date, or on Stated Maturity, money or securities, if permitted hereunder, sufficient to pay Notes payable on that date, then immediately after such Fundamental Change Purchase Date or Stated Maturity, as the case may be, such Notes shall cease to be outstanding and interest on such Notes shall cease to accrue.

If a Note is converted in accordance with Article 10, then from and after the time of conversion on the conversion date, such Note shall cease to be outstanding and interest shall cease to accrue on such Note.

Section 2.10 *Temporary Notes.* Pending the preparation of definitive Notes, the Company may execute, and upon a Company Order the Trustee shall authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Notes may determine, as conclusively evidenced by their execution of such Notes.

If temporary Notes are issued, the Company will cause definitive Notes to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes shall be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency of the Company designated for such purpose pursuant to Section 2.04, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes the Company shall execute and the Trustee or an Authenticating Agent shall authenticate and deliver in exchange therefor a like principal amount of definitive Notes of authorized denominations. Until so exchanged the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as definitive Notes.

Section 2.11 *Cancellation.* All Notes surrendered for payment, purchase by the Company pursuant to Article 3, conversion or registration of transfer or exchange shall, if surrendered to any person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 10. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 2.11, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be disposed of by the Trustee in its customary manner.

Section 2.12 *Persons Deemed Owners.* Prior to due presentment of a Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of principal of the Note or the payment of any Fundamental Change Purchase Price in respect thereof, and interest thereon, for the purpose of conversion and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 2.13 *CUSIP Numbers.* The Company in issuing the Notes may use "**CUSIP**" numbers (if then generally in use). No representation is made as to the correctness of such CUSIP numbers and reliance may be placed only on the other identification numbers printed on the Notes. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

Section 2.14 *Default Interest.* If the Company defaults in a payment of interest on the Notes, it shall pay, or shall deposit with the Paying Agent money in immediately available funds sufficient to pay, the defaulted interest, plus (to the extent lawful) any interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date. A special record date, as used in this Section 2.14 with respect to the payment of any defaulted interest, shall mean the 15th day next preceding the date fixed by the Company for the payment of defaulted interest, whether or not such day is a Business Day. At least 15 days before the subsequent special record date, the Company shall mail to each Holder and to the Trustee a notice that states the subsequent special record date, the payment date and the amount of defaulted interest to be paid.

ARTICLE 3
REDEMPTION AND REPURCHASE

Section 3.01 *Company's Right to Redeem.* Prior to February [10], 2010, the Notes shall not be redeemable at the Company's option. At any time on or after February [10], 2010 and prior to Stated Maturity, the Company, at its option, may redeem the Notes, in whole or in part, in accordance with the provisions of Section 3.02, Section 3.03 and Section 3.04 on the Redemption Date for a redemption price (the "**Redemption Price**") in cash equal to 100% of the principal amount of the Notes plus any accrued and unpaid interest, on the Notes redeemed to, but excluding, the Redemption Date. The Company will make an additional payment equal to

the total value of the aggregate amount of the interest otherwise payable on the Notes from the last day through which interest was paid on the Notes through the Redemption Date.

Section 3.02 *Notice of Optional Redemption; Selection of Notes.*

(a) In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of the Notes pursuant to Section 3.01, it shall fix a date for redemption (the "**Redemption Date**") and it or, at its written request (which request must include the information listed in Section 3.02(b) and be received by the Trustee not fewer than thirty-five (35) days prior (or such shorter period of time as may be acceptable to the Trustee) to the Redemption Date), the Trustee in the name of and at the expense of the Company, shall mail or cause to be mailed a notice of such redemption (a "**Redemption Notice**") not fewer than twenty (20) nor more than sixty (60) days prior to the Redemption Date to each holder of Notes so to be redeemed as a whole or in part at its last address as the same appears on the Note Register; *provided* that if the Company shall give such notice, it shall also give written notice of the Redemption Date to the Trustee. Such mailing shall be by first class mail. The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note. Concurrently with the mailing of any such Redemption Notice, the Company shall issue a press release announcing such redemption, the form and content of which press release shall be determined by the Company in its sole discretion. The failure to issue any such press release or any defect therein shall not affect the validity of the Redemption Notice or any of the proceedings for the redemption of any Note called for redemption.

(b) Each such Redemption Notice shall specify the aggregate principal amount of Notes to be redeemed, the CUSIP, ISIN or similar number or numbers of the Notes being redeemed, the Redemption Date (which shall be a Business Day), the Redemption Price at which Notes are to be redeemed, the place or places of payment, that payment will be made upon presentation and surrender of such Notes, that Interest accrued and unpaid up to but not including the Redemption Date will be paid as specified in said notice, and that on and after said date Interest thereon or on the portion thereof to be redeemed will cease to accrue. Such notice shall also state the current Conversion Rate and the date on which the right to convert such Notes or portions thereof into Common Shares will expire. If fewer than all the Notes are to be redeemed, the Redemption Notice shall identify the Notes to be redeemed (including CUSIP, ISIN or similar number or numbers, if any). In case any Note is to be redeemed in part only, the Redemption Notice shall state the portion of the principal amount thereof to be redeemed and shall state that, on and after the Redemption Date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion thereof will be issued.

(c) On or prior to the Redemption Date specified in the Redemption Notice given as provided in this Section 3.02, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the the Paying Agent, shall segregate and hold in trust as provided in Section 2.05) an amount of money in immediately available funds sufficient to redeem on the Redemption Date all the Notes (or portions thereof) so called for redemption (other than those theretofore surrendered for

conversion into Common Shares) at the appropriate Redemption Price;*provided* that if such payment is made on the Redemption Date it must be received by the Trustee or Paying Agent, as the case may be, by 10:00 a.m., New York City time, on such date. The Company shall be entitled to retain any interest, yield or gain on amounts deposited with the Trustee or any Paying Agent pursuant to this Section 3.02(c) in excess of amounts required hereunder to pay the Redemption Price. Subject to the last sentence of Section 7.05, if any Note called for redemption is converted pursuant hereto prior to such Redemption Date, any money deposited with the Trustee or any Paying Agent or so segregated and held in trust for the redemption of such Note shall be paid to the Company upon its written request, or, if then held by the Company, shall be discharged from such trust. Whenever any Notes are to be redeemed, the Company will give the Trustee written notice in the form of an Officers' Certificate not fewer than thirty-five (35) days (or such shorter period of time as may be acceptable to the Trustee) prior to the Redemption Date as to the aggregate principal amount of Notes to be redeemed.

(d) If the Company opts to redeem less than all of the Outstanding Notes, the Trustee shall select or cause to be selected the Notes or portions thereof of the Global Note or the Notes in certificated form to be redeemed (in principal amounts of $1,000 or whole multiples thereof) by lot, on a pro rata basis or by another method the Trustee deems fair and appropriate. If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of such Note submitted for conversion shall be deemed (so far as may be possible) to be from the portion selected for redemption. The Notes (or portions thereof) so selected shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Note is submitted for conversion in part before the mailing of the Redemption Notice.

Upon any redemption of less than all of the Outstanding Notes, the Company and the Trustee may (but need not), solely for purposes of determining the pro rata allocation among such Notes as are unconverted and Outstanding at the time of redemption, treat as Outstanding any Notes surrendered for conversion during the period of fifteen (15) days next preceding the mailing of a Redemption Notice and may (but need not) treat as Outstanding any Note authenticated and delivered during such period in exchange for the unconverted portion of any Note converted in part during such period.

Section 3.03 *Payment of Notes Called for Redemption by the Company.* If notice of redemption has been given as provided in Section 3.02(a), the Notes or portion of Notes with respect to which such notice has been given shall, unless converted into Common Shares pursuant to the terms hereof, become due and payable on the Redemption Date and at the place or places stated in such notice at the applicable Redemption Price, unless the Company shall default in the payment of the Redemption Price. Interest on the Notes or portion of Notes so called for redemption shall cease to accrue and after the close of business on the second Business Day immediately preceding the Redemption Date (unless the Company shall default in the payment of the Redemption Price), such Notes shall cease to be convertible into Common Shares and, except as provided in Section 7.05, to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the Redemption Price thereof. On presentation and surrender of such Notes at a place of payment in said notice specified, the said Notes or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price; *provided* that if the applicable Redemption Date is an Interest Payment Date, the Interest payable on such Interest

Payment Date shall be paid on such Interest Payment Date to the holders of record of such Notes on the applicable record date instead of the holders surrendering such Notes for redemption on such date.

Upon presentation of any Note redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Note or Notes, of authorized denominations, in principal amount equal to the unredeemed portion of the Note or Notes so presented.

Notwithstanding the foregoing, the Trustee shall not redeem any Notes or mail any Redemption Notices during the continuance of a default in payment of Interest on the Notes. If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, continue to bear interest at the rate borne by the Note, and such Note shall remain convertible into Common Shares, cash or a combination of cash and Common Shares until the principal and Interest shall have been paid or duly provided for. The Company will notify all of the holders if the Company redeems any of the Notes.

Section 3.04 *Conversion Arrangement on Call for Redemption.* In connection with any redemption of Notes, the Company may arrange for the purchase and conversion of any Notes by an agreement with one or more investment banks or other purchasers to purchase such Notes by paying to the Trustee in trust for the Noteholders, on or before the date fixed for redemption, an amount not less than the applicable redemption price, together with Interest accrued and unpaid to, but excluding, the date fixed for redemption, of such Notes. Notwithstanding anything to the contrary contained in this Article 3, the obligation of the Company to pay the redemption price of such Notes, together with Interest accrued and unpaid to, but excluding, the date fixed for redemption, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, a copy of which will be filed with the Trustee prior to the date fixed for redemption, any Notes not duly surrendered for conversion by the holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such holders and surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Notes shall be extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it in the same manner as it would monies deposited with it by the Company for the redemption of Notes. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Notes shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture.

Section 3.05 *Purchase of Notes at Option of the Holder Upon Fundamental Change.* (a) If there shall have occurred a Fundamental Change, all or any portion of the Notes of any Holder equal to $1,000 or a whole multiple of $1,000, shall be repurchased by the Company, at the option of such Holder, at a repurchase price equal to 100% of the aggregate principal amount of the Notes to be repurchased, together with accrued and unpaid interest to, but excluding, the purchase date (the "**Fundamental Change Purchase Price**"), on the date (the "**Fundamental Change Purchase Date**") that is 45 days after the date the Company delivered the notice required under Section 3.05(c) (or if such 45th day is not a Business Day, the next succeeding

Business Day); *provided*, *however*, that if the Fundamental Change Purchase Date is after a Regular Record Date but on or prior to the corresponding Interest Payment Date, the accrued and unpaid interest becoming due on such Interest Payment Date shall be payable to the Holders of such Notes, or one or more predecessor Notes, registered as such on the relevant Regular Record Date according to their terms.

If and only to the extent a Holder timely elects to convert Notes in connection with a Fundamental Change transaction pursuant to clause (ii) of the Change of Control definition set forth in this Section 3.05(a) that occurs on or prior to February 1, 2012, pursuant to which 5% or more of the consideration for Common Shares (excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) in such Fundamental Change transaction consists of cash or securities (or other property) that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or the NASDAQ National Market, then except as set forth in Section 3.05(b), such holder will be entitled to receive, in addition to a number of Common Shares equal to the Conversion Rate per $1,000 principal amount of Notes, an additional number of Common Shares (the "**Additional Shares**") as described below; *provided* that if the Share Price paid in connection with such transaction is greater than $6.75 or less than $1.63 (subject in each case to adjustment as described below), no Additional Shares shall be issuable. No Additional Shares shall be issuable under this Section 3.05(a) unless the Holder elects to convert the Securities in connection with such Fundamental Change transaction. Notwithstanding this Section 3.05(a), if the Company elects to adjust the Conversion Rate pursuant to Section 3.05(b), the provisions of Section 3.05(b) will apply in lieu of the provisions of this Section 3.05(a).

The number of Additional Shares issuable in connection with the conversion of Notes as described in the immediately preceding paragraph will be determined by reference to the table attached as Schedule I hereto, based on the effective date of such Fundamental Change transaction and the Share Price paid in connection with such transaction; *provided* that if the Share Price is between two Share Price amounts in the table or such effective date is between two effective dates in the table, the number of Additional Shares will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Price amounts and the two dates, as applicable, based on a 365-day year. The "effective date" with respect to a Fundamental Change transaction means the date that a Fundamental Change becomes effective.

The Share Prices set forth in the first column of the table in Schedule I hereto will be adjusted as of any date on which the Conversion Rate of the Notes is adjusted pursuant to Section 10.04. The adjusted Share Prices will equal the Share Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Share Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares will be adjusted in the same manner as the Conversion Rate as set forth in Section 10.04.

Notwithstanding the foregoing, in no event will the total number of Common Shares issuable upon conversion per $1,000 principal amount of Notes exceed 583.4756, subject to adjustments in the same manner as the Conversion Rate as set forth in Section 10.04.

A "**Fundamental Change**" will be deemed to have occurred upon a Change of Control or a Termination in Trading.

A "**Change of Control**" of the Company shall be deemed to have occurred at such time after the original issuance of the Notes as any of the following events shall occur:

(i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), acquires the beneficial ownership (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that such Person shall be deemed to have "**beneficial ownership**" of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, through a purchase, amalgamation, merger or other acquisition transaction, of 50% or more of the total voting power of the total outstanding Voting Stock of the Company other than an acquisition by the Company, any of its Subsidiaries or any employee benefit plans of the Company; or

(ii) the Company consolidates with, or amalgamates or merges with or into, another Person or conveys, transfers, leases or otherwise disposes of all or substantially all of its assets to any Person, or any Person consolidates with, or amalgamates or merges with or into, the Company other than:

(A) any transaction (1) that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of the Capital Stock of the Company and (2) pursuant to which holders of the Capital Stock of the Company immediately prior to the transaction are entitled to exercise, directly or indirectly, 50% or more of the total voting power of the Capital Stock of the Company entitled to vote generally in the election of directors of the continuing or surviving person immediately after the transaction;

(B) any amalgamation or merger for the purpose of changing the Company's jurisdiction of organization and resulting in a reclassification, conversion or exchange of outstanding Common Shares solely into shares of common equity of the surviving or continuing entity; or

(C) any transaction in which at least 95% of the consideration for the Common Shares (excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights) in the transaction or transactions otherwise constituting the Change of Control consists of shares of common equity traded on a United States national securities exchange or quoted on the NASDAQ National Market, or which will be so traded or quoted when issued or exchanged in connection with the Change of Control, and as a result of such transaction or transactions the Notes become convertible solely into such shares of common equity, or

(iii) during any consecutive two-year period, individuals who at the beginning of that two-year period constituted the Board of Directors (together with any new directors whose election to the Board of Directors, or whose nomination for election by

the shareholders of the Company, was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election were previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office; or

(iv) the shareholders of the Company pass a special resolution approving a liquidation or dissolution and no additional approvals of the Company's shareholders are required under applicable law to cause a liquidation or dissolution.

Beneficial ownership will be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act. The term "person" includes any syndicate or group that would be deemed a "person" under Section 13(d)(3) of the Exchange Act. A "**Termination in Trading**" will be deemed to have occurred any time the Common Shares (or other common shares into which the notes are then convertible) are neither listed for trading on a United States national or regional securities exchanges nor approved for trading on the NASDAQ National Market, NASDAQ SmallCap Market or any other established United States system of automated dissemination of quotations of securities prices.

(b) Notwithstanding the foregoing, in the case of a Public Acquirer Change of Control (as defined below), the Company may, in lieu of increasing the Conversion Rate by Additional Shares as described in Section 3.05(a), elect to adjust the Conversion Rate and the related Conversion Obligation (as defined in Section 10.01) such that from and after the effective date of such Public Acquirer Change of Control, Holders of the Notes will be entitled to convert the Notes into a number of shares of Public Acquirer Common Stock (as defined below) by adjusting the Conversion Rate in effect immediately before the Public Acquirer Change of Control by a fraction:

(i) the numerator of which will be (i) in the case of a consolidation, amalgamation, merger or binding share exchange, pursuant to which the Common Shares are converted into cash, securities or other property, the average value of all cash and any other consideration (as determined by the Board of Directors) paid or payable per Common Share or (ii) in the case of any other Public Acquirer Change of Control, the average of the last reported sale price of the Common Shares for the five consecutive trading days prior to but excluding the effective date of such Public Acquirer Change of Control, and

(ii) the denominator of which will be the average of the last reported sale prices of the Public Acquirer Common Stock for the five consecutive trading days commencing on the Trading Day next succeeding the effective date of such Public Acquirer Change of Control.

A "**Public Acquirer Change of Control**" means any event constituting a Change of Control that would otherwise obligate the Company to increase the Conversion Rate as described in Section 3.05(a) and the acquirer (or any entity that is a directly or indirectly wholly-owned Subsidiary of the acquirer or of which the acquirer is a directly or indirectly wholly-owned Subsidiary) has a class of common stock traded on a national securities exchange or quoted on

the NASDAQ National Market or which will be so traded or quoted when issued or exchanged in connection with such event (the "**Public Acquirer Common Stock**").

After the adjustment of the Conversion Rate in connection with a Public Acquirer Change of Control, the Conversion Rate will be subject to further similar adjustments in the event that any of the events described in Section 10.01 occur thereafter.

Upon a Public Acquirer Change of Control, if the Company so elects, Holders may convert the Notes at the adjusted Conversion Rate described in the third preceding paragraph but will not be entitled to the increased Conversion Rate described under Section 3.05(a). The Company is required to notify Holders of its election in writing of such transaction. In addition, the Holder can also, subject to certain conditions, require the Company to repurchase all or a portion of its Notes as described under Section 3.05(a).

(c) Prior to or on the 30th day after the occurrence of a Fundamental Change, the Company, or, at the written request and expense of the Company prior to or on the 30th day after such occurrence, the Trustee, shall give to all Holders, in the manner provided in Section 11.02 hereof, notice of the occurrence of the Fundamental Change and of the purchase right set forth herein arising as a result thereof. The Company shall also deliver a copy of such notice of a purchase right to the Trustee. The notice shall include a form of Fundamental Change Purchase Notice (as defined in Section 3.05(d)) to be completed by the Holder and shall state:

(1) briefly, the events causing a Fundamental Change and the date of such Fundamental Change;

(2) the date by which the Fundamental Change Purchase Notice pursuant to this Section 3.05 must be given;

(3) the Fundamental Change Purchase Date;

(4) the Fundamental Change Purchase Price;

(5) the name and address of the Paying Agent and the Conversion Agent;

(6) that Notes as to which a Fundamental Change Purchase Notice has been given may be converted pursuant to Article 10 hereof only if the Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(7) that Notes must be surrendered to the Paying Agent to collect payment;

(8) that the Fundamental Change Purchase Price for any Note as to which a Fundamental Change Purchase Notice has been duly given and not withdrawn will be paid promptly following the later of the Fundamental Change Purchase Date and the time of surrender of such Note as described in (7) above;

(9) briefly, the procedures the Holder must follow to exercise rights under this Section 3.05;

(10) briefly, the conversion rights of the Notes, including the Conversion Rate and any adjustments thereto;

(11) the procedures for withdrawing a Fundamental Change Purchase Notice; and

(12) the CUSIP number of the Notes.

(d) A Holder may exercise its rights specified in this Section 3.05 upon delivery of a written notice of purchase ("**Fundamental Change Purchase Notice**") to the Paying Agent prior to the Fundamental Change Purchase Date, stating:

(1) the certificate number of the Note, if any, which the Holder will deliver to be purchased or the appropriate Depositary procedures if the Notes are not in certificated form;

(2) the portion of the principal amount of the Note which the Holder will deliver to be purchased, which portion must be $1,000 or any whole multiple thereof; and

(3) that such Note shall be purchased pursuant to the terms and conditions specified in paragraph 5 on the reverse side of the Notes and in this Indenture.

If the Notes are not in certificated form, a Holder's Fundamental Change Purchase Notice must comply with the appropriate DTC procedures.

The delivery or book-entry transfer of such Note to the Paying Agent prior to the Fundamental Change Purchase Date (together with all necessary endorsements) at the offices of the Paying Agent shall be a condition to the receipt by the Holder of the Fundamental Change Purchase Price therefor; *provided*, *however*, that such Fundamental Change Purchase Price shall be so paid pursuant to this Section 3.05 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Fundamental Change Purchase Notice.

The Company shall purchase from the Holder thereof, pursuant to this Section 3.05, a portion of a Note so delivered for purchase if the principal amount of such portion is $1,000 or a whole multiple of $1,000. Provisions of this Indenture that apply to the purchase of all of a Note also apply to the purchase of such portion of such Note.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.05 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Fundamental Change Purchase Date and the time of delivery or book-entry transfer of the Note to the Paying Agent in accordance with this Section 3.05.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 3.05 shall have the right to withdraw such Fundamental Change Purchase Notice at any time prior to the close of business on the Business Day prior to the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.06.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Purchase Notice or written withdrawal thereof.

Section 3.06 *Effect of Fundamental Change Purchase Notice.* Upon receipt by the Paying Agent of the Fundamental Change Purchase Notice specified in Section 3.05(d), the Holder of the Note in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Purchase Price with respect to such Note. Such Purchase Price shall be paid to such Holder, subject to receipt of consideration for the Notes by the Paying Agent, promptly following the later of (x) the Fundamental Change Purchase Date with respect to such Note (*provided* the conditions in Section 3.05(d), as the case may be, have been satisfied) or (y) the time of delivery or book-entry transfer of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.05(d), as the case may be. Notes in respect of which a Fundamental Change Purchase Notice has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

A Fundamental Change Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Fundamental Change Purchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date specifying:

(1) the certificate number of the Note in respect of which such notice of withdrawal is being submitted or, if not in certificated form, the applicable Depositary procedures,

(2) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and

(3) the principal amount, if any, of such Note which remains subject to the original Fundamental Change Purchase Notice and which has been or will be delivered for purchase by the Company.

There shall be no purchase of any Notes pursuant to Section 3.05 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Notes, of the required Fundamental Change Purchase Notice) and is continuing an Event of Default (other than a default in the payment of the Fundamental Change Purchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Notes (x) with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with

this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Fundamental Change Purchase Price with respect to such Notes) in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.07 *Deposit of Fundamental Change Purchase Price.* Prior to 10:00 a.m. (New York City time) on the Fundamental Change Purchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.05) an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Fundamental Change Purchase Price of all the Notes or portions thereof which are to be purchased as of the Fundamental Change Purchase Date.

If the Trustee or other Paying Agent appointed by the Company, or the Company or an Affiliate of the Company, if it or such Affiliate is acting as the Paying Agent, holds cash sufficient to pay the aggregate Fundamental Change Purchase Price of all the Notes or portions thereof that are to be purchased as of the Fundamental Change Purchase Date (i) such Notes will cease to be outstanding, (ii) interest on such Notes will cease to accrue and (iii) all other rights of the holders of such Notes will terminate other than the right to receive the Fundamental Change Purchase Price upon delivery of the Notes, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent.

Section 3.08 *Notes Purchased in Part.* Any Note which is to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered which is not purchased.

Section 3.09 *Covenant to Comply with Securities Laws Upon Purchase of Notes* In connection with any offer to purchase or purchase of Notes under Section 3.05 hereof (*provided* that such offer or purchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or purchase), the Company shall (i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act which may then be applicable, (ii) file the related Schedule TO (or any successor schedule, form or report) or any other schedule required under the Exchange Act, and (iii) otherwise comply with all federal and state securities laws so as to permit the rights and obligations under Section 3.05 to be exercised in the time and in the manner specified in Section 3.05.

Section 3.10 *Repayment to the Company.* The Trustee and the Paying Agent shall return to the Company any cash or Common Shares that remain unclaimed as provided in paragraph 12 of the Notes, together with interest or dividends, if any, thereon, held by them for the payment of the Fundamental Change Purchase Price; *provided*, *however*, that to the extent

that the aggregate amount of cash deposited by the Company pursuant to Section 3.07 exceeds the aggregate Fundamental Change Purchase Price of the Notes or portions thereof which the Company is obligated to purchase as of the Fundamental Change Purchase Date then promptly after the Business Day following the Fundamental Change Purchase Date the Trustee shall return any such excess to the Company together with interest, if any, thereon.

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Principal, Premium, Interest on the Notes.* The Company will duly and punctually pay the principal of and premium, if any, and interest in respect of the Notes in accordance with the terms of the Notes and this Indenture. The Company will deposit or cause to be deposited with the Trustee as directed by the Trustee, no later than the day of the Stated Maturity of any Note or installment of interest, all payments so due. The principal amount, Fundamental Change Purchase Price and cash interest shall be considered paid on the applicable date due if on such date (or, in the case of a Fundamental Change Purchase Price on the Business Day following the applicable Fundamental Change Purchase Date) the Trustee or the Paying Agent holds, in accordance with this Indenture, money or Notes, if permitted hereunder, sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay cash interest on overdue amounts at the rate per annum set forth in paragraph 1 of the Notes, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand.

Section 4.02 *Reports by the Company.* The Company shall file with the Trustee and the SEC, and transmit to holders of Notes, such information, documents and other reports and such summaries thereof, as may be required pursuant to the TIA at the times and in the manner provided pursuant to the TIA, whether or not the Notes are governed by the TIA; *provided*, *however*, that any such information, documents or reports required to be filed with the SEC pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within fifteen (15) days after the same is so required to be filed with the SEC; *provided*, *however*, that delivery may be effected in accordance with the provisions of Rule 19a-1 under the TIA if and during any time the Company is eligible thereunder; and *provided further*, that the Company shall not be required to deliver to the Trustee any material for which the Company has sought and received confidential treatment by the SEC. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 4.03 *Compliance Certificate*. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2005) an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or

requirement of notice provided hereunder) and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 4.04 *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.05 *Maintenance of Office or Agency*. The Company will maintain in the Borough of Manhattan, the City of New York, an office or agency of the Trustee, Note Registrar, Paying Agent and Conversion Agent where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer, exchange, purchase or conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Corporate Trust Office and each office or agency of the Trustee in the Borough of Manhattan, the City of New York, shall initially be one such office or agency for all of the aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office of the Trustee). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 11.02.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, the City of New York, for such purposes.

Section 4.06 *Delivery of Certain Information*. At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a holder or any beneficial holder of Notes or Common Shares issued upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder or any beneficial holder of Notes or holder of Common Shares issued upon conversion of Notes, or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. "**Rule 144A Information**" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act.

Section 4.07 *Existence*. Subject to Article 5, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided*, *however*, that the Company shall not be required to preserve any such right if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Noteholders.

Section 4.08 *Maintenance of Properties*. The Company will cause all properties used or useful in the conduct of its business or the business of any Significant Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary

equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided*, *however*, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any Significant Subsidiary and not disadvantageous in any material respect to the Noteholders.

Section 4.09 *Payment of Taxes and Other Claims.* The Company will pay or discharge, or cause to be paid or discharged, before the same may become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Company or any Significant Subsidiary or upon the income, profits or property of the Company or any Significant Subsidiary, (ii) all claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon the property of the Company or any Significant Subsidiary and (iii) all stamps and other duties, if any, which may be imposed by the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange or conversion of any Notes or with respect to this Indenture; *provided*, *however*, that, in the case of clauses (i) and (ii), the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (A) if the failure to do so will not, in the aggregate, have a material adverse impact on the Company, or (B) if the amount, applicability or validity is being contested in good faith by appropriate proceedings.

ARTICLE 5
SUCCESSOR CORPORATION

Section 5.01 *When Company May Merge or Transfer Assets.* The Company may, without the consent of the Holders of the Notes, consolidate or amalgamate with, merge with or convert into any other Person or convey, transfer or lease all or substantially all of its properties and assets to any other Person, if:

(a) such Person (other than an individual) is organized and validly existing under the laws of Bermuda or the United States or any of its political subdivisions and such Person shall expressly remain liable for or assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Company under the Notes and this Indenture;

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

(c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article 5 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of the properties and assets of one or more Subsidiaries (other than to the Company or another Subsidiary), which, if such assets were owned by the Company, would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The successor person formed by such consolidation or amalgamation or into which the Company is merged or the successor person to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease and obligations the Company may have under a supplemental indenture pursuant to Section 10.11, the Company shall be discharged from all obligations and covenants under this Indenture and the Notes. Subject to Section 9.06, the Company, the Trustee and the successor person shall enter into a supplemental indenture to evidence the succession and substitution of such successor person and such discharge and release of the Company.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.* An "**Event of Default**" occurs if:

(a) the Company fails to pay when due the principal of or premium, if any, on any of the Notes at maturity, upon exercise of a repurchase right or otherwise;

(b) the Company fails to pay an installment of interest on any of the Notes that continues for 30 days after the date when due;

(c) the Company fails to deliver Common Shares (including any Common Shares issued as an Additional Interest Payment), together with cash in lieu of fractional shares, when such Common Shares or cash in lieu of fractional shares are required to be delivered upon conversion of a Note and such failure continues for 10 days after such delivery date;

(d) the Company fails to give notice regarding a Fundamental Change within the time period specified in Section 3.05;

(e) the Company fails to perform or observe any other term, covenant or agreement contained in the Notes or this Indenture for a period of 60 days after receipt by the Company of a Notice of Default (as defined below);

(f) (i) the Company or any Significant Subsidiary fails to make any payment by the end of the applicable grace period, if any, after the final scheduled payment date for such payment with respect to any indebtedness for borrowed money in an aggregate amount in excess of $10 million or (ii) indebtedness for borrowed money of the Company or any Significant Subsidiary in an aggregate amount in excess of $10 million shall have been accelerated or otherwise declared due and payable, or required to be prepaid or repurchased (other than by regularly scheduled required prepayment) prior to the scheduled maturity thereof as a result of a default with respect to such indebtedness, in either case without such indebtedness referred to in

subclause (i) or (ii) of this clause (f) having been discharged, cured, waived, rescinded or annulled, for a period of 30 days after receipt by the Company of a Notice of Default;

(g) the Company or any Significant Subsidiary fails to make any payment on a final judgment in an aggregate amount in excess of $10 million without such judgment having been paid, discharged or stayed for a period of 60 days;

(h) the Company, or any Significant Subsidiary, or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary pursuant to or under or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding;

(ii) consents to the entry of an order for relief against it in an involuntary case or proceeding or the commencement of any case against it;

(iii) consents to the appointment of a Custodian of it or for any substantial part of its property;

(iv) makes a general assignment for the benefit of its creditors;

(v) files a petition in bankruptcy or answer or consent seeking reorganization or relief; or

(vi) consents to the filing of such a petition or the appointment of or taking possession by a Custodian; and

(i) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary in an involuntary case or proceeding, or adjudicates the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary insolvent or bankrupt;

(ii) appoints a Custodian of the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary or for any substantial part of its or their properties; or

(iii) orders the winding up or liquidation of the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 days.

For purposes of Sections 6.01(h) and 6.01(i) above:

"**Bankruptcy Law**" means Title 11, United States Code, or any similar federal or state law for the relief of debtors.

"**Custodian**" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (e) or (f) above is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding notify the Company and the Trustee, of the Default and the Company does not cure such Default (and such Default is not waived) within the time specified in clause (e) or (f) above after actual receipt of such notice. Any such notice must specify the Default, demand that it be remedied and state that such notice is a "**Notice of Default**."

The Company shall deliver to the Trustee, within five Business Days of becoming aware of the occurrence of an Event of Default, written notice thereof. In addition, the Company shall deliver to the Trustee, within 30 days after it becomes aware of the occurrence thereof, written notice of any event which with the lapse of time would become an Event of Default under clause (e) above, its status and what action the Company is taking or proposes to take with respect thereto.

The Trustee shall, within 90 days of the occurrence of an Event of Default, give to the Noteholders notice of all uncured Events of Defaults known to it*provided* that the Trustee shall be protected in withholding such notice if the Trustee, in good faith, determines that the withholding of such notice is in the best interest of the Noteholders, except in the case of an Event of Default described in Section 6.01(a) or 6.01(b).

Section 6.02 *Acceleration.* If an Event of Default (other than an Event of Default specified in Section 6.01(h) or 6.01(i)) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding by notice to the Company and the Trustee, may declare the Notes due and payable at their principal amount together with accrued interest. Upon a declaration of acceleration, such principal and accrued and unpaid interest to the date of payment shall be immediately due and payable. If an Event of Default is cured prior to any such declaration by the Trustee or the Holders, the Trustee and the Holders shall not be entitled to declare the Notes due and payable as provided herein as a result of such cured Event of Default and any such cured Event of Default shall be deemed waived by the Holders and the Trustee.

If an Event of Default specified in Sections 6.01(h) or 6.01(i) above occurs and is continuing, then the principal and the accrued interest on all the Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Noteholders.

The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by notice to the Trustee (and without notice to any other Noteholder) may rescind or annul an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the principal and any accrued cash interest that have become due solely as a result of acceleration

and if all amounts due to the Trustee under Section 7.06 have been paid. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

Section 6.03 *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of the principal, the premium, if any, and any accrued cash interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Notes or produce any of the Notes in the proceeding. A delay or omission by the Trustee or any Noteholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 *Waiver of Past Defaults.* The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, by notice to the Trustee (and without notice to any other Noteholder), may waive an existing Event of Default and its consequences except (1) an Event of Default described in Section 6.01(a) or 6.01(b) or (2) an Event of Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Noteholder affected. When an Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Event of Default or impair any consequent right.

Section 6.05 *Control By Majority.* The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is prejudicial to the rights of other Noteholders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it against loss, liability or expense.

Section 6.06 *Limitation on Suits.* A Noteholder may not pursue any remedy with respect to this Indenture or the Notes unless:

(1) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;

(2) the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer to the Trustee indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of security or indemnity; and

(5) the Holders of a majority in aggregate principal amount of the Notes at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Noteholder may not use this Indenture to prejudice the rights of any other Noteholder or to obtain a preference or priority over any other Noteholder.

Section 6.07 *Rights of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the principal amount, premium, if any, Fundamental Change Purchase Price, or any accrued cash interest in respect of the Notes held by such Holder, on or after the respective due dates expressed in the Notes or any Fundamental Change Purchase Date, and to convert the Notes in accordance with Article 10, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee.* If an Event of Default described in Section 6.01(a) or 6.01(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount owing with respect to the Notes and the amounts provided for in Section 7.06.

Section 6.09 *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Notes or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal amount, Fundamental Change Purchase Price, or any accrued cash interest in respect of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amount) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of the principal amount, Fundamental Change Purchase Price, or any accrued cash interest and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.06) and of the Holders allowed in such judicial proceeding, and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06.

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

Section 6.10 *Priorities.* If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

(1) to the Trustee for amounts due under Section 7.06;

(2) to Noteholders for amounts due and unpaid on the Notes for the principal amount, Fundamental Change Purchase Price or any accrued cash interest as the case may be, ratably, without preference or priority of any kind, according to such amounts due and payable on the Notes; and

(3) the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Noteholders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Noteholder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 6.11 *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit in the manner and to the extent provided in the TIA, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate principal amount of the Notes at the time outstanding.

Section 6.12 *Waiver of Stay, Extension or Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal amount, Fundamental Change Purchase Price, or any accrued cash interest in respect of Notes, or any interest on such amounts, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties and Responsibilities of the Trustee; During Default; Prior to Default.* The Trustee, prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all such Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and

skill in their exercise, as a reasonable person would exercise or use under the circumstances in the conduct of his own affairs.

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

(a) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all such Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any statements, certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such statements, certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

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

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to Section 6.05 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Certain Rights of the Trustee.* Subject to Section 7.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, Officers' Certificate or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, Note or other paper or document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be

herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the secretary or an assistant secretary of the Company;

(c) the Trustee may consult with counsel of its selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Indenture with the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred therein or thereby;

(e) the Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Indenture;

(f) prior to the occurrence of an Event of Default hereunder and after the curing or waiving of all such Events of Default, the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document unless requested in writing to do so by the Holders of not less than a majority in aggregate principal amount of the Notes then outstanding; *provided* that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such investigation shall be paid by the Company or, if paid by the Trustee or any predecessor trustee, shall be repaid by the Company upon demand;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys not regularly in its employ and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be required to take notice or be deemed to have notice of any Event of Default, except failure of the Company to cause to be made any of the payments required to be made to the Trustee, unless the Trustee shall be specifically notified by a writing of such default by the Company or by the Holders of at least 25% aggregate principal amount of the Notes then outstanding delivered to the Corporate Trust Office of the Trustee and, in the absence of such notice so delivered the Trustee may conclusively assume no default exists;

(i) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be

enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(j) before taking any action or refraining from taking any action under this Indenture, the Trustee may require that indemnity satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including costs incurred in defending itself against any and all charges, claims, complaints, allegations, assertions or demands of any nature whatsoever, except liability which is adjudicated to be a result of the Trustee's negligence or willful misconduct in connection with any such action; and

(k) whether or not therein expressly so provided, every provision of this Indenture relating to the conduct of, or affecting the liability of, or affording protection to the Trustee shall be subject to the provisions of this Section 7.02.

Section 7.03 *Trustee Not Responsible for Recitals, Dispositions of Notes or Application of Proceeds Thereof.* The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any of the Notes or of the proceeds thereof.

Section 7.04 *Trustee and Agents May Hold Notes; Collections, Etc.* The Trustee or any agent of the Company or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee or such agent and, subject to Sections 7.08 and 7.13, if operative, may otherwise deal with the Company and receive, collect, hold and retain collections from the Company with the same rights it would have if it were not the Trustee or such agent.

Section 7.05 *Moneys Held by Trustee.* Subject to the provisions of Section 8.03 hereof, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. Neither the Trustee nor any agent of the Company or the Trustee shall be under any liability for interest on any moneys received by it hereunder. Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Notes. In accepting the trust hereby created, the Trustee acts solely as Trustee for the Holders of the Notes and not in its individual capacity and all persons, including without limitation the Holders of Notes and the Company having any claim against the Trustee arising from this Indenture shall look only to the funds and accounts held by the Trustee hereunder for payment except as otherwise provided herein.

Section 7.06 *Compensation and Indemnification of Trustee and Its Prior Claim.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) to be agreed to in writing by the Trustee and the Company, and the Company covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request for all expenses, disbursements and advances incurred or

made by or on behalf of it in accordance with any of the provisions of this Indenture (including (i) the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ and (ii) interest at the prime rate on any disbursements and advances made by the Trustee and not paid by the Company within 5 days after receipt of an invoice for such disbursement or advance) except any such expense, disbursement or advance as shall be determined by a court of competent jurisdiction to have been caused by its own negligence or bad faith. The Company also covenants to fully indemnify each of the Trustee, each predecessor Trustee, any Authenticating Agent and any officer, director, employee or agent of the Trustee, each such predecessor Trustee or any such Authenticating Agent for, and to hold it harmless against, any and all loss, liability, claim, damage or expense (including legal fees and expenses) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including the costs and expenses of defending itself against or investigating any claim of liability in the premises. The obligations of the Company under this Section 7.06 to compensate and indemnify the Trustee, each predecessor Trustee, any Authenticating Agent and any officer, director, employee or agent of the Trustee, each such predecessor Trustee or any such Authenticating Agent and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. Such additional indebtedness shall be a senior claim to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Notes, and the Notes are hereby effectively subordinated to such senior claim to such extent. The provisions of this Section 7.06 shall survive the termination of this Indenture and the resignation or removal of the Trustee. The Trustee's fees and expenses are intended to constitute an "Administrative Expense" under the Bankruptcy Law.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

Section 7.07 *Right of Trustee to Rely on Officers' Certificate, Etc.* Subject to Sections 7.01 and 7.02, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Conflicting Interests.* If the Trustee has or shall acquire a conflicting interest within the meaning of the TIA, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the TIA.

Section 7.09 *Persons Eligible for Appointment as Trustee.* The Trustee shall at all times be a corporation or banking association having a combined capital and surplus of at least

$50,000,000. If such corporation or banking association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then, for the purposes of this Section 7.09, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, the Trustee shall resign immediately in the manner and with the effect specified in Section 7.10.

Section 7.10 *Resignation and Removal; Appointment of Successor Trustee.* (a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series of Notes by giving written notice of resignation to the Company and by mailing notice thereof by first class mail to the Holders of Notes at their last addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee or trustees by written instrument in duplicate, executed by authority of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee or trustees. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or any Noteholder who has been a bona fide Holder of a Note for at least six months may, subject to the provisions of Section 7.11, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 7.08 with respect to any Notes after written request therefor by the Company or by any Noteholder who has been a bona fide Holder of a Note for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any Noteholder; or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or a receiver or liquidator of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation; or

(iv) the Company shall determine that the Trustee has failed to perform its obligations under this Indenture in any material respect;

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.11, any Noteholder who has been a bona fide Holder of a Note for at least six months may on behalf of himself and all others similarly situated, petition

any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee. If no successor trustee shall have been appointed and have accepted appointment within 30 days after a notice of removal has been given, the removed trustee may petition a court of competent jurisdiction for the appointment of a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding may at any time remove the Trustee and appoint a successor trustee by delivering to the Trustee so removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 1.05 of the action in that regard taken by the Noteholders.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

Section 7.11 *Acceptance of Appointment by Successor Trustee*. Any successor trustee appointed as provided in Section 7.10 shall execute and deliver to the Company and to the predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall pay over to the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers, duties and obligations. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a prior claim upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09.

Upon acceptance of appointment by any successor trustee as provided in this Section 7.11, the Company shall mail notice thereof by first class mail to the Holders of Notes at their last addresses as they shall appear in the Note Register. If the acceptance of appointment is substantially contemporaneous with the resignation, then the notice called for by the preceding sentence may be combined with the notice called for by Section 7.10. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 7.12 *Merger, Conversion, Consolidation or Succession to Business of Trustee*. Any corporation or banking association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or banking association resulting from any

merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or banking association succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; *provided* that such corporation or banking association shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee or Authenticating Agent and deliver such Notes so authenticated; and, in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any Authenticating Agent appointed by such successor Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificate shall have the full force and effect that this Indenture provides for the certificate of authentication of the Trustee; provided that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.13 *Preferential Collection of Claims Against the Company.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the TIA regarding the collection of the claims against the Company (or any such other obligor).

Section 7.14 *Reports By The Trustee.* (a) Within sixty (60) days after May 15 of each year commencing with the year 2006, the Trustee shall transmit to Holders and other persons such reports dated as of May 15 of the year in which such reports are made concerning the Trustee and its actions under this Indenture as may be required pursuant to the TIA.

(b) A copy of each such report shall, at the time of such transmission to Noteholders, be furnished to the Company and be filed by the Trustee with each stock exchange upon which the Notes are listed and also with the SEC. The Company agrees to notify the Trustee when and as the Notes become admitted to trading on any national securities exchange or become delisted therefrom.

Section 7.15 *Trustee to Give Notice of Default, But May Withhold in Certain Circumstances.* The Trustee shall transmit to the Noteholders, as the names and addresses of such Holders appear on the Note Register, notice by mail of all Events of Defaults which have occurred, such notice to be transmitted within 90 days after the occurrence thereof, unless such defaults shall have been cured before the giving of such notice; *provided* that, except in the case of an Event of Default in the payment of the principal of, premium, if any, or interest on any of the Notes when due or in the payment of any repurchase obligation, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the best interests of the Noteholders.

ARTICLE 8
DISCHARGE OF INDENTURE

Section 8.01 *Discharge of Indenture*. When the Company has deposited with the Trustee cash sufficient to pay and discharge all outstanding Notes on the date of their Stated Maturity together with any interest payable on such Notes, then the Company may discharge its obligations under this Indenture while Notes remain outstanding; *provided* that provisions of Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 2.08, Section 4.01, Section 4.05, Section 7.06, Article 10 and this Article 8 shall survive until the Notes have been paid in full. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand of the Company accompanied by an Officers' Certificate and Opinion of Counsel as required by Section 11.04 and at the cost and expense of the Company; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes. The Company will remain obligated to issue Common Shares upon conversion of the Notes until such maturity as described under Article 10.

Section 8.02 *Paying Agent to Repay Monies Held* Upon the discharge of this Indenture, all monies then held by any Paying Agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies.

Section 8.03 *Return of Unclaimed Monies.* Subject to the requirements of applicable law, any monies deposited with or paid to the Trustee or the Paying Agent for payment of the principal of, premium, if any, or interest on Notes and not applied but remaining unclaimed by the holders of Notes for two years after the date upon which the principal of, premium, if any, or interest on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee or the Paying Agent on written demand and all liability of the Trustee or the Paying Agent shall thereupon cease with respect to such monies; and the holder of any of the Notes shall thereafter look only to the Company for any payment that such holder may be entitled to collect unless an applicable abandoned property law designates another Person.

ARTICLE 9
SUPPLEMENTAL INDENTURES

Section 9.01 *Without Consent of Holders*. The Company and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto without the consent of any Noteholder for one or more of the following purposes:

(a) adding to the Company's covenants for the benefit of the Holders;

(b) surrendering any right or power conferred upon the Company;

(c) providing for the continuation or assumption of the Company's obligations to the Holders in the case of an amalgamation, merger, consolidation, conveyance, transfer or lease in accordance with Article 5;

(d) increasing the Conversion Rate or reducing the Conversion Price;*provided* that the increase or reduction will not adversely affect the interests of Holders in any material respect;

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

(f) curing any ambiguity or correcting or supplementing any defective provision contained in this Indenture;*provided* that such modification or amendment does not adversely affect the interests of the Holders in any material respect; *provided, however*, that any change to conform this Indenture to the Description of Notes contained in the Prospectus shall be deemed not to adversely affect the interests of the Holders of the Notes in any material respect;

(g) establishing the forms or terms of the Notes;

(h) evidencing the acceptance of appointment by a successor Trustee;

(i) adding or modifying any other provisions which the Company and the Trustee may deem necessary or desirable and which will not adversely affect the interests of the Holders in any material respect;

(j) complying with the requirements regarding amalgamation, merger or transfer of assets; or

(k) providing for uncertificated Notes in addition to the certificated Notes so long as such uncertificated Notes are in registered form for purpose of the Internal Revenue Code of 1986, as amended.

Section 9.02 *With Consent of Holders*. With the written consent of the Holders of at least a majority in aggregate principal amount of the Notes at the time outstanding, the Company and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or change in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders of the Notes. However, without the consent of each Noteholder so affected, a supplemental indenture may not:

(a) change the payment date of the principal of or any installment of interest on any Note;

(b) reduce the principal amount of, or any premium or interest on, any Note or the Additional Shares a Holder is entitled to receive pursuant to Section 3.05(a);

(c) change the currency of payment of such Note or interest thereon;

(d) impair the right to institute suit for the enforcement of any payment on or with respect to any Note;

(e) modify the Company’s obligations to maintain an office or agency in New York City;

(f) except as otherwise permitted or contemplated by provisions concerning corporate reorganizations, adversely affect the repurchase option of Holders upon a Fundamental Change or the conversion rights of Holders; or

(g) reduce the percentage in aggregate principal amount of Notes outstanding necessary to modify or amend this Indenture or to waive any past Event of Default.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent approves the substance thereof.

After a supplemental indenture under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the supplemental indenture.

Section 9.03 *Compliance with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article shall comply with the TIA; provided that this Section 9.03 shall not require such supplemental indenture or the Trustee to be qualified under the TIA prior to the time such qualification is in fact required under the terms of the TIA or the Indenture has been qualified under the TIA, nor shall it constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the TIA or the Indenture has been qualified under the TIA.

Section 9.04 *Revocation and Effect of Consents, Waivers and Actions.* Until a supplemental indenture, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Note hereunder is a continuing consent by the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same obligation as the consenting Holder's Note, even if notation of the consent, waiver or action is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the supplemental indenture, waiver or action becomes effective. After a supplemental indenture, waiver or action becomes effective, it shall bind every Noteholder.

Section 9.05 *Notation on or Exchange of Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee or an Authenticating Agent in exchange for outstanding Notes.

Section 9.06 *Trustee to Sign Supplemental Indentures.* The Trustee shall sign any supplemental indenture authorized pursuant to this Article 9 if the amendment contained therein does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing such supplemental indenture the Trustee shall be provided with, and (subject to the provisions of Section 7.01) shall

be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Section 9.07 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE 10
CONVERSION

Section 10.01 *Conversion Right and Conversion Rate*. Subject to and upon compliance with the provisions of this Indenture, at the option of the Holder thereof, any Note or any portion of the principal amount thereof which is $1,000 or a whole multiple of $1,000 may be converted at the principal amount thereof, or of such portion thereof, into duly authorized, fully paid and nonassessable Common Shares, at the Conversion Rate (the "**Conversion Obligation**"), determined as hereinafter provided, in effect at the time of conversion. Such conversion right shall expire at the close of business on the final maturity date of the Notes.

In the case of a Fundamental Change for which the Holder exercises its repurchase right with respect to a Note or portion thereof, such conversion right in respect of the Note or portion thereof shall expire at the close of business on the Business Day immediately preceding the Fundamental Change Purchase Date.

The rate at which Common Shares shall be delivered upon conversion per $1,000 principal amount of Notes (the "**Conversion Rate**") shall be initially equal to 533.4756, which is equal to an initial Conversion Price of approximately $1.87 per share. The Conversion Rate shall be adjusted in certain instances as provided in paragraphs (a), (b), (c), (d), (e), (f), (g) and (i) of Section 10.04 hereof.

Section 10.02 *Exercise of Conversion Right.* To exercise the conversion right, the Holder of any Note to be converted shall surrender such Note duly endorsed or assigned to the Company or in blank, at the office of any Conversion Agent, accompanied by a duly signed conversion notice substantially in the form attached to the Note to the Company stating that the Holder elects to convert such Note or, if less than the entire principal amount thereof is to be converted, the portion thereof to be converted.

Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the opening of business on the next succeeding Interest Payment Date shall be accompanied by payment in New York Clearing House funds or other funds acceptable to the Company of an amount equal to the interest to be received on such Interest Payment Date on the principal amount of Notes being surrendered for conversion.

Notes shall be deemed to have been converted immediately prior to the close of business on the day of surrender of such Notes for conversion in accordance with the foregoing provisions, and at such time the rights of the Holders of such Notes as Holders shall cease, and the Person or Persons entitled to receive the Common Shares issuable upon conversion shall be

treated for all purposes as the record holder or holders of such Common Shares at such time. As promptly as practicable on or after the conversion date, the Company shall cause to be issued and delivered to such Conversion Agent a certificate or certificates for the number of full Common Shares issuable upon conversion, together with payment in lieu of any fraction of a share as provided in Section 10.03 hereof.

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

Except as provided in Sections 10.14, 10.15 and 10.16, by delivering the full number of Common Shares issuable upon conversion, together with a cash payment in lieu of fractional shares to the Conversion Agent or to the Holder or such Holder's nominee or nominees, the Company will have satisfied in full its Conversion Obligation with respect to such Note, and upon such delivery accrued and unpaid Interest, if any, with respect to such Note will be deemed to be paid in full rather than canceled, extinguished or forfeited.

Section 10.03 *Fractions of Shares*. No fractional Common Shares shall be issued upon conversion of any Note or Notes. If more than one Note shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered. Instead of any fractional Common Share which would otherwise be issued upon conversion of any Note or Notes (or specified portions thereof), the Company shall pay a cash adjustment in respect of such fraction (calculated to the nearest one-100th of a share) in an amount equal to the same fraction of the quoted price of the Common Shares as of the Trading Day preceding the date of conversion.

Section 10.04 *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend, make a bonus issue or make any other distribution to all holders of the outstanding Common Shares in Common Shares, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the date following the Record Date for such dividend, bonus issue or other distribution by a fraction,

(i) the numerator of which shall be the sum of the number of Common Shares outstanding at the close of business on such Record Date plus the total number of Common Shares constituting such dividend, bonus issue or other distribution; and

(ii) the denominator of which shall be the number of Common Shares outstanding at the close of business on such Record Date,

such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. If any dividend, bonus issue or other distribution of the type described in this Section 10.04(a) is declared but not so paid or made, the

Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend, bonus issue or other distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of its outstanding Common Shares entitling them (for a period expiring within forty-five (45) days after the Record Date for the issuance of such rights and warrants) to subscribe for or purchase Common Shares at a price per share less than the Closing Price on the Trading Day immediately preceding the date such distribution is first publicly announced by the Company, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to such Record Date by a fraction,

(i) the numerator of which shall be the number of Common Shares outstanding on such Record Date plus the total number of additional Common Shares offered for subscription or purchase, and

(ii) the denominator of which shall be the sum of the number of Common Shares outstanding at the close of business on such Record Date plus the number of shares that the aggregate offering price of the total number of shares so offered would purchase at a price equal to the Closing Price on the Trading Day immediately preceding the date such distribution is first publicly announced by the Company.

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the Record Date for the issuance of such rights or warrants. To the extent that Common Shares are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of Common Shares actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Record Date had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase Common Shares at a price less than the Closing Price for the Trading Day immediately preceding the date such distribution is first publicly announced by the Company, and in determining the aggregate offering price of such Common Shares, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

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

(d) In case the Company shall, by dividend, bonus issue or otherwise, distribute to all holders of its Common Shares, shares of any class of Capital Stock of the Company or evidences of its indebtedness or assets (including cash or securities, but excluding (1) any rights or warrants referred to in Section 10.04(b), (2) any dividend, bonus issue or other distribution paid exclusively in cash, (3) any dividend, bonus issue, or other distribution in connection with a reclassification, amalgamation, consolidation, statutory share exchange, merger, combination, sale of conveyance to which Section 10.11 hereof applies, (any of the foregoing hereinafter in this Section 10.04(d)) called the "**Securities**")), then, in each such case (unless the Company elects to reserve such Securities for distribution to the Noteholders upon the conversion of the Securities so that any such Holder converting Securities will receive upon such conversion, in addition to the Common Shares to which such Holder is entitled, the amount and kind of such Securities which such Holder would have received if such Holder had converted its Securities into Common Shares immediately prior to the Record Date for such distribution of the Securities) the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

(i) the numerator of which shall be the Current Market Price on such Record Date; and

(ii) the denominator of which shall be the Current Market Price on such Record Date less the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on such Record Date of the portion of the Securities so distributed applicable to one Common Share,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; *provided* that if the then Fair Market Value (as so determined) of the portion of the Securities so distributed applicable to one Common Share is equal to or greater than the Current Market Price on such Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion the amount of Securities such holder would have received had such holder converted each Note on the Record Date for such distribution. If such dividend, bonus issue or other distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend, bonus issue or other distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 10.04(d) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price on the applicable Record Date for such distribution. Notwithstanding the foregoing, if the Securities distributed by the Company to all holders of its Common Shares consist of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit of the Company or a Subsidiary, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

(iii) the numerator of which shall be the sum of (A) the average of the Closing Prices of the Common Shares for the ten (10) Trading Days commencing on and

including the fifth Trading Day after the date on which "ex-dividend trading" commences for such dividend or distribution on the NASDAQ National Market or such other national or regional exchange or market on which such securities are then listed or quoted (the "Ex-Dividend Date") plus (B) the Fair Market Value of the securities distributed in respect of each Common Share for which this Section 10.04(d) applies, which shall equal the number of securities distributed in respect of each Common Share multiplied by the average of the Closing Prices of those securities distributed for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date; and

(iv) the denominator of which shall be the average of the Closing Prices of the Common Shares for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; *provided* that the Company may in lieu of the foregoing adjustment make adequate provision so that each Noteholder shall have the right to receive upon conversion the amount of Securities such holder would have received had such holder converted each Note on the Record Date with respect to such distribution.

Rights or warrants distributed by the Company to all holders of Common Shares entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such Common Shares; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Shares, shall be deemed not to have been distributed for purposes of this Section 10.04 (and no adjustment to the Conversion Rate under this Section 10.04 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 10.04(d). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 10.04 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Shares with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Shares as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any

holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

No adjustment of the Conversion Rate shall be made pursuant to this Section 10.04(d) in respect of rights or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights or warrants are actually distributed, or reserved by the Company for distribution to holders of Securities upon conversion by such holders of Securities to Common Shares.

For purposes of this Section 10.04(d) and Section 10.04(a) and (b), any dividend, bonus issue or other distribution to which this Section 10.04(d) is applicable that also includes Common Shares, or rights or warrants to subscribe for or purchase Common Shares (or both), shall be deemed instead to be (1) a dividend, bonus issue or other distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such Common Shares or rights or warrants (and any Conversion Rate adjustment required by this Section 10.04(d) with respect to such dividend, bonus issue or other distribution shall then be made) immediately followed by (2) a dividend, bonus issue or other distribution of such Common Shares or such rights or warrants (and any further Conversion Rate adjustment required by Sections 10.04(a) and 10.04(b) with respect to such dividend, bonus issue or other distribution shall then be made), except any Common Shares included in such dividend, bonus issue or other distribution shall not be deemed "outstanding at the close of business on such Record" within the meaning of Section 10.04(a).

(e) In case the Company shall, by dividend, bonus issue or otherwise, distribute to all holders of its Common Shares cash (excluding any dividend, bonus issue or other distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary), then, in such case, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend, bonus issue or other distribution by a fraction,

(i) the numerator of which shall be the Current Market Price on such Record Date; and

(ii) the denominator of which shall be the Current Market Price on such Record Date less the amount of cash so distributed applicable to one Common Share,

such adjustment to be effective immediately prior to the opening of business on the day following such Record Date; *provided* that if the portion of the cash so distributed applicable to one Common Share is equal to or greater than the Current Market Price on such Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion the amount of cash such Holder would have received had such Holder converted each Note on such Record Date. If such dividend, bonus issue or other distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend, bonus issue or other distribution had not been declared.

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

exchange offer (as amended upon the expiration thereof) shall require the payment to shareholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution) that combined together with the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and set forth in a Board Resolution), as of the expiration of such tender offer or exchange offer, of other consideration paid in respect of any other tender offers or exchange offers, by the Company or any of its Subsidiaries for all or any portion of the Common Shares expiring within the 12 months preceding the expiration of such tender offer or exchange offer and in respect of which no adjustment pursuant to this Section 10.04(f) has been made, exceeds the last reported sale price of the Common Shares on the Trading Day next succeeding the last time (the "**Expiration Time**") tenders or exchanges could have been made pursuant to such tender offer or exchange offer, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to shareholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "**Purchased Shares**") and (y) the product of the number of Common Shares outstanding (less any Purchased Shares) at the Expiration Time and the Closing Price of a Common Share on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator of which shall be the number of Common Shares outstanding (including any Purchased Shares) at the Expiration Time multiplied by the Closing Price of a Common Share on the Trading Day next succeeding the Expiration Time

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(g) In case of a tender or exchange offer made by a Person other than the Company or any Subsidiary for an amount that increases the offeror's ownership of Common Shares to more than twenty-five percent (25%) of the Common Shares outstanding and shall involve the payment by such Person of consideration per Common Share having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) that as of the last time (the "**Offer Expiration Time**") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds the Closing Price of a Common Share on the Trading Day next succeeding the Offer Expiration Time, and in which, as of the Offer Expiration Time the Board

of Directors is not recommending rejection of the offer, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Offer Expiration Time by a fraction

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to shareholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Offer Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "**Accepted Purchased Shares**") and (y) the product of the number of Common Shares outstanding (less any Accepted Purchased Shares) at the Offer Expiration Time and the Closing Price of a Common Share on the Trading Day next succeeding the Offer Expiration Time, and

(ii) the denominator of which shall be the number of Common Shares outstanding (including any tendered or exchanged shares) at the Offer Expiration Time multiplied by the Closing Price of a Common Share on the Trading Day next succeeding the Offer Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Offer Expiration Time. If such Person is obligated to purchase shares pursuant to any such tender or exchange offer, but such Person is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 10.04(g) shall not be made if, as of the Offer Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Company to engage in any transaction described in Section 10.11.

(h) For purposes of this Section 10.04, the following terms shall have the meaning indicated:

(i) "**Current Market Price**" shall mean the average of the daily Closing Prices per Common Share for the ten consecutive Trading Days selected by the Company commencing no more than 30 Trading Days before and ending not later than the earlier of such date of determination and the day before the "**ex**" date with respect to the issuance, distribution, subdivision or consolidation requiring such computation immediately prior to the date in question. For purposes of this paragraph, the term "**ex**" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Shares trades, regular way, on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision or consolidation of Common Shares, means the first date on which the Common Shares trades, regular way, on such exchange or in such market after the time at which such subdivision or consolidation becomes effective.

If another issuance, distribution, subdivision or consolidation to which Section 10.04 applies occurs during the period applicable for calculating "**Current Market Price**" pursuant to the definition in the preceding paragraph, "**Current Market Price**" shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or consolidation on the Closing Price during such period.

(ii) "**Fair Market Value**" shall mean the amount which a willing buyer would pay a willing seller in an arm's-length transaction.

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

(i) The Company may make such increases in the Conversion Rate, in addition to those required by Section 10.04(a), (b), (c), (d), (e), (f) or (g) as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Shares or rights to purchase Common Shares resulting from any dividend or distribution of shares (or rights to acquire shares) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to holders of record of the Notes a notice of the increase at least fifteen (15) days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) No adjustment to the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least 1% in such rate*provided*, *however*, that any adjustments which by reason of this Section 10.04(j) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 10 shall be made by the Company and shall be made to the nearest one hundredth of a cent or to the nearest one hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Shares.

(k) In any case in which this Section 10.04 provides that an adjustment shall become effective immediately after (1) a Record Date for an event, (2) the Record Date for a dividend or distribution as described in Section 10.04(a), (3) the Record Date for the issuance of rights or warrants as described in Section 10.04(b), or (4) the Expiration Time for any tender or exchange offer pursuant to Section 10.04(f) or Section 10.04(g) (each a "**Determination Date**"), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the holder of any Note converted after such Determination

Date and before the occurrence of such Adjustment Event, the additional Common Shares or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Shares issuable upon such conversion before giving effect to such adjustment and (y) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 10.03. For purposes of this Section 10.04(k), the term "**Adjustment Event**" shall mean:

(i) in any case referred to in clause (1) hereof, the occurrence of such event,

(ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,

(iii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and

(iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Shares pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(l) For purposes of this Section 10.04, the number of Common Shares at any time outstanding shall include shares issuable in respect of scrip certificates issued in lieu of fractions of Common Shares.

Section 10.05 *Notice of Adjustments of Conversion Rate.* Whenever the Conversion Rate is adjusted as herein provided (other than in the case of an adjustment pursuant to the second paragraph of Section 10.04 for which the notice required by such paragraph has been provided), the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the adjusted Conversion Rate and showing in reasonable detail the facts upon which such adjustment is based. Promptly after delivery of such Officers' Certificate, the Company shall prepare a notice stating that the Conversion Rate has been adjusted and setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective, and shall mail such notice to each Holder at the address of such Holder as it appears in the Note Register within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not effect the legality or validity of any such adjustment.

Section 10.06 *Notice Prior to Certain Actions.* In case at any time after the date hereof:

(1) the Company shall declare a dividend (or any other distribution) on its Common Shares payable otherwise than in cash out of its capital surplus or its consolidated retained earnings;

(2) the Company shall authorize the granting to the holders of its Common Shares of rights or warrants to subscribe for or purchase any shares of Capital Stock of any class (or of securities convertible into shares of Capital Stock of any class) or of any other rights;

(3) there shall occur any reclassification of the Common Shares of the Company (other than a subdivision or consolidation of its outstanding Common Shares, a

change in par value, a change from par value to no par value or a change from no par value to par value), or any amalgamation, merger, consolidation, statutory share exchange or combination to which the Company is a party and for which approval of any shareholders of the Company is required, or the sale, transfer or conveyance of all or substantially all of the assets of the Company; or

(4) there shall occur the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of Notes pursuant to Section 4.03 hereof, and shall cause to be provided to the Trustee and all Holders in accordance with Section 11.02 hereof, at least 20 days (or 10 days in any case specified in clause (1) or (2) above) prior to the applicable record or effective date hereinafter specified, a notice stating:

(A) the date on which a record is to be taken for the purpose of such dividend, distribution, rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Shares of record to be entitled to such dividend, distribution, rights or warrants are to be determined, or

(B) the date on which such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale, transfer, conveyance, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Shares of record shall be entitled to exchange their Common Shares for securities, cash or other property deliverable upon such reclassification, amalgamation, merger, consolidation, statutory share exchange, sale, transfer, dissolution, liquidation or winding up.

Neither the failure to give such notice nor any defect therein shall affect the legality or validity of the proceedings or actions described in clauses (1) through (4) of this Section 10.06.

Section 10.07 *Company to Reserve Common Shares.* The Company shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued Common Shares, for the purpose of effecting the conversion of Notes, the full number of fully paid and nonassessable Common Shares then issuable upon the conversion of all Notes outstanding.

Section 10.08 *Taxes on Conversions.* Except as provided in the next sentence, the Company will pay any and all taxes (other than taxes on income) and duties that may be payable in respect of the issue or delivery of Common Shares on conversion of Notes pursuant hereto. A Holder delivering a Note for conversion shall be liable for and will be required to pay any tax or duty which may be payable in respect of any transfer involved in the issue and delivery of Common Shares in a name other than that of the Holder of the Note or Notes to be converted, and no such issue or delivery shall be made unless the Person requesting such issue has paid to the Company the amount of any such tax or duty, or has established to the satisfaction of the Company that such tax or duty has been paid.

Section 10.09 *Covenant as to Common Shares.* The Company covenants that all Common Shares which may be issued upon conversion of Notes will upon issue be fully paid and nonassessable and, except as provided in Section 10.08, the Company will pay all taxes, liens and charges with respect to the issue thereof.

Section 10.10 *Cancellation of Converted Notes.* All Notes delivered for conversion shall be delivered to the Trustee to be canceled by or at the direction of the Trustee, which shall dispose of the same as provided in Section 2.11.

Section 10.11 *Effect of Reclassification, Consolidation, Merger or Sale.* If any of following events occur, namely:

(1) any reclassification or change of the outstanding Common Shares (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or consolidation),

(2) any amalgamation, merger, consolidation, statutory share exchange or combination of the Company with another corporation as a result of which holders of Common Shares shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Shares or

(3) any sale or conveyance of all or substantially all the properties and assets of the Company to any other corporation as a result of which holders of Common Shares shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Shares,

the Company or the successor or purchasing corporation, as the case may be, shall execute with the Trustee and the Company a supplemental indenture (which shall comply with the TIA as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) providing that such Note shall be convertible into the kind and amount of shares and other securities or property or assets (including cash) which such Holder would have owned or been entitled to receive upon such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale or conveyance had such Notes been converted into Common Shares immediately prior to such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale or conveyance assuming such holder of Common Shares did not exercise its rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale or conveyance (*provided* that, if the kind or amount of securities, cash or other property receivable upon such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale or conveyance is not the same for each Common Share in respect of which such rights of election shall not have been exercised ("**Non-Electing Share**"), then for the purposes of this Section 10.11 the kind and amount of securities, cash or other property receivable upon such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale or conveyance for each Non-Electing Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Non-Electing Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article

10. If, in the case of any such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale or conveyance, the stock or other securities and assets receivable thereupon by a holder of Common Shares includes shares or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, amalgamation, merger, consolidation, statutory share exchange, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent practicable the provisions providing for the repurchase rights set forth in Section 3.05 hereof.

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

The above provisions of this Section 10.11 shall similarly apply to successive reclassifications, amalgamations, mergers, consolidations, statutory share exchanges, combinations, sales and conveyances.

If this Section 10.11 applies to any event or occurrence, Section 10.04 hereof shall not apply.

Section 10.12 *Responsibility of Trustee for Conversion Provisions.* The Trustee, subject to the provisions of Section 7.01 hereof, and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or intent of any such adjustments when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee, subject to the provisions of Section 7.01 hereof, nor any Conversion Agent shall be accountable with respect to the validity or value (of the kind or amount) of any Common Shares, or of any other securities or property, which may at any time be issued or delivered upon the conversion of any Note; and it or they do not make any representation with respect thereto. Neither the Trustee, subject to the provisions of Section 7.01 hereof, nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares or share certificates or other securities or property upon the surrender of any Note for the purpose of conversion; and the Trustee, subject to the provisions of Section 7.01 hereof, and any Conversion Agent shall not be responsible or liable for any failure of the Company to comply with any of the covenants of the Company contained in this Article.

Section 10.13 *Shareholder Rights Plans.* Each Common Share issued upon conversion of Notes pursuant to this Article 10 shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Shares issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any shareholder rights plan adopted by the Company, as the same may be amended from time to time. If at the time of conversion, however, the rights have separated from the Common Shares in accordance with the provisions of the applicable shareholder rights agreement so that the holders of the Notes would

not be entitled to receive any rights in respect of Common Shares issuable upon conversion of the Notes, the conversion rate will be adjusted as if the Company distributed to all holders of Common Shares, shares of the Company's share capital, evidences of indebtedness or assets (including cash or securities, but excluding (1) any rights or warrants referred to in Section 10.04(b), (2) any dividend or distribution paid exclusively in cash, (3) any dividend, bonus issue, or other distributions in connection with a reclassification, amalgamation, consolidation, statutory share exchange, merger, combination, sale of conveyance to which Section 10.11 applies), subject to readjustment in the event of the expiration, termination or redemption of the rights.

Section 10.14 *Automatic Conversion by the Company.*

(a) The Company may elect to automatically convert the Notes in whole or in part (an**"Automatic Conversion"**) at any time on or prior to Stated Maturity if the Closing Price of the Common Shares has exceeded 150% of the Conversion Price then in effect for at least 20 Trading Days in any 30 Trading Day period, ending within five Trading Days prior to the date of the Automatic Conversion Notice (as defined below). In the event that the date on which the Notes will be automatically converted (the **"Automatic Conversion Date"**) occurs on or prior to February [10], 2010, the Company will pay an Additional Interest Payment in respect of the Notes subject to such Automatic Conversion as provided in this Section 10.14.

(b) Unless the Company shall have theretofore called for redemption all of the outstanding Notes, the Company or, at the request and expense of the Company, the Trustee, shall mail or cause to be mailed to each holder of Notes subject to such Automatic Conversion notice (the **"Automatic Conversion Notice"**) of an Automatic Conversion not more than thirty (30) days but not less than twenty (20) days prior to the Automatic Conversion Date. If the Company give such notice, it shall also deliver a copy of such Automatic Conversion Notice to the Trustee. Such mailing shall be by first class mail. The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Note designated for Automatic Conversion as a whole or in part shall not affect the validity of the proceedings for the Automatic Conversion of any other Note.

(c) Each Automatic Conversion Notice shall state:

(1) the aggregate principal amount of Notes to be automatically converted,

(2) the CUSIP, ISIN or similar number or numbers of the Notes being automatically converted,

(3) the Automatic Conversion Date,

(4) that on and after said date Interest thereon or on the portion thereof to be automatically converted will cease to accrue,

(5) whether an Additional Interest Payment, if any, shall be paid by the Company and, if so, whether and to what extent such

Additional Interest Payment shall be paid in cash, by delivery of Common Shares or as a combination of cash and Common Shares,

(6) the place or places where such Notes are to be surrendered for conversion, and

(7) the Conversion Price then in effect.

(d) If fewer than all the Notes are to be automatically converted, the Automatic Conversion Notice shall identify the Notes to be automatically converted (including CUSIP, ISIN or similar number or numbers, if any). In case any Note is to be automatically converted in part only, the Automatic Conversion Notice shall state the portion of the principal amount thereof to be automatically converted and shall state that, on and after the Automatic Conversion Date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unconverted portion thereof will be issued.

(e) If the Company opts to automatically convert less than all of the Outstanding Notes, the Trustee shall select or cause to be selected the Notes or portions thereof of the Global Note or the Notes in certificated form to be automatically converted (in principal amounts of $1,000 or whole multiples thereof) by lot, on a pro rata basis or by another method the Trustee deems fair and appropriate. If any Note selected for partial automatic conversion is submitted for voluntary conversion in part after such selection, the portion of such Note submitted for voluntary conversion shall be deemed (so far as may be possible) to be from the portion selected for automatic conversion. The Notes (or portions thereof) so selected shall be deemed duly selected for automatic conversion for all purposes hereof, notwithstanding that any such Note is submitted for voluntary conversion in part before the mailing of the Automatic Conversion Notice

(f) In the event of an Automatic Conversion, the Company shall issue and deliver a certificate or certificates for the number of Common Shares issuable upon conversion of the Notes subject to such Automatic Conversion and, to the extent the Company elects to pay any applicable Additional Interest Payment in Common Shares in respect of the Additional Interest Payment, if any, due on such Notes along with any cash in respect of any fractional Common Shares otherwise issuable upon conversion or to the extent the Company elects to pay any applicable Additional Interest Payment, if any, in cash, for payment to the holder as promptly after the Automatic Conversion Date, as practicable in accordance with the provisions of this Article 10, but in no event later than the close of business of the next succeeding third Business Day following such Automatic Conversion Date.

(g) All Notes subject to an Automatic Conversion shall be delivered to the Trustee to be canceled at the direction of the Trustee, which shall dispose of the same as provided in Section 2.11 hereof. Upon presentation of any Note automatically converted in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Note or Notes, of authorized denominations, in principal amount equal to the unconverted portion of the Note or Notes so presented.

(h) Interest on the Notes or portion of Notes so called for automatic conversion shall cease to accrue and, except as provided in Section 7.05, to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the Common Shares and cash, if any, to which they are entitled pursuant to this Section 10.14.

(i) If any of the provisions of this Section 10.14 are inconsistent with applicable law at the time of such Automatic Conversion, such law shall govern.

Section 10.15 *Voluntary Conversion Prior to February [10], 2010.*

(a) If a holder elects to voluntarily convert its Notes as provided in this Article 10 on or prior to February [10], 2010 and prior to the date of any Automatic Conversion Notice (each, a **"Voluntary Conversion"**), the Company will pay the applicable Additional Interest Payment to such holder on the date selected for such Voluntary Conversion (the **"Voluntary Conversion Date"**). In such event, the Company will notify any applicable holder whether the Additional Interest Payment, if any, shall be paid by the Company in cash, by delivery of Common Shares or as a combination of cash and Common Shares.

(b) In the event of a Voluntary Conversion subject to Section 10.15(a), the Company shall issue and deliver a certificate or certificates for the number of Common Shares issuable upon conversion of the Notes so converted and, to the extent the Company elects to pay any applicable Additional Interest Payment in Common Shares, in respect of the Additional Interest Payment, if any, due on such Notes along with any cash in respect of any fractional Common Shares otherwise issuable upon conversion or to the extent the Company elects to pay any applicable Additional Interest Payment, if any, in Common Shares instead of cash, for payment to the holder as promptly after the Voluntary Conversion Date, as practicable in accordance with the provisions of this Article 10, but in no event later than the close of business of the next succeeding [third] Business Day following such Voluntary Conversion Date.

Section 10.16 *Restrictions on Company's Ability to Pay any Additional Interest Payment in Common Stock*

(a) The Company may not, without the approval of a resolution of the Company's shareholders, elect to pay an Additional Interest Payment in Common Shares as contemplated by Section 10.14 or Section 10.15, as applicable, to the extent that the sum of:

(i) The aggregate amount of the Common Shares issued as Additional Interest Payments since the Issue Date of the Notes; and

(ii) The aggregate amount of the Common Shares proposed to be issued as an Additional Interest Payment at such time would exceed a "Cap Amount" equal to _____ Common Shares.

Whether or not the Company seeks approval of the Company's shareholders pursuant to this Section 10.16(b) is at the sole discretion of the Company.

(b) In the event that the Company obtains the approval of the Company's shareholders to issue Common Shares in excess of the Cap Amount, the limitation on the Company's ability to pay an Additional Interest Payment in Common Shares set forth in Section 10.16(a) shall not apply.

Section 10.17 *Notification to Trustee.* If the Company is obligated to pay any Additional Interest Payment upon Automatic Conversion pursuant to Section 10.14(b) or upon a Voluntary Conversion pursuant to Section 10.15, it shall deliver to the Trustee a certificate setting forth (i) the amount of interest actually paid or provided for by the Company with respect to the affected Notes prior to the Automatic Conversion Date or the holder's Voluntary Conversion Date, as applicable, and (ii) if such Additional Interest Payment upon Automatic Conversion or upon a Voluntary Conversion, as applicable, is to be paid in whole or in part in Common Shares, the number of Common Shares which is equal to that portion of the Additional Interest Payment to be paid in Common Shares, valued at the Conversion Price then in effect. Unless and until the Trustee shall receive such certificate, it shall not be charged with knowledge of the facts required by this Section 10.17 to be set forth therein. In no event will the Trustee be required to inquire into or verify the information required to be set forth in such certificate, other than the amount of interest actually paid by the Trustee as paying agent with respect to the affected Notes. The Trustee need not inquire into or confirm any amount of Interest "provided for" by the Company, unless such amount has actually been delivered to the Trustee as paying agent and is being held by the Trustee as paying agent pending distribution to the affected holders.

ARTICLE 11
MISCELLANEOUS

Section 11.01 *Trust Indenture Act Controls.* This Indenture is hereby made subject to, and shall be governed by, the provisions of the TIA required to be part of and to govern indentures qualified under the TIA; *provided*, *however*, that, unless otherwise required by law, notwithstanding the foregoing, this Indenture and the Notes issued hereunder shall not be subject to the provisions of subsections (a)(1), (a)(2), and (a)(3) of Section 314 of the TIA as now in effect or as hereafter amended or modified; *provided further* that this Section 11.01 shall not require this Indenture or the Trustee to be qualified under the TIA prior to the time such qualification is in fact required under the terms of the TIA, nor shall it constitute any admission or acknowledgment by any party to the Indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the TIA. If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 11.02 *Notices*. Any request, demand, authorization, notice, waiver, consent or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows or transmitted by facsimile transmission (confirmed by guaranteed overnight courier) to the following facsimile numbers:

if to the Company:

XOMA Ltd.
2910 Seventh Street

Berkeley, California 94710
Attention: Legal Department
Telephone: (510) 204-7200
Facsimile: (510) 649-7571

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

Cahill Gordon & Reindel LLP
80 Pine Street
17th Floor
New York, New York 10005
Attention: Geoffrey E. Liebmann
Telephone: (212) 701-3000
Facsimile: (212) 269-5420

if to the Trustee:

Wells Fargo Bank, National Association
707 Wilshire Boulevard
17th Floor
Los Angeles, California 90017
Attention: Madeliena Hall, Trust Officer
Telephone: (213) 614-2588
Facsimile: (213) 614-3355

The Company or the Trustee by notice given to the other in the manner provided above may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Noteholder shall be mailed to the Noteholder, by first-class mail, postage prepaid, at the Noteholder's address as it appears on the registration books of the Note Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Noteholders, it shall mail a copy to the Trustee and each Note Registrar, Paying Agent, Conversion Agent or co-registrar.

Section 11.03 *Communication by Holders with Other Holders*. Noteholders may communicate pursuant to Section 312(b) of the TIA with other Noteholders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Note Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of Section 312(c) of the TIA.

Section 11.04 *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 11.05 *Statements Required in Certificate or Opinion*. Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(1) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;

(3) a statement that, in the opinion of each such person, he has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement that, in the opinion of such person, such covenant or condition has been complied with.

Section 11.06 *Separability Clause*. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 11.07 *Rules by Trustee, Paying Agent, Conversion Agent and Note Registrar.* The Trustee may make reasonable rules for action by or a meeting of Noteholders. The Note Registrar, Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 11.08 *Legal Holidays*. A "**Legal Holiday**" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Notes, no interest, if any, shall accrue for the intervening period.

Section 11.09 *GOVERNING LAW*. THIS INDENTURE AND THE NOTES WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 11.10 *No Recourse Against Others.* A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes.

Section 11.11 *Successors*. All agreements of the Company in this Indenture and the Notes shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 11.12 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any authenticating agent, any Note Registrar and their successors hereunder and the holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 11.13 *Table of Contents, Heading, Etc.* The table of contents and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 11.14 *Authenticating Agent*. The Trustee may appoint an authenticating agent (the "**Authenticating Agent**") that shall be authorized to act on its behalf, and subject to its direction, in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Sections 2.03, 2.07, 2.08, 3.08 and 10.02, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the Authenticating Agent shall be deemed to be authentication and delivery of such Notes "**by the Trustee**" and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such Authenticating Agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.09.

Any corporation into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of any Authenticating Agent, shall be the successor of the Authenticating Agent hereunder, if such successor corporation is otherwise eligible under this Section 11.14, without the execution or filing of any paper or any further act on the part of the parties hereto or the Authenticating Agent or such successor corporation.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall cease to be eligible under this Section, the

Trustee shall either promptly appoint a successor Authenticating Agent or itself assume the duties and obligations of the former Authenticating Agent under this Indenture and, upon such appointment of a successor Authenticating Agent, if made, shall give written notice of such appointment of a successor Authenticating Agent to the Company and shall mail notice of such appointment of a successor Authenticating Agent to all holders of Notes as the names and addresses of such holders appear on the Note Register.

The Company agrees to pay to the Authenticating Agent from time to time such reasonable compensation for its services as shall be agreed upon in writing between the Company and the Authenticating Agent.

The provisions of Sections 2.12, 7.03, 7.04, 7.07 and this Section 11.14 shall be applicable to any Authenticating Agent.

Section 11.15 *Execution In Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

XOMA LTD.

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

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

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF THE DEPOSITORY TRUST COMPANY, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE TWO OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

XOMA LTD.
6.50% Convertible SNAPs$_{sm}$ due 2012

No. CUSIP: [ ]
Issue Date:

XOMA LTD., a Bermuda company promises to pay to [Cede & Co.]* or registered assigns, [the principal amount of_____ DOLLARS ($_____)] [the principal amount as set forth on Schedule I hereto]* on February 1, 2012.

This Note shall bear interest as specified on the other side of this Note. This Note is convertible as specified on the other side of this Note.

Additional provisions of this Note are set forth on the other side of this Note.

* Include only on Global Security

Dated:

The common seal of XOMA Ltd. was affixed hereto in the presence of:

By: _____
Name: **J. David Boyle II**
Title: **Vice President, Finance and Chief Financial Officer**

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture (as defined on the other side of this Note).

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

By: _____
As Authenticating Agent
(if different from Trustee)

Dated: _____

[FORM OF REVERSE SIDE OF NOTE]

6.50% Convertible SNAPs$_{sm}$ due 2012

1. Cash Interest.

The Company promises to pay interest in cash on the principal amount of this Note at the rate per annum of 6.50%. The Company will pay cash interest semi-annually in arrears on February 1 and August 1 of each year (each an "**Interest Payment Date**"), beginning August 1, 2006, to Holders of record at the close of business on January 15 and July 15 (whether or not a business day) (each a "**Regular Record Date**"), as the case may be, immediately preceding such Interest Payment Date, and the Company will pay interest in arrears on the maturity date to the Holder to whom it pays the principal of this Note. Cash interest on the Notes will accrue from the most recent date to which interest has been paid or duly provided or, if no interest has been paid, from the Issue Date. Cash interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay cash interest on overdue principal at 7% per annum, and it shall pay interest in cash on overdue installments of cash interest at the same rate to the extent lawful. All such overdue cash interest shall be payable on demand.

2. Method of Payment.

Subject to the terms and conditions of the Indenture, the Company will make payments in respect of the principal of, premium, if any, and cash interest on this Note and in respect of Fundamental Change Purchase Price to Holders who surrender Notes to a Paying Agent to collect such payments in respect of the Notes. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may make such cash payments by check payable in such money. A holder of Notes with an aggregate principal amount in excess of $5,000,000 will be paid by wire transfer in immediately available funds at the election of such holder. Any payment required to be made on any day that is not a Business Day will be made on the next succeeding Business Day.

3. Paying Agent, Conversion Agent and Note Registrar.

Initially, Wells Fargo Bank, National Association (the "**Trustee**"), will act as Paying Agent, Conversion Agent and Note Registrar. The Company may appoint and change any Paying Agent, Conversion Agent, Note Registrar or co-registrar without notice, other than notice to the Trustee except that the Company will maintain at least one Paying Agent in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent, Note Registrar or co-registrar.

4. Indenture.

The Company issued this Note under an Indenture dated as of February__, 2006 (the "**Indenture**"), between the Company and the Trustee. The terms of this Note include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as in effect from time to time (the "**TIA**"). Capitalized terms used herein and not

defined herein have the meanings ascribed thereto in the Indenture. This Note is subject to all such terms, and Noteholders are referred to the Indenture and the TIA for a statement of those terms.

This Note is a general unsecured obligation of the Company (except as provided in Paragraph 12 hereof) limited to $70,000,000 aggregate principal amount. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

5. Redemption and Repurchase by the Company at the Option of the Holder.

Prior to February [10], 2010, the Notes shall not be redeemable at the Company's option. At any time on or after February [10], 2010 and prior to Stated Maturity, the Company, at its option, may redeem the Notes, in whole or in part, in accordance with the Indenture on the Redemption Date for a Redemption Price in cash equal to 100% of the principal amount of the Notes plus any accrued and unpaid interest, on the Notes redeemed to but not including the Redemption Date. The Company will make an additional payment equal to the total value of the aggregate amount of the interest otherwise payable on the Notes from the last day through which Interest was paid on the Notes through the Redemption Date.

If there shall have occurred a Fundamental Change (subject to certain conditions provided for in the Indenture), each Holder, at such Holder's option, shall have the right, in accordance with the provisions of the Indenture, to require the Company to purchase its Notes (or any portion of the principal amount hereof that is at least $1,000 or any whole multiple thereof, provided that the portion of the principal amount of this Note to be outstanding after such purchase is at least equal to $1,000) at the Fundamental Change Purchase Price in cash, plus any accrued and unpaid interest to but not including the Fundamental Change Purchase Date.

A written notice of the Fundamental Change will be given to the Holders as provided in the Indenture. To exercise a purchase right, a Holder must deliver to the Trustee a Fundamental Change Purchase Notice as provided in the Indenture.

Holders have the right to withdraw any Fundamental Change Purchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

6. Conversion.

Subject to the next two succeeding sentences, a Holder of a Note may convert it into Common Shares at any time before the close of business on the final maturity date of the Note. A Note in respect of which a Holder has delivered a Fundamental Change Purchase Notice exercising the option of such Holder to require the Company to purchase such Note may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

The initial Conversion Rate shall be initially equal to 583.4756 Common Shares per $1,000 principal amount of the Notes, subject to adjustment in certain events described in the Indenture, which is equal to an initial Conversion Price of approximately $1.87 per Common

Share. The Company shall pay a cash adjustment as provided in the Indenture in lieu of any fractional Common Share.

In addition, following certain corporate transactions that constitute a Fundamental Change pursuant to clause (ii) of the Change of Control definition as set forth in Section 3.05(a) of the Indenture that occur on or prior to February 1, 2012, a Holder who elects to convert its Notes in connection with such corporate transaction will be entitled to receive Additional Shares upon conversion, subject to the Company's payment elections set forth in the Indenture. Notwithstanding the previous sentence, in the case of a Public Acquirer Change of Control, the Company may, in lieu of increasing the Conversion Rate by Additional Shares, elect to adjust the Conversion Rate and Conversion Obligation such that from and after the effective date of such Public Acquirer Change of Control, Holders of the Notes will be entitled to convert their Securities into a number of shares of Public Acquirer Common Stock, as determined pursuant to Section 3.05(b) of the Indenture.

To convert a Note, a Holder must (1) complete and manually sign the conversion notice below (or complete and manually sign a facsimile of such notice) and deliver such notice to the Conversion Agent, (2) surrender the Note to the Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Conversion Agent, the Company or the Trustee and (4) pay any transfer or similar tax, if required.

7. Automatic Conversion by Company.

If at any time the Closing Price of the Company's Common Stock exceeds 150% of the Conversion Price for at least 20 Trading Days during a 30-day Trading Day period ending within five Trading Days prior to the notice of Automatic Conversion, the Company may elect to automatically convert this Note pursuant to the terms of the Indenture. In the event that the date that this Note or any portion hereof (in integral multiples of $1,000) will be automatically converted occurs on or prior to February [10], 2010, the Company will pay to the holder an Additional Interest Payment in cash or, at the Company's option, in Common Shares, equal to four full years of interest on the portion of this Note being automatically converted, less any interest actually paid or provided for on the Note prior to the Automatic Conversion Date. If the Company elects to pay all or any portion of the Additional Interest Payment, if any, on the Note in Common Shares, such Common Shares will be valued at the Conversion Price then in effect.

8. Voluntary Conversion by Holder.

If the holder elects to voluntarily convert this Note, or any portion hereof (in integral multiples of $1,000), at any time on or prior to February [10], 2010, the holder will receive an Additional Interest Payment upon conversion so long as the Company has not previously mailed an Automatic Conversion Notice to holders. In the event that the Company elects to pay all or any portion of the Additional Interest Payment, if any, on the Notes in Common Shares upon a voluntary conversion, such Common Shares will be valued at the Conversion Price then in effect.

9. Restrictions on the Company's Ability to Pay Additional Interest Payments in Common Shares

The Company may not, without the approval of the Company's shareholders, elect to pay an Additional Interest Payment in Common Shares where the sum of the aggregate amount of the Common Shares issued as Additional Interest Payments since the Issue Date of the Notes and the aggregate amount of Common Shares proposed to be issued as an Additional Interest Payment at such time would exceed the Cap Amount, as set forth in the Indenture.

10. Denominations; Transfer; Exchange.

The Notes are in fully registered form, without coupons, in denominations of $1,000 of principal amount and whole multiples of $1,000. A Holder may transfer or exchange Notes in accordance with the Indenture. The Note Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Note Registrar need not transfer or exchange any Notes in respect of which a Fundamental Change Purchase Notice has been given and not withdrawn (except, in the case of a Note to be purchased in part, the portion of the Note not to be purchased).

11. Persons Deemed Owners.

The registered Holder of this Note may be treated as the owner of this Note for all purposes.

12. Unclaimed Money or Notes.

The Trustee and the Paying Agent shall return to the Company upon written request any money or Notes held by them for the payment of any amount with respect to the Notes that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or Notes must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

13. Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Notes may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Notes at the time outstanding and (ii) certain Defaults or Events of Default may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Notes at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Noteholder, the Company and the Trustee may amend the Indenture or the Notes, among other things, to cure any ambiguity, omission, defect or inconsistency, or to comply with Article 5 of the Indenture, or to make any change that does not adversely affect the rights of any Noteholder, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA.

14. Defaults and Remedies.

Under the Indenture, Events of Default include (1) the Company fails to pay when due the principal of or premium, if any, on any of the Notes at maturity, upon exercise of a repurchase right or otherwise; (2) the Company fails to pay an installment of interest on any of the Notes that continues for 30 days after the date when due; (3) the Company fails to deliver Common Shares, together with cash in lieu of fractional shares, when such Common Shares or cash in lieu of fractional shares is required to be delivered upon conversion of a Note and such failure continues for 10 days after such required delivery date; (4) the Company fails to give notice regarding a Fundamental Change within the time period specified in the Indenture; (5) the Company fails to perform or observe any other term, covenant or agreement contained in the Notes or the Indenture for a period of 60 days after written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Notes then outstanding; (6) (A) the Company or any Significant Subsidiary fails to make any payment by the end of the applicable grace period, if any, after the final scheduled payment date for such payment with respect to any indebtedness for borrowed money in an aggregate amount in excess of $10 million or (B) indebtedness for borrowed money of the Company or any Significant Subsidiary in an aggregate amount in excess of $10 million shall have been accelerated or otherwise declared due and payable, or required to be prepaid or repurchased (other than by regularly scheduled required prepayment) prior to the scheduled maturity thereof as a result of a default with respect to such indebtedness referred to in subclause (A) or (B) hereof, in either case without such having been discharged, cured, waived, rescinded or annulled, for a period of 30 days after receipt by the Company of a Notice of Default; (7) the Company or any Significant Subsidiary fails to make any payment on a final judgment in an aggregate amount in excess of $10 million without such judgment having been paid, discharged or stayed for a period of 60 days; and (8) certain events of bankruptcy, insolvency or reorganization with respect to the Company or any Significant Subsidiary or any Subsidiaries of the Company which in the aggregate would constitute a Significant Subsidiary. If an Event of Default (other than an Event of Default specified in clause (8) above) occurs and is continuing, the Trustee, or the Holders of at least 25% in aggregate principal amount of the Notes at the time outstanding, may declare all the Notes to be due and payable immediately. Certain events of bankruptcy or insolvency are Events of Default which will result in the Notes becoming due and payable immediately upon the occurrence of such Events of Default.

Noteholders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives reasonable indemnity or security. Subject to certain limitations, Holders of a majority in aggregate principal amount of the Notes at the time outstanding may direct the Trustee in its exercise of any trust or power. The Trustee shall, within 90 days of the occurrence of an Event of Default, give notice of such Event of Default to the holders of the Notes, *provided* that the Trustee may withhold from Noteholders notice of any continuing Default (except a Default in payment of amounts specified in clause (1) or (2) above) if it determines that withholding notice is in their interests.

15. Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others.

A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Noteholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

17. Authentication.

This Note shall not be valid until an authorized signatory of the Trustee or an Authenticating Agent manually signs the Trustee's Certificate of Authentication on the other side of this Note.

18. Abbreviations.

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

19. GOVERNING LAW.

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

The Company will furnish to any Noteholder upon written request and without charge a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

XOMA Ltd.
7910 Seventh Street
Berkeley, California 94710

CONVERSION NOTICE

TO: XOMA LTD.
WELLS FARGO BANK, NATIONAL ASSOCIATION

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

Dated: _____

_____

Signature(s)

Signature(s) must be guaranteed by an "**eligible guarantor institution**" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

_____

Signature Guarantee

Fill in the registration of Common Shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

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

$ _____

Social Security or Other Taxpayer Identification Number:

FUNDAMENTAL CHANGE PURCHASE NOTICE

TO: XOMA LTD.
WELLS FARGO BANK, NATIONAL ASSOCIATION

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from XOMA Ltd. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Note (Certificate No._____), or the portion thereof (which is $1,000 or a whole multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Note to the registered holder hereof.

Dated: _____

_____

_____
Signature(s)

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

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

$ _____

_____
Social Security or Other
Taxpayer Identification Number

ASSIGNMENT

For value received _____ hereby sell(s) assign(s) and transfer(s) unto _____ (Please insert social security or other Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____

Signature(s)

Signature(s) must be guaranteed by an "**eligible guarantor institution**" meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "**signature guarantee program**" as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Signature Guarantee

NOTICE: The signature of the conversion notice, the Fundamental Change Purchase Notice or the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

SCHEDULE I to EXHIBIT A

XOMA LTD.
6.50% Convertible SNAPs$_{sm}$ Due 2012

No:

Date	Principal Amount	Notation

SCHEDULE I

The following table sets forth the Share Prices and the number of Additional Shares to be issuable per $1,000 principal amount of Notes.

Effective Date	$1.63	$1.75	$2.25	$2.75	$3.25	$3.75	$4.25	$4.75	$5.25	$5.75	$6.25	$6.75
February 1, 2005	50.00	50.00	50.00	50.00	50.00	20.89	16.56	13.25	10.65	8.58	6.90	0.00
February 1, 2006	50.00	50.00	50.00	50.00	21.09	16.47	13.15	10.61	8.61	7.00	5.67	0.00
February 1, 2007	50.00	50.00	50.00	18.07	12.78	9.81	7.85	6.41	5.28	4.35	3.58	0.00
February 1, 2008	50.00	50.00	18.02	1.72	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
February 1, 2009	50.00	50.00	16.87	0.87	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
February 1, 2010	50.00	50.00	16.32	0.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
February 1, 2011	50.00	50.00	14.03	0.52	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
February 1, 2012	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)

WELLS FARGO BANK, NATIONAL ASSOCIATION

(Exact name of trustee as specified in its charter)

Not Applicable **(Jurisdiction of incorporation or organization if not a U.S. national bank)**	**94-1347393** **(I.R.S. Employer Identification No.)**
420 Montgomery Street **San Francisco, CA** **(Address of principal executive offices)**	**94163** **(Zip code)**

Wells Fargo & Company
Law Department, Trust Section
MAC N9305-172
Sixth and Marquette, 17th Floor
Minneapolis, MN 55479
(agent for services)

XOMA Ltd.

(Exact name of obligor as specified in its charter)

Bermuda **(State or other jurisdiction of incorporation or organization)**	**52-2154066** **(I.R.S. Employer Identification No.)**
2910 Seventh Street **Berkeley, CA** **(Address of principal executive offices)**	**94710** **(Zip code)**

6.50% CONVERTIBLE SENIOR NOTES DUE 2012
(Title of the indenture securities)

Item 1. **General Information.** Furnish the following information as to the trustee:

(a) Name and address of each examining or supervising authority to which it is subject.

Comptroller of the Currency,
Treasury Department
Washington, D.C. 20230

Federal Deposit Insurance Corporation
Washington, D.C. 20429

Federal Reserve Bank of San Francisco
San Francisco, CA 94120

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

Item 2. **Affiliations with Obligor.** If the obligor is an affiliate of the trustee, describe each such affiliation.

None with respect to the trustee.

No responses are included for Items 3-14 of this Form T-1 because the obligor is not in default as provided under Item 13.

Item 15. **Foreign Trustee.** Not applicable.

Item 16. **List of Exhibits.** List below all exhibits filed as a part of this Statement of Eligibility. Wells Fargo Bank incorporates by reference into this Form T-1 exhibits attached hereto.

Exhibit 1. A copy of the Articles of Association of the trustee now in effect. *

Exhibit 2. A copy of the Comptroller of the Currency Certificate of Corporate Existence for Wells Fargo Bank, National Association, dated November 28, 2001. *

Exhibit 3. A copy of the authorization of the trustee to exercise corporate trust powers. A copy of the Comptroller of the Currency Certificate of Corporate Existence (with Fiduciary Powers) for Wells Fargo Bank, National Association, dated November 28, 2001. *

Exhibit 4. Copy of By-laws of the trustee as now in effect. *

Exhibit 5. Not applicable.

Exhibit 6. The consents of United States institutional trustees required by Section 321(b) of the Act.

Exhibit 7. Attached is a copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

Exhibit 8. Not applicable.

Exhibit 9. Not applicable.

* Incorporated by reference to exhibit number 25 filed with registration statement number 333-87398.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Los Angeles and State of California on the day of 11th day of January, 2006.

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ MADDY HALL

Name: **Maddy Hall**
Title: **Assistant Vice President**

Exhibit 6

January 11, 2006

Securities and Exchange Commission
Washington, D.C. 20549

Gentlemen:

In accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, the undersigned hereby consents that reports of examination of the undersigned made by Federal, State, Territorial, or District authorities authorized to make such examination may be furnished by such authorities to the Securities and Exchange Commission upon its request thereof.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ MADDY HALL
Maddy Hall
Assistant Vice President

Consolidated Report of Condition of

Wells Fargo Bank National Association
of 101 North Phillips Avenue, Sioux Falls, SD 57104
And Foreign and Domestic Subsidiaries,
at the close of business September 30, 2005, filed in accordance with 12 U.S.C. §161 for National Banks.

		Dollar Amounts In Millions
ASSETS		
Cash and balances due from depository institutions:		
Noninterest-bearing balances and currency and coin		$ 13,784
Interest-bearing balances		2,075
Securities:		
Held-to-maturity securities		0
Available-for-sale securities		28,826
Federal funds sold and securities purchased under agreements to resell:		
Federal funds sold in domestic offices		1,426
Securities purchased under agreements to resell		1,006
Loans and lease financing receivables:		
Loans and leases held for sale		45,712
Loans and leases, net of unearned income	242,978	
LESS: Allowance for loan and lease losses	2,230	
Loans and leases, net of unearned income and allowance		240,748
Trading Assets		6,821
Premises and fixed assets (including capitalized leases)		3,712
Other real estate owned		155
Investments in unconsolidated subsidiaries and associated companies		335
Customers' liability to this bank on acceptances outstanding		82
Intangible assets		
Goodwill		8,734
Other intangible assets		11,308
Other assets		15,385
Total assets		$ 380,109
LIABILITIES		
Deposits:		
In domestic offices		$ 270,245
Noninterest-bearing	82,683	
Interest-bearing	187,562	
In foreign offices, Edge and Agreement subsidiaries, and IBFs		23,338
Noninterest-bearing	4	
Interest-bearing	23,334	
Federal funds purchased and securities sold under agreements to repurchase:		
Federal funds purchased in domestic offices		16,167
Securities sold under agreements to repurchase		3,986

	Dollar Amounts In Millions
Trading liabilities	5,804
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	7,593
Bank's liability on acceptances executed and outstanding	82
Subordinated notes and debentures	7,045
Other liabilities	10,821
Total liabilities	$ 345,081
Minority interest in consolidated subsidiaries	66
EQUITY CAPITAL	
Perpetual preferred stock and related surplus	0
Common stock	520
Surplus (exclude all surplus related to preferred stock)	24,671
Retained earnings	9,342
Accumulated other comprehensive income	429
Other equity capital components	0
Total equity capital	34,962
Total liabilities, minority interest, and equity capital	$ 380,109

I, Karen B. Martin, Vice President of the above-named bank do hereby declare that this Report of Condition has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true to the best of my knowledge and belief.

Karen B. Martin
Vice President

We, the undersigned directors, attest to the correctness of this Report of Condition and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true and correct.

Howard Atkins
John Stumpf Directors
Carrie Tolstedt

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9

Guidelines for Determining the Proper Identification Number to Give the Payer.—Social Security Numbers have nine digits separated by two hyphens: i.e. 000-00-0000. Employer Identification Numbers have nine digits separated by only one hyphen: i.e. 00-0000000. The table below will help determine the number to give the payer.

For this type of account:	Give name and SOCIAL SECURITY number of—
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account(1)
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)
4. (a)The usual revocable savings trust account (grantor is also trustee)	The grantor-trustee(1)
(b) So-called trust account that is not a legal or valid trust under State law	The actual owner(1)
5. Sole proprietorship	The owner(3)

For this type of account:	Give name and EMPLOYER IDENTIFICATION number of—
6. A valid trust, estate, or pension trust	The legal entity(4)
7. Corporate	The corporation
8. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
9. A broker or registered nominee	The broker or nominee
10. Partnership	The partnership
11. Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district, or prison) that receives agricultural program payments	The public entity

(1) List first and circle the name of the person whose number you furnish. If only one person on a joint account has a Social Security Number, that person's Social Security Number must be furnished.
(2) Circle the minor's name and furnish the minor's Social Security Number.
(3) You must show your individual name, but you may also enter your business or "doing business as" name. You may either use your Social Security Number or Employer Identification Number (if you have one).
(4) List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: If no name is circled when there is more than one name listed, the number will be considered to be that of the first name listed.