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

FORM 10-K

[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED DECEMBER 31, 1999

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM TO

COMMISSION FILE NUMBER: 0-27488

INCYTE PHARMACEUTICALS, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	94-3136539
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(IRS EMPLOYER IDENTIFICATION NO.)
3174 PORTER DRIVE, PALO ALTO, CALIFORNIA 94304	(650) 855-0555
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

SECURITIES REGISTERED TO SECTION 12(b) OF THE ACT: NONE

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
COMMON STOCK, PAR VALUE $.001 PER SHARE
SERIES A PARTICIPATING PREFERRED STOCK PURCHASE RIGHTS

Indicate by check mark whether the registrant (1) has filed all reports required by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (Section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

The aggregate market value of Common Stock held by non-affiliates (based upon the closing sale price on the Nasdaq National Market on February 29, 2000) was approximately $8,742,060,000.

As of February 29, 2000, there were 31,724,420 shares of Common Stock, $.001 per share par value, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Items 10 (as to directors), 11, 12 and 13 of Part III incorporate by reference information from the registrant's proxy statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the registrant's 2000 Annual Meeting of Stockholders to be held on June 5, 2000.

ITEM 1. BUSINESS

When used in this Report, the words "expects," "anticipates," "estimates," "plans," and similar expressions are intended to identify forward-looking statements. These are statements that relate to future periods and include statements as to the Company's and diaDexus' expected net losses, expected expenditure levels and rate of growth of expenditures, expected cash flows, the adequacy of capital resources, growth in operations, the ability to commercialize products developed under collaborations and alliances, our ability to complete the sequence of full-length genes in areas of therapeutic interest and file patents on these potential drug targets, our ability to integrate companies and operations that we have acquired or will acquire, our ability to implement online delivery of our database and software products, the scheduling and timing of current and future litigation, our strategy with regard to protecting our proprietary technology, our ability to compete and respond to rapid technological change and the performance and utility of our products and services. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, those risks discussed below, as well as the extent to which the pharmaceuticals and biotechnology industries use genomic information in research and development, risks relating to development of new products and services and their use by our potential customers and collaborators, our ability to work with our collaborators to meet the goals of our collaborators and alliances, our ability to retain and obtain customers, the cost of accessing or acquiring technologies or intellectual property, the effectiveness of our sequencing efforts, the impact of alternative technological advances and competition, uncertainties associated with changes in patent laws and developments in and expenses related to litigation and interference proceedings; and the risks set forth below under Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Factors That May Affect Results." These forward-looking statements speak only as of the date hereof. The Company expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in the Company's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

In the sections of this report entitled "Business" and "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Factors That May Affect Results," all references to "Incyte," "we," "us," "our" or the "Company" mean Incyte Pharmaceuticals, Inc. and its subsidiaries, except where it is made clear that the term means only the parent company.

Incyte, LifeSeq and PathoSeq are our registered trademarks. ZooSeq, LifeTools, LifeArray, LifeProt, LifeExpress, GeneAlbum and GEM are our trademarks. We also refer to trademarks of other corporations and organizations in this document.

OVERVIEW

Incyte is a leading provider of genomic information-based products and services. These products and services include database products, genomic data management software tools, microarray-based gene expression services, genomic reagents and related services. We focus on providing an integrated platform of information technologies designed to assist pharmaceutical and biotechnology companies and academic researchers in the understanding of disease and the discovery and development of new drugs.

Our genomic databases integrate bioinformatics software with proprietary and, when appropriate, publicly available genomic information. In building the databases, we utilize high-throughput, computer-aided gene sequencing and analysis technologies to identify and characterize the expressed genes of the human genome, as well as certain animal, plant and microbial genomes. By searching our proprietary genomic databases, customers can integrate and analyze genomic information from multiple sources in order to discover genes that may represent the basis for new biological targets, therapeutic proteins, or gene therapy, antisense or diagnostic products. The pharmaceutical and biotechnology industries use our genomic products and services to accelerate the discovery and development of new diagnostic and therapeutic products. Our products and services can be applied to gene and target discovery, functional genomics studies, preclinical pharmacology and toxicology studies, and can aid in understanding and analyzing the results of clinical development studies.

We currently provide access to our genomic databases through collaborations with pharmaceutical and biotechnology companies worldwide. As of December 31, 1999, more than twenty companies had entered into multi-year agreements to obtain access to our databases on a non-exclusive basis. These companies include the following:

Abbott Laboratories	Johnson & Johnson
AstraZeneca PLC	Millennium Pharmaceuticals, Inc.
Aventis S.A.	Monsanto Company
Bristol-Myers Squibb Company	Novartis AG
Eli Lilly and Company	Pfizer Inc.
F. Hoffmann-La Roche Ltd.	Pharmacia & Upjohn, Inc.
Genentech, Inc.	Schering AG
Glaxo Wellcome plc	Schering-Plough, Ltd.

Revenues from these companies have primarily consisted of database access fees. Our LifeSeq Gold human gene sequence database agreements also provide for future milestone payments and royalties from the sale of products derived from proprietary information contained in one or more database modules.

Our portfolio of products and services includes:

- LifeSeq Gold human gene sequence and expression database;

- PathoSeq microbial genomic database;

- ZooSeq animal model gene sequence and expression database;

- LifeExpress gene expression and protein expression database;

- SNP database that identifies common DNA sequence variants between individuals;

- LifeTools suite of bioinformatics software;

- LifeArray gene expression data management and analysis software;

- LifeProt protein expression data management and analysis software; and

- contract sequencing and other services.

The databases are available using the Oracle database architecture and operate on Sun Microsystems, Compaq and SGI workstations. As part of our strategy for expanding our customer base, we are developing the infrastructure to enable the online delivery of our database and software products.

BACKGROUND

Genes, found in all living cells, are composed of DNA, which in turn is composed of two strands of complementary nucleotides referred to as base pairs or bases. Nucleotides may be one of four different molecules -- adenine, guanine, cytosine, or thymine -- which are strung together in specific patterns to create genes. Genes provide the necessary information to create proteins, the molecules that carry out all functions within a cell. Many human diseases are associated with the inadequate or inappropriate presence, production or performance of proteins. As such, pharmaceutical and biotechnology companies often seek to develop drugs that will bind to a targeted protein involved in disease in order to regulate, inhibit or stimulate its biological activity. Other proteins, known as therapeutic proteins, have direct biological activity and may be capable of treating disease. Insulin and human growth hormone are examples of therapeutic proteins. Understanding the role genes play in disease, and the protein targets or therapeutic proteins that they encode, has thus become a significant area of interest and research within the pharmaceutical and biotechnology industries.

Sequencing

One frequently employed method for determining gene function involves the grouping of genes into "related" families based on similarities, or homologies, in DNA sequence. DNA sequencing is a process that

identifies the order of the bases in a segment of DNA. Once a gene's sequence is known, its function may be inferred by comparing its sequence with the sequences of other human genes of known function, because genes with homologous sequences may have related functions. Comparing gene sequences across species has also become a useful tool for understanding gene function, as frequently it is easier to first assess gene function in other organisms.

Gene Expression

Another method used to determine gene function focuses on the analysis of gene activity, referred to as expression, within a cell. When a gene is active, its DNA is copied into messenger RNA or "mRNA." The population of mRNA within a cell can be isolated and converted into complementary DNA or "cDNA," thereby creating a cDNA library that represents the population of mRNAs present in a cell type at a particular time. In a process called "gene expression profiling," high-throughput cDNA sequencing, computer analysis and microarray technologies can be used to identify which genes are active or inactive and, if active, at what levels. Expression profiles provide a more detailed picture of cellular genetics than conventional laboratory techniques by indicating which genes, both known and novel, are specifically correlated to discrete biological events in normal and disease-state cells.

Microarray Technology

Microarray technology can be used to analyze the expression patterns or sequence variations in a large number of genes simultaneously. A microarray consists of fragments of a single strand DNA's double strand attached to a surface, usually a glass, plastic or silicon slide, in a grid-like formation. When cDNA that has been prepared from mRNA samples from normal and diseased cells is applied to the microarray, complementary strands attach to the DNA fragments on the microarray. Microarray technology allows the fabrication of very small grids containing probes for thousands of different genes. Microarrays can be used in drug discovery and development, to evaluate the behavior of a large number of related genes in a diseased tissue or in response to treatment with a new drug or in diagnostic testing to quickly detect the presence of a large number of disease markers.

Bioinformatics

Due to improvements in sequencing technology, genomic information from both public and private sources is increasing at a dramatic rate. As a result, bioinformatics, or the use of computers and sophisticated algorithms to store, analyze and interpret large volumes of biological data, is essential in order to capture value from this growing pool of data. To date, the main focus of bioinformatic and genomic tools has been drug discovery. The Company believes these tools, and those under development, will also assist researchers with the preclinical and clinical development process. For example, with the help of new technology and bioinformatic analyses scientists may be able to correlate genetic and physiologic response in preclinical animal models, examine gene expression profiles in drug-treated animals to assess the pharmacological activity and toxicity of new drugs, and stratify clinical trial patients according to their gene expression profiles.

Single Nucleotide Polymorphism ("SNP") Discovery

Due to genetic variation, individuals may respond differently to disease or to treatment with the same drug. Few, if any, FDA-approved drugs are capable of successfully treating every individual diagnosed with a targeted disease. The differences in patients' responses to a drug are believed to result in part from differences in the sequence of nucleotides within genes. The most common form of sequence variation is known as a single nucleotide polymorphism or "SNP." A SNP is defined as a single base difference within the same DNA region between two individuals. Some SNPs are "silent" and not associated with a disease or a patient's ability to respond to a particular therapy, and some SNPs occur at a frequency that is too low to justify large-scale patient screening. Thus, researchers need to do more than identify SNPs; they must identify the most frequently occurring SNPs and identify those that correlate with a patient's disease prognosis or ability to respond to a drug. Through our acquisition of Hexagen in September 1998, we are developing fluorescent single-strand confirmation polymorphism (fSSCP) technology, a high-throughput SNP discovery technology.

fSSCP is particularly useful for identifying SNPs in genes not expressed or more rarely expressed. This gel-based system detects SNPs in multiple samples simultaneously by observing changes in the tertiary structure of single stranded DNA fragments due to base pair changes. Incyte is contributing technologies in the areas of electrophoresis, fluorescence chemistries, sequencing and bioinformatics in order to continue to develop and improve the accuracy and efficiency of this technology.

Gene Mapping

Mapping refers to the determination of the physical location of a gene in the genome and the relative position of that gene to other genes along a chromosome. Physiological processes and associated diseases can be extremely complex and involve many genes. A gene can activate one or more different genes forming a cascade of genetically controlled events or a "pathway." When the genes involved in such a pathway are located within neighboring regions of DNA, mapping can allow the location of one member of the pathway to be used to identify the other members. In addition, genetically inherited diseases that have been passed from generation to generation may be associated with visible chromosome alterations, such as deletions of large segments of the chromosome or insertions within the chromosome. These physical chromosome abnormalities allow researchers to identify the DNA regions and genes that have a critical role in causing disease.

Proteomics

Proteomics is a relatively new field of study that involves the separation, identification, and characterization of proteins present in a biological sample. By comparing disease and control samples, it is possible to identify disease-specific proteins. These may have potential as targets for drug development or as molecular markers of disease. The power of proteomics lies in the ability to directly measure a gene product, determine subcellular localization and detect post-translational modifications.

PRODUCTS AND SERVICES

Our current products and services include an integrated platform of genomic databases, data management software tools, microarray-based gene expression databases and services, and related reagents and services.

Genomic Databases. We provide our database collaborators with non-exclusive database access. Database collaborators receive periodic data updates as well as software upgrades and additional search and analysis tools when they become available. The fees and the period of access are negotiated independently with each company. Fees generally consist of database access fees, option fees, and non-exclusive or exclusive license fees corresponding to patent rights on proprietary sequences. We may also receive future milestone and royalty payments from database collaborators from the development and sale of their products derived from our technology and database information. Researchers can browse not only Incyte-generated data, but also public domain information. We currently offer the following database modules:

- LifeSeq Gold Database. The LifeSeq Gold human sequence and expression database integrates the information from our LifeSeq public-domain and proprietary gene sequences and expression database; LifeSeq FL, full-length gene sequence database; and the sequence information from our GeneAlbum database and reagent set. LifeSeq Gold uses a novel method to assemble cDNA sequence fragments (ESTs) into genes, providing increased sensitivity for distinguishing between closely related sequences, including splice variants. Researchers can easily move from one module to another through the HTML-based graphical interface. The sequence database contains our computer-edited gene sequence files and is used by researchers to identify related or homologous genes. For example, a scientist may wish to identify new genes homologous to a gene identified through their own research and believed to be linked to a disease. The database contains biological information about each sequence in our sequence database, including tissue source, homologies, and annotations regarding characteristics of the gene sequence. Also, the database contains a gene expression profile for every tissue in the database combined with proprietary bioinformatics software to allow collaborators to browse data and compare differences in gene expression across cells, tissues, and different disease states. Thus, the database can

be used to assist researchers in correlating the presence of specific genes to discrete biological events in normal and disease-state cells. We continually add sequences and expression data from normal and diseased tissues to the LifeSeq Gold database.

- PathoSeq Database. The PathoSeq database currently contains proprietary and public domain genomic data for more than 40 medically relevant bacterial and fungal microorganisms. With drug-resistant strains of bacteria and other microorganisms posing an increasing threat to world health, pharmaceutical and biotechnology companies are searching for genes unique to these pathogens that will aid in the development of new drugs to treat infectious disease. Our proprietary bioinformatics process edits all sequence data to remove artifacts and contamination, assemble sequences, display the relative position of the DNA coding regions, and identify genes either common among multiple microorganisms or unique to one microbial genome. We believe PathoSeq can help researchers understand the biology of microorganisms, study the mechanisms of drug resistance, identify genes that may make effective drug targets, and, ultimately, develop new therapeutics to treat and prevent infectious disease.

- ZooSeq Database. The ZooSeq database was developed to aid pharmaceutical and biotechnology companies in designing and evaluating preclinical drug studies in animal models, a crucial step in the drug development process. The database currently contains gene sequence and expression data for the rat, mouse, and monkey -- animals commonly used in preclinical drug toxicology and efficacy studies. By correlating a drug's effects on an animal with the animal's genetic makeup, and then cross-referencing these data with our human LifeSeq database, a researcher may better predict the drug's efficacy and side effects before moving to human clinical trials.

- LifeExpress Database. The LifeExpress database is a comprehensive, nonexclusive database of gene expression and protein expression on samples focusing on major therapeutic areas and pharmacology/toxicology. The protein expression modules of the LifeExpress database are developed in cooperation with our collaborator Oxford GlycoSciences. The two subcategories of LifeExpress are TargetExpress and LeadExpress. Aimed at facilitating the discovery and validation of high value targets, TargetExpress provides further annotation and detailed expression information on known and unknown gene products. LeadExpress focuses on using genomic and proteomic technologies to further annotate chemical structures of common drug classes.

- IsSNPs. Our in silico SNP program identifies common SNPs by mining LifeSeq Gold and genomic sequence data. We have identified approximately 46,000 isSNPs and expect to identify a total of 100,000 isSNPs from LifeSeq Gold (over 60,000 from expressed regions) throughout the coming year.

Contract Sequencing. Contract sequencing services generally include generating sequence and bioinformatics data for customers using our core strengths in library construction, high-throughput cDNA sequencing and bioinformatics.

Software. We have developed an enterprise-wide genomic information management system capable of updating, reprocessing and integrating genetic data from multiple sources and from different organisms. This system allows the integration of our proprietary, subscriber-specific and public domain data, and is capable of comparing information from humans, animals, microbes, fungi and plants. The system incorporates the architecture necessary to integrate our software tools data visualization tools, data mining programs and project management capabilities, and is capable of being integrated with additional technologies developed to more efficiently manage and analyze genomic data.

- LifeTools, a suite of specialized bioinformatic software programs and project management tools, consists of sequence analysis and data management tools for handling complex genomic information from multiple sources. LifeTools reads and edits raw sequence data, including data imported from public databases, and annotates and clusters sequence fragments based on sequence similarity. LifeTools includes a fast, scalable database search engine with intranet-based graphical tools for interactive queries and analyses. The LifeTools relational database management system stores and distributes sequence assembly, homology, tissue expression information and biological data. Our

database management architecture is based on open system standards, providing interconnectivity between disparate systems and applications, and enterprise-wide access to data and functions.

- LifeArray software manages and analyzes data resulting from microarray hybridization experiments. It includes a searchable database that accommodates experiment results from a variety of microarray platforms. LifeArray provides an integrated data warehouse and analysis environment, which allows the customer to bring data from multiple microarray platforms into one integrated environment. LifeArray enables the user to visualize differential expression between biological samples and can track all details of microarrays, genes, biological samples, donor information, and experimental results in one integrated environment with a Java-based interface. It is an enterprise-wide system that can support as many simultaneous users as required, and grow to suit changing microarray management needs.

- LifeProt software provides tools to query, display, and analyze the protein expression data resulting from two-dimensional gel experiments. Using the program's query capabilities, customers can quickly locate relevant sample data sets from among many stored in a central database. This database tracks experiment conditions, tissue, treatment, and donor information, as well as the sample data. The LifeProt software is an enterprise-wide system that uses a Java-based interface and is available across a company to scientists using a variety of different computers and operating systems.

Microarray-Based Services. We offer microarray-based gene expression services to the pharmaceutical, biotechnology, and agricultural industries and academic researchers. These services can be used to simultaneously evaluate the gene expression profile of a large number of genes. Our GEM microarray technology allows probes for up to 10,000 genes per microarray. Microarrays can be used to identify the genes involved in a complex disease pathway, examine a drug-treated tissue to understand how the drug affected the expression of important genes, and study several new drug candidates to determine if one has a more favorable effect on gene expression than the others. Experiments can use either prefabricated arrays or custom arrays. Prefabricated arrays contain either public domain genes or genes chosen from our databases. We currently offer 18 prefabricated microarrays, including an array containing the genes found in a microbial pathogen Staphlycoccus aureus, an array containing the genes found in the rat liver and kidney, and a series of arrays that contain Incyte proprietary genes. Custom arrays can contain genes provided by the customer or chosen by the customer from our proprietary databases.

DNA Reagents and Other Services. We offer a variety of DNA reagents and other services designed to assist its collaborators in using information from its databases in the customer's internal lab-based experiments. The cloned DNA fragments from which the information in our databases is derived represent valuable resources for researchers, enabling them to perform bench-style experiments to supplement the information obtained from searching our databases. We retain copies of all isolated clones corresponding to the sequences in the database. Our collaborators may request clones corresponding to a sequence of interest on a one-by-one basis or through the LifeSeq GeneAlbum component of LifeSeq Gold. GeneAlbum is a subscription-based service that provides database collaborators with large numbers of sequence verified DNA clones. In addition, we produce a broad line of genomic research products, such as DNA clones and insert libraries, and offers technical support services, including high-throughput DNA screening, custom robotic services, contract DNA preparation, contract mapping and fluorescent in situ hybridization, to assist researchers in the identification and isolation of novel genes.

DATABASE PRODUCTION

We engage in the high-throughput automated sequencing of genes derived from tissue samples followed by the computer-aided analysis of each gene sequence to identify homologies to genes of known function in order to predict the biological function of newly identified sequences. The derivation of information in our databases involves the following steps:

- Tissue Access. We obtain tissue samples representing most major organs in the human body from various academic and commercial sources. Where possible, we obtain information as to the medical history and pathology of the tissue. The genetic material is isolated from the tissue and prepared for

analysis. The results of this analysis, as well as the corresponding pathology and medical history information, are incorporated into the databases.

- High-Throughput cDNA Sequencing. We utilize specialized teams in an integrated approach to our high-throughput sequencing and analysis effort. Gene sequencing is performed using multiple work shifts to increase daily throughput. One team develops and prepares cDNA libraries from biological sources of interest, a second team prepares the cDNAs using robotic workstations to perform key steps that result in purified cDNAs for sequencing, and a third team operates the automated DNA sequencers.

- Bioinformatics. Sequence information generated from our high-throughput sequencing operations is uploaded to a network of servers. Our proprietary bioinformatic software then assembles and edits the sequence information. The sequence of each cDNA is compared via automated, computerized algorithms to the sequences of known genes in our databases and public domain databases to identify whether the cDNA codes for a known protein or is homologous to a known gene. Each sequence is annotated as to its cell or tissue source, its relative abundance and whether it is homologous to a known gene with known function. The bioinformatics staff monitors this computerized analysis and may perform additional analyses on sequence information. The finished data are then added to our proprietary sequence databases.

COLLABORATORS

As of December 31, 1999, we had database collaboration agreements with more than 20 companies. Each collaborator has agreed to pay annual fees to receive non-exclusive access to one or more of our databases. One of these companies contributed 12% of total revenues in 1998. No customer contributed 10% or more of total revenues in 1999 or 1997. During 1999, our database collaborators included the following companies:

Abbott Laboratories	Johnson & Johnson
AstraZeneca PLC	Millennium Pharmaceuticals, Inc.
Aventis S.A.	Monsanto Company
Bristol-Myers Squibb Company	Novartis AG
Eli Lilly and Company	Pfizer Inc.
F. Hoffmann-La Roche Ltd.	Pharmacia & Upjohn, Inc.
Genentech, Inc.	Schering AG
Glaxo Wellcome plc	Schering-Plough, Ltd.

Some of our database agreements contain minimum annual update requirements, which if not met could result in our breach of the respective agreement. We cannot assure you that any of our database collaboration agreements will not be terminated early in accordance with their terms. Loss of revenues from any individual database agreement, if terminated or not renewed, could have an adverse impact on our results of operations, although is not anticipated to have a material adverse impact on our business or financial condition.

DEVELOPMENT PROGRAMS

Since our inception, we have made substantial investments in research and technology development. During the years ended December 31, 1999, 1998, and 1997 we spent approximately $146.8 million, $97.2 million, and $72.5 million, respectively, on research and development activities. This investment in research and development includes an active program to enter into relationships with other technology-driven companies and, when appropriate, acquire licenses to technologies for evaluation or use in the production and analysis process. Not all of these technologies or relationships survive the evaluation process. We have entered into a number of research and development relationships with companies and research institutions.

In January 1998, we announced a relationship with Oxford GlycoSciences plc ("OGS") to investigate the use of proteomics, the large-scale, high-throughput analysis of protein expression, in the development of new information-based products. As part of the relationship, we made an equity investment in OGS. We and OGS entered into a collaborative agreement under which the two parties are developing data, software and related services, focusing on protein expression and sequence information from a variety of human tissues. As part of the collaborative agreement, we reimbursed OGS $5.0 million in 1999 for services rendered and agreed to reimburse OGS for up to an additional $5.0 million in 2000 if revenues are not sufficient to offset OGS' expenses for services to be rendered.

In August 1998, we initiated a series of programs in human genome sequencing, accelerated human genome mapping, bioinformatics and SNP discovery. The information resulting from these efforts will be used to supplement existing databases and to generate new databases and services. We are initiating SNP programs focused on specific candidate genes, gene families, disease pathways, therapeutic areas or drug targets that could be useful to individual pharmaceutical partners. These programs may include the identification of genes associated with a particular disease and an in depth study of the population frequency and disease correlation of SNPs within a selected DNA region. The SNP discovery efforts were assisted by our acquisition of Hexagen in September 1998.

We are developing various platforms that can be used for the high throughput screening of patient samples in order to correlate SNPs with patients' responses to drugs. These platforms may be used to offer genotyping and patient profiling services to pharmaceutical companies to help identify statistically significant and medically relevant associations between SNPs in specific genes and drug response or disease susceptibility. We expect that this service will be used to assist in the evaluation of new drugs in clinical trials and to assess clinical trial design.

DIADEXUS JOINT VENTURE

In September 1997, we established a 50-50 joint venture company, diaDexus, LLC, with SmithKline Beecham Corporation. diaDexus is applying genomic and bioinformatic technologies to the discovery and commercialization of novel molecular diagnostic products. We provide diaDexus with non-exclusive access to our human and microbial databases (LifeSeq Gold and PathoSeq) for diagnostic applications. diaDexus also has exclusive rights to develop diagnostic tests based on novel molecular targets and genetic alterations identified as part of SmithKline Beecham's drug discovery efforts. SmithKline Beecham and Incyte have also each assigned various additional technologies and intellectual property rights in the diagnostic field and initially contributed a combined total of $25 million in funding to diaDexus. In July 1999, we and SmithKline Beecham each invested an additional $2.5 million in the form of convertible notes that mature in April 2000. The notes will automatically convert into equity if certain funding requirements are met.

diaDexus is focusing initially on the generation of unique diagnostic markers for so-called "homebrew" tests -- scientifically validated tests which are awaiting formal regulatory approval -- for reference laboratory testing and for license to diagnostic kit manufacturers. Ultimately, diaDexus may develop its own capacity to manufacture kits for sale to clinical testing laboratories. The initial product range will focus on tests for disease detection. New tests for improved diagnosis, staging and patient stratification in infectious disease and oncology will be accorded particular emphasis.

PATENTS AND PROPRIETARY TECHNOLOGY

Our database business and competitive position are in part dependent upon our ability to protect our proprietary database information and software technology. We rely on patent, trade secret and copyright law, as well as nondisclosure and other contractual arrangements to protect our proprietary information.

Our ability to license proprietary genes and SNPs may be dependent upon our ability to obtain patents, protect trade secrets and operate without infringing upon the proprietary rights of others. Other pharmaceutical, biotechnology and biopharmaceutical companies, as well as academic and other institutions, have filed applications for, may have been issued patents or may obtain additional patents and proprietary rights, relating to products or processes competitive to our products or processes. Patent applications filed by competitors may

claim some of the same gene sequences or partial gene sequences as those claimed in patent applications that we file. We are aware that some entities have made or have announced their intention to make gene sequences publicly available. Publication of sequence information may adversely affect our ability to obtain patent protection for sequences that have been made publicly available.

Our current policy is to file patent applications on what we believe to be novel full-length and partial gene sequences obtained through our high-throughput computer-aided gene sequencing efforts. We have filed U.S. patent applications in which we have claimed certain partial gene sequences and have filed patent applications in the U.S. and applications under the Patent Cooperation Treaty ("PCT"), designating countries in Europe as well as Canada and Japan, claiming full-length gene sequences associated with cells and tissues that are the subject of our high-throughput gene sequencing program. To date, we hold approximately 400 U.S. patents with respect to full-length gene sequences and one issued U.S. patent claiming multiple partial gene sequences. Currently, we have no registered copyrights for our database-related software.

In 1996, the United States Patent and Trademark Office issued guidelines limiting the number of partial gene sequences that can be examined in a single patent application. Many of our patent applications containing multiple partial sequences contain more sequences than the maximum number allowed under the new guidelines. We are reviewing our options, and due to the resources needed to comply with the guidelines, we may decide to abandon patent applications for some of our partial gene sequences.

We have begun to file patent applications for patentable SNPs identified with our LifeSeq Gold database, through our human genome sequencing program, and through the use of our fSSCP discovery technology. These patents will claim rights to SNPs for diagnostic and genotyping purposes. As information relating to particular SNPs is developed, we plan to seek additional rights in those SNPs that are associated with specific diseases, functions or drug responses. The scope of patent protection for gene sequences, including SNPs, is highly uncertain, involves complex legal and factual questions and has recently been the subject of much controversy. No clear policy has emerged with respect to the breadth of claims allowable for SNPs. There is significant uncertainty as to what, if any, claims will be allowed on SNPs discovered through high throughput discovery programs.

As the biotechnology industry expands, more patents are issued and other companies engage in the business of discovering genes and other genomic-related businesses, the risk increases that our potential products, and the processes used to develop these products, may be subject to claims that they infringe the patents of others. Further, we are aware of several issued patents in the field of microarray or gridding technology, which can be utilized in the generation of gene expression information. Some of these patents are the subject of litigation. Therefore, our operations may require us to obtain licenses under any of these patents or proprietary rights, and these licenses may not be made available on terms acceptable to us. Litigation may be necessary to defend against or assert claims of infringement, to enforce patents issued to us, to protect trade secrets or know-how owned by us, or to determine the scope and validity of the proprietary rights of others. We believe that some of our patent applications cover genes that may also be claimed in patent applications filed by other parties. Interference proceedings may be necessary to establish which party was the first to invent a particular sequence for the purpose of patent protection. Several interferences involving our patent applications covering full length genes have been declared. Litigation or interference proceedings, regardless of the outcome, could result in substantial costs to us, and divert our efforts, and may have a material adverse effect on our business, operating results and financial condition. In addition, there can be no assurance that such proceedings or litigation would be resolved in our favor.

In January and September 1998, Affymetrix, Inc. filed lawsuits in the United States District Court for the District of Delaware alleging infringement of three U.S. patents by Incyte and its Synteni, Inc. subsidiary. Incyte believes that it and Synteni have meritorious defenses and intends to defend these suits vigorously. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Factors That May Affect Results -- We Are Involved in Patent Litigation, Which, If Not Resolved Favorably, Could Harm Our Business."

COMPETITION

There is a finite number of genes in the human genome, and competitors may seek to identify, sequence and determine in the shortest time possible the biological function of a large number of genes in order to obtain a proprietary position with respect to the largest number of new genes discovered. A number of companies, institutions, and government-financed entities are engaged in gene sequencing, gene discovery, gene expression analysis, positional cloning and other genomic service businesses. Many of these companies, institutions and entities have greater financial and human resources than we do. In addition, we are aware that other companies have developed databases containing gene sequence, gene expression, genetic variation or other genomic information and are marketing, or have announced their intention to market, their data to pharmaceutical companies. We expect that additional competitors may attempt to establish databases containing this information in the future.

In addition, competitors may discover and establish patent positions with respect to the gene sequences and polymorphisms in our databases. Further, some entities engaged in or with stated intentions to engage in gene sequencing have made or have stated their intention to make the results of their sequencing efforts publicly available. These patent positions, or the public availability of gene sequences comprising substantial portions of the human genome or on microbial or plant genes, could:

- decrease the potential value of our databases to our subscribers; and

- adversely affect our ability to realize royalties or other revenue from commercialization of products based upon such genetic information.

The gene sequencing machines that are utilized in our high-throughput computer-aided gene sequencing operations are commercially available and are currently being utilized by several competitors. Also, some of our competitors or potential competitors are in the process of developing, and may successfully develop, proprietary sequencing technologies that may be more advanced than the technology we use. In addition, we are aware that a number of companies are pursuing alternative methods for generating gene expression information, including some that have developed and are developing microarray technologies. At least one other company currently offers microarray-based services that might be competitive with those we offer. These advanced sequencing or gene expression technologies, if developed, may not be commercially available for our purchase or license on reasonable terms, if at all.

A number of companies have announced their intent to develop and market software to assist pharmaceutical companies and academic researchers in the management and analysis of their own genomic data, as well as the analysis of sequence data available in the public domain. Some of these entities have access to significantly greater resources than we do, and their products may achieve greater market acceptance than our products.

Our SNP discovery platform represents a modification of a process that is in the public domain. Other companies could make similar or superior improvements in this process.

We believe that the following are important aspects of our competitive position:

- the features and ease of use of our database software;

- our experience in high-throughput gene sequencing;

- the cumulative size of our databases;

- the quality of the data, including the annotations in our databases;

- our computing infrastructure; and

- and our experience with bioinformatics and database software.

The genomics industry is characterized by extensive research efforts and rapid technological progress. New developments are expected to continue and there can be no assurance that discoveries by others will not render our services and potential products noncompetitive. In addition, significant levels of research in

biotechnology and medicine occur in universities and other non-profit research institutions. These entities have become increasingly active in seeking patent protection and licensing revenues for their research results. These entities also compete with us in recruiting talented scientists. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Factors That May Affect Results -- We Experience Intense Competition and Rapid Technological Change and If We Do Not Compete Effectively Our Revenues May Decline."

GOVERNMENT REGULATION

Regulation by governmental authorities in the United States and other countries will be a significant factor in the production and marketing of any pharmaceutical products that may be developed by us or our licensees. At the present time, we do not intend to develop any pharmaceutical products ourselves. Our agreements with our LifeSeq Gold database subscribers provide for the payment to us of royalties on any pharmaceutical products developed by those subscribers derived from proprietary information obtained from our genomic databases. Thus, the receipt and timing of regulatory approvals for the marketing of such products may have a significant effect on our future revenues. Pharmaceutical products developed by licensees will require regulatory approval by governmental agencies prior to commercialization. In particular, human pharmaceutical therapeutic products are subject to rigorous preclinical and clinical testing and other approval procedures by the United States Food and Drug Administration in the United States and similar health authorities in foreign countries. Various federal and, in some cases, state statutes and regulations also govern or influence the manufacturing, safety, labeling, storage, record keeping and marketing of such pharmaceutical products, including the use, manufacture, storage, handling and disposal of hazardous materials and certain waste products. The process of obtaining these approvals and the subsequent compliance with appropriate federal and foreign statutes and regulations require the expenditure of substantial resources over a significant period of time, and there can be no assurance that any approvals will be granted on a timely basis, if at all. Any such delay in obtaining or failure to obtain such approvals could adversely affect our ability to earn milestone payments, royalties or other license-based fees. Additional governmental regulations that might arise from future legislation or administrative action cannot be predicted, and such regulations could delay or otherwise affect adversely regulatory approval of potential pharmaceutical products. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Factors That May Affect Results -- Our Revenues Are Derived Primarily from the Pharmaceutical and Biotechnology Industries and May Fluctuate Substantially Due to Reductions and Delays in Research and Development Expenditures."

HUMAN RESOURCES

As of December 31, 1999, we had 1,108 full-time equivalent employees (195 of whom were contract or part-time employees), including 399 in sequencing, microarray, SNP and reagent production, 294 in bioinformatics, 239 in research and technology development, and 176 in marketing, sales and administrative positions. None of our employees is covered by collective bargaining agreements, and management considers relations with our employees to be good. Our future success will depend in part on the continued service of our key scientific, software, bioinformatics and management personnel and its ability to identify, hire and retain additional personnel, including personnel in the customer service, marketing and sales areas. There is intense competition for qualified personnel in the areas of our activities, especially with respect to experienced bioinformatics and software personnel, and there can be no assurance that we will be able to continue to attract and retain such personnel necessary for the development of our business. Failure to attract and retain key personnel could have a material adverse effect on our business, financial condition and operating results. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Factors that May Affect Results -- We May Have Difficulty Managing Our Growth, Which May Impact Our Ability to Optimize Our Resources" and "-- We Depend on Key Employees in a Competitive Market for Skilled Personnel and the Loss of the Services of Any of Our Key Employees Would Materially Affect Our Business."

ITEM 2. PROPERTIES

Incyte's headquarters are in Palo Alto, California, where its main research laboratories, sequencing facility, bioinformatics and administrative facilities are located. Incyte also operates facilities in Fremont, California; St. Louis, Missouri; and Cambridge, England. As of December 31, 1999, Incyte had multiple sublease and lease agreements covering approximately 442,000 square feet that expire on various dates ranging from March 2000 to March 2011. The Company believes that its current facilities are adequate to support its current and anticipated near-term operations and believes that it can obtain additional space it may need in the future on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

Affymetrix

In January 1998, Affymetrix, Inc. ("Affymetrix") filed a lawsuit in the United States District Court for the District of Delaware, subsequently transferred to the United States District Court for the Northern District of California in November 1998, alleging infringement of U.S. patent number 5,445,934 (the " '934 Patent") by both Synteni and Incyte. The complaint alleges that the '934 Patent has been infringed by the making, using, selling, importing, distributing or offering to sell in the U.S. high density arrays by Synteni and Incyte and that such infringement was willful. Affymetrix seeks a permanent injunction enjoining Synteni and Incyte from further infringement of the '934 Patent and, in addition, seeks damages, costs and attorney's fees and interest. Affymetrix further requests that any such damages be trebled based on its allegation of willful infringement by Incyte and Synteni.

In September 1998, Affymetrix filed an additional lawsuit in the United States District Court for the District of Delaware, subsequently transferred to the United States District Court for the Northern District of California in November 1998, alleging infringement of the U.S. patent number 5,800,992 (the " '992 Patent") and U.S. patent number 5,744,305 (the " '305 Patent") by both Synteni and Incyte. The complaint alleges that the '305 Patent has been infringed by the making, using, selling, importing, distributing or offering to sell in the United States high density arrays by Synteni and Incyte, that the '992 Patent has been infringed by the use of Synteni's and Incyte's GEM(TM) microarray technology to conduct gene expression monitoring using two-color labeling, and that such infringement was willful. Affymetrix seeks a permanent injunction enjoining Synteni and Incyte from further infringement of the '305 and '992 Patents and, in addition, Affymetrix had sought a preliminary injunction enjoining Incyte and Synteni from using Synteni's and Incyte's GEM microarray technology to conduct gene expression monitoring using two-color labeling as described in the '992 Patent. Affymetrix's request for a preliminary injunction was denied in May 1999. As a result of the assignment of the case to a new judge, all scheduled trial and pretrial dates have been vacated. The court is expected to set a new schedule in late April 2000.

In April 1999, the Board of Patent Appeals and Interferences of United States Patent and Trademark Office (PTO) declared interferences between pending patent applications licensed exclusively to Incyte and the Affymetrix '305 and '992 Patents. An interference proceeding is invoked by the PTO when more than one patent applicant claims the same invention. The Board of Patent Appeals and Interferences evaluates all relevant facts, including those bearing on first to invent, validity, enablement and scope of claims, and then makes a determination as to who, if anyone, is entitled to the patent on the disputed invention. In September 1999, the Board of Patent Appeals and Interferences determined that Incyte had not met its prima facie case, and ruled that the patents licensed by Incyte and Synteni from Stanford University were not entitled to priority over corresponding claims in the two Affymetrix patents. The Company is seeking de novo review of the Board decisions in the United States District Court for the Northern District of California.

Incyte and Synteni believe they have meritorious defenses and intend to defend the suits vigorously. However, there can be no assurance that Incyte and Synteni will be successful in the defense of these suits. At this time, the Company cannot reasonably estimate the possible range of any loss resulting from these suits due to uncertainty regarding the ultimate outcome. Regardless of the outcome, this litigation has resulted and is expected to continue to result in substantial expenses and diversion of the efforts of management and

technical personnel. Further, there can be no assurance that any license that may be required as a result of this suit or the outcome thereof would be made available on commercially acceptable terms, if at all.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

The Company's common stock, par value $.001 ("Common Stock"), is traded on the Nasdaq National Market ("Nasdaq") under the symbol "INCY." The following table sets forth, for the periods indicated, the range of high and low sales prices for the Common Stock on Nasdaq as reported in its consolidated transaction reporting system.

	HIGH	LOW
1998		
First Quarter	$50 3/8	$36
Second Quarter	47 1/	31 1/
Third Quarter	42	18 1/
Fourth Quarter	39 1/	20 15/1
1999		
First Quarter	37 3/	20 1/1
Second Quarter	26 7/1	17 3/
Third Quarter	41 3/	21 5/3
Fourth Quarter	63 1/	16 9/1

As of December 31, 1999, the Common Stock was held by 506 stockholders of record. The Company has never declared or paid dividends on its capital stock and does not anticipate paying any dividends in the foreseeable future.

ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The data set forth below should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements and related Notes included in Item 8 of this Report.

	YEAR ENDED DECEMBER 31,				
	1999	1998	1997	1996	1995
	(IN THOUSANDS, EXCEPT PER SHARE DATA)				
STATEMENT OF OPERATIONS DATA:(1)					
Revenues	$156,962	$134,811	$ 89,996	$ 41,895	$ 12,299
Costs and expenses:					
Research and development	146,833	97,192	72,452	41,337	19,272
Selling, general and administrative	37,235	25,438	13,928	6,957	3,952
Charge for purchase of in-process research and development	--	10,978	--	3,165	--
Acquisition-related charges	--	1,171	--	--	--
Total costs and expenses	184,068	134,779	86,380	51,459	23,224
Income (loss) from operations	(27,106)	32	3,616	(9,564)	(10,925)
Interest and other income, net	5,169	7,266	4,140	2,288	988
Losses from joint venture	(5,631)	(1,474)	(300)	--	--
Income (loss) before income taxes	(27,568)	5,824	7,456	(7,276)	(9,937)
Provision (benefit) for income taxes	(800)	2,352	548	--	--
Net income (loss)	$(26,768)	$ 3,472	$ 6,908	$ (7,276)	$ (9,937)
Basic net income (loss) per share	$ (0.95)	$ 0.13	$ 0.28	$ (0.32)	$ (0.53)
Number of shares used in computation of basic net income (loss) per share	28,138	26,921	24,300	22,398	18,819
Diluted net income (loss) per share	$ (0.95)	$ 0.12	$ 0.26	$ (0.32)	$ (0.53)
Number of shares used in computation of diluted net income (loss) per share	28,138	28,899	26,498	22,398	18,819

	DECEMBER 31,				
	1999	1998	1997	1996	1995
	(IN THOUSANDS)				
BALANCE SHEET DATA:(1)					
Cash, cash equivalents, and securities available-for-sale	$ 66,937	$111,233	$113,095	$ 40,238	$ 41,218
Working capital	58,043	81,437	90,700	21,351	39,015
Total assets	221,934	230,290	199,089	69,173	58,892
Non-current portion of capital lease obligations and notes payable	194	796	801	37	147
Accumulated deficit	(55,169)	(28,401)	(30,129)	(37,037)	(29,761)
Stockholders' equity	170,282	179,567	145,702	44,834	47,606

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(1) Financial data for the years ended December 31, 1995 and 1996, have been restated to reflect the combined results and financial position of the Company and Genome Systems, Inc. All periods through December 31, 1997 have been restated to reflect combined results and financial position of the Company and Synteni, Inc. See Note 9 of Notes to Consolidated Financial Statements.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of the Company's financial condition and results of operations should be read in conjunction with "Selected Consolidated Financial Data" and the Consolidated Financial Statements and related Notes included elsewhere in this Report.

When used in this discussion, the words "expects," "anticipates," "estimates," and similar expressions are intended to identify forward-looking statements. These statements, which include statements as to the Company's and diaDexus' expected net losses, expected expenditure levels, expected cash flows, the adequacy of capital resources, growth in operations and Year 2000 related actions, are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, but are not limited to, those risks discussed below, as well as the extent of utilization of genomic information by the biotechnology and pharmaceutical industries; risks relating to the development of new products and their use by potential collaborators of the Company; the impact of technological advances and competition; the ability of the Company to obtain and retain customers; competition from other entities; early termination of a database collaboration agreement or failure to renew an agreement upon expiration; the cost of accessing or acquiring technologies developed by other companies; uncertainty as to the scope of coverage, enforceability or commercial protection from patents that issue on gene sequences and other genetic information; developments in and expenses relating to litigation; the results and viability of joint ventures and businesses in which the Company has purchased equity; and the matters discussed in "Factors That May Affect Results." These forward-looking statements speak only as of the date hereof. The Company expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in the Company's expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

OVERVIEW

Incyte Pharmaceuticals, Inc. ("Incyte" and, together with its wholly owned subsidiaries, the "Company") designs, develops and markets genomic information-based products and services. These products and services include database products, genomic data management software tools, microarray-based gene expression services, genomic reagents, and related services. The Company's genomic databases integrate bioinformatics software with proprietary and, when appropriate, publicly available genetic information to create information-based products and services used by pharmaceutical and biotechnology companies and academic researchers in the understanding of disease and the discovery and development of new drugs.

Revenues recognized by the Company consist primarily of non-exclusive database access fees related to database agreements. Revenues also include the sales of genomic screening products and services, fees for microarray-based gene expression services, fees for contract sequencing services, and sales of genomic data management software tools. The Company's database agreements provide for future milestone payments and royalties from the sale of products derived from proprietary information obtained through the databases. There can be no assurance that any database subscriber will ever generate products from information contained within the databases and thus that the Company will ever receive additional milestone payments or royalties. The Company's ability to maintain and increase revenues will be dependent upon its ability to obtain additional database subscribers, retain existing subscribers, and to expand its product and service offerings and expand its customer base for microarray services. The loss of revenues from any individual database agreement, if terminated or not renewed, could have an adverse impact on the Company's results of operations, although it is not anticipated to have a material adverse impact on the Company's business or financial conditions.

The Company intends to invest in its sequencing, bioinformatics, expression database development and SNP discovery programs in 2000 and as a result expects to report a net loss at least through 2000. If the costs of these programs are greater than anticipated, or if these programs take longer to complete, or if losses are incurred from strategic investments, the Company may incur losses in future periods, as well.

The Company has made and intends to continue to make strategic equity investments in, and acquisitions of, technologies and businesses that are complementary to the businesses of the Company. As a result, the

Company may record losses or expenses related to the Company's proportionate ownership interest in such long-term equity investments, record charges for the acquisition of in-process technologies, or record charges for the recognition of the impairment in the value of the securities underlying such investments.

In September 1998, the Company completed the acquisition of Hexagen Limited ("Hexagen"), a privately held SNP discovery company based in Cambridge, England. The Company issued 976,130 shares of its common stock and $5.0 million in cash in exchange for all of Hexagen's outstanding capital stock. In addition, the Company assumed Hexagen's stock options, which if fully vested and exercised, would amount to 125,909 shares of its common stock. The intrinsic value of the stock options was included in the purchase price of Hexagen. The transaction was accounted for as a purchase with a portion of the purchase price, estimated to be approximately $11.0 million, expensed in the third quarter of 1998 as a charge for the purchase of in-process research and development. The remainder of the purchase price, approximately $17.6 million, was allocated to goodwill ($16.3 million), developed technology ($0.7 million), and Hexagen's assembled work force ($0.6 million), which are being amortized over 8, 5 and 3 years, respectively. The Company evaluates its intangible assets for impairment on a quarterly basis.

The Company allocated Hexagen's purchase price based on the relative fair value of the net tangible and intangible assets acquired. In performing this allocation, the Company considered, among other factors, the technology research and development projects in process at the date of acquisition. Hexagen's in-process research and development program consisted of the development of its fSSCP technology for SNP discovery. In 1999, the Company completed the development of the fSSCP technology. There have been no significant changes in the assumptions used to value the assets of Hexagen.

In January 1998, the Company completed the acquisition of Synteni, Inc. ("Synteni"), a privately-held microarray-based gene expression company. The transaction has been accounted for as a pooling of interests, and the consolidated financial statements discussed herein and all historical financial information have been restated to reflect the combined operations of both companies.

In September 1997, the Company formed a joint venture, diaDexus, LLC ("diaDexus"), with SmithKline Beecham Corporation ("SB") which will utilize genomic and bioinformatics technologies in the discovery and commercialization of molecular diagnostics. The Company and SB each hold a 50 percent equity interest in diaDexus. The investment is accounted for under the equity method, and the Company records its share of diaDexus' earnings and losses in its statement of operations.

In January 1998, the Company announced a relationship relating to the joint development of proteomics data and related software with Oxford GlycoSciences plc ("OGS"). As part of this relationship, the Company made a $5.0 million initial equity investment and a follow-on investment in April 1998 of approximately $0.8 million as part of the OGS initial public offering of its ordinary shares. As part of the collaborative agreement, the Company reimbursed OGS $5.0 million in 1999 for services rendered and will reimburse OGS up to $5.0 million in 2000 if revenues are not sufficient to offset OGS' expenses for services rendered. The market prices of the securities of the companies in which the Company invests are highly volatile and therefore subject to declines in market value. The Company will continue to evaluate its long-term equity investments for impairment on a quarterly basis.

In an effort to broaden its business, the Company is investing in a number of new areas, including molecular diagnostics, genome sequencing, SNP discovery, proteomics, and microarray services. Given that many of these address new markets, or involve untested technologies, it is not known if any of them will generate revenues or if the revenues will be sufficient to provide an adequate return on the investment. Depending on the investment required and the timing of such investments, expenses or losses related to these investments could adversely affect operating results.

The Company has incurred and could continue to incur substantial expenses in its defense of the lawsuits filed in January and September 1998 by Affymetrix, Inc. ("Affymetrix") alleging patent infringement by Synteni and Incyte. Affymetrix seeks a preliminary injunction enjoining Incyte and Synteni from using certain microarray technology in a manner alleged to infringe an Affymetrix patent and a permanent injunction enjoining Incyte and Synteni from further infringement of certain Affymetrix patents. In addition, Affymetrix

seeks damages, costs, attorneys' fees and interest. Affymetrix further requests that any such damages be trebled on its allegation of willful infringement by Incyte and Synteni. Incyte and Synteni believe they have meritorious defenses and intend to defend these suits vigorously. However, there can be no assurance that Incyte and Synteni will be successful in the defense of these suits. At this time, the Company cannot reasonably estimate the possible range of any loss related to these suits due to uncertainty regarding the ultimate outcome. Regardless of the outcome, this litigation has resulted and is expected to continue to result in substantial expenses and diversion of the efforts of management and technical personnel. Any future litigation could result in similar expenses and diversion of efforts. Further, there can be no assurance that any license that may be required as a result of these suits or the outcome thereof would be made available on commercially acceptable terms, if at all.

RESULTS OF OPERATIONS

The Company recorded a net loss for the year ended December 31, 1999 of $26.8 million and net income for the years ended December 31, 1998 and 1997 of $3.5 million and $6.9 million, respectively. On a per share basis, basic and diluted net loss was $0.95 for the year ended December 31, 1999. Basic and diluted net income per share was $0.13 and $0.12 for the year ended December 31, 1998, respectively and $0.28 and $0.26 for the year ended December 31, 1997, respectively. Excluding acquisition related charges, the Company recorded net income of $15.5 million, and basic and diluted net income per share of $0.58 and $0.54, respectively, for the year ended December 31, 1998. The net income per share in 1997 reflects the dilutive effect of approximately 2.7 million shares issued in an August 1997 follow-on public offering. The net income per share for 1998 and 1997 reflects the issuance of approximately 2.3 million shares in January 1998 in connection with the Company's business combination with Synteni. All share and per share data have been adjusted retroactively for a two-for-one stock split effected in the form of a stock dividend paid on November 7, 1997 to holders of record on October 17, 1997.

Revenues. Revenues for the years ended December 31, 1999, 1998, and 1997 were $157.0 million, $134.8 million, and $90.0 million, respectively. Revenues resulted primarily from database access fees and, to a much lesser extent, from microarray-based gene expression services, genomic screening products and services, fees for contract sequencing, and sales of genomic data management software tools and maintenance. The increase in revenues from year to year was predominantly driven by expanded database agreements with existing customers, new database customers and increased revenues from microarray-related products and services.

Expenses. Total costs and expenses for the years ended December 31, 1999, 1998, and 1997 were $184.1 million, $134.8 million, and $86.4 million, respectively. Total costs and expenses for the year ended December 31, 1998 included a one-time charge of $11.0 million for the purchase of in-process research and development relating to the acquisition of Hexagen, and acquisition related expenses of $1.2 million related to the combination with Synteni. Total costs and expenses are expected to increase in the foreseeable future due to the continued investment in new products and services.

Research and development expenses for the years ended December 31, 1999, 1998, and 1997 were $146.8 million, $97.2 million, and $72.5 million, respectively. The increase from 1999 over 1998 resulted primarily from the Company's genomic sequencing, genetic mapping, and SNP discovery initiatives that were initiated in the second half of 1998, the Company's collaboration with OGS in proteomics, the increase in microarray production, and the costs related to intellectual property protection. The increase in research and development expenses in 1998 over 1997 resulted primarily from an increase in bioinformatics and software development efforts and to a lesser extent microarray production capacity, and from costs related to genomic sequencing, genetic mapping, SNP discovery efforts, technology development initiatives, and intellectual property protection. The Company expects research and development spending to increase as the Company continues to pursue the development of new database products and services, including expression databases, expansion of existing database products, increases in sequencing, bioinformatics, expression database development and SNP discovery operations, and investments in new technologies.

Selling, general and administrative expenses for the years ended December 31, 1999, 1998, and 1997 were $37.2 million, $25.4 million, and $13.9 million, respectively. The increase in selling, general and administrative expenses in 1999 over 1998 resulted primarily from the growth in sales and marketing activities and the increased personnel to support the growing complexity of the Company's operations. The increase in selling, general and administrative expenses in 1998 over 1997 resulted primarily from the growth in sales and marketing activities and to a lesser extent the expansion of the Company's United Kingdom operations and increased personnel to support the growing complexity of the Company's operations. The Company's 1999 and 1998 operations were also impacted by legal expenses related to the patent infringement lawsuits filed by Affymetrix of approximately $6.5 million and $2.9 million, respectively. The Company expects that total selling, general and administrative expenses will continue to increase, primarily due to continued growth in marketing, sales and customer support and expenses to support the growing complexity of the Company's operations.

Interest and Other Income, Net. Interest and other income, net, for the years ended December 31, 1999, 1998, and 1997 were $5.2 million, $7.3 million, and $4.1 million, respectively. The decrease in 1999 from 1998 was primarily due to decreased interest income as a result of lower cash, cash equivalent and marketable securities balances. The increase in 1998 over 1997 was primarily due to increased interest income from higher average combined cash, cash equivalent and marketable securities balances and an increase in realized gains on the sale of marketable securities.

Losses from Joint Venture. Losses from joint venture were $5.6 million, $1.5 million and $0.3 million for the years ended December 31, 1999, 1998 and 1997, respectively. The loss represents the Company's share of diaDexus' losses from operations. The loss in 1998 was net of $2.5 million of amortization of the excess of the Company's share of diaDexus' net assets over its basis.

Income Taxes. The Company had an effective income tax benefit rate of 3.0% in 1999. The benefit was primarily due to the carryback of the current year net operating loss. The effective tax rate for 1998 was 14.0%, excluding the charge for the purchase of in-process research and development, and for 1997 was 7.3%, which represents the provision of federal and state alternative minimum taxes after utilization of net operating loss carryforwards. The increase from 1997 to 1998 in the effective tax rate resulted primarily from the Company's expectation that it would fully utilize all federal net operating loss carryforwards available to benefit the income tax provision.

LIQUIDITY AND CAPITAL RESOURCES

As of December 31, 1999, the Company had $66.9 million in cash, cash equivalents and marketable securities, compared to $111.2 million as of December 31, 1998. The Company has classified all of its marketable securities as short-term, as the Company may choose not to hold its marketable securities until maturity in order to take advantage of favorable market conditions. Available cash is invested in accordance with the Company's investment policy's primary objectives of liquidity, safety of principal and diversity of investments.

Net cash used in operating activities was $21.4 million for the year ended December 31, 1999, compared to cash provided of $36.2 million and $18.0 million for the years ended December 31, 1998 and 1997. The change in cash flows from operations in 1999 compared to 1998 was primarily due to the Company's investments in genomic sequencing, mapping, bioinformatics and SNP discovery resulting in a net loss in 1999 as compared to net income in 1998, and the increase in accounts receivable and prepaid expenses, partially offset by increases in accrued liabilities. The increase in net cash provided by operating activities in 1998 compared to 1997 was primarily due to the increase in net income before non-cash charges and the decrease in accounts receivable, partially offset by the increase in prepaid and other assets and the decrease in deferred revenues.

The Company's investing activities, other than purchases, sales and maturities of marketable securities, have consisted predominantly of capital expenditures and net purchases of long-term investments. Capital expenditures for the years ended December 31, 1999, 1998, and 1997 were $34.8 million, $30.7 million, and $27.2 million, respectively. Capital expenditures increased in 1999 and 1998 primarily due to investments in

computer and laboratory equipment as well as leasehold improvements related to the expansion of the Company's facilities. Long-term investments in companies with which the Company has research and development agreements were $4.2 million for the year ended December 31, 1999 compared to $7.1 million and $8.5 million for the years ended December 31, 1998 and 1997, respectively. In 1999 the Company liquidated its investment in two such companies, resulting in proceeds of $4.3 million and a net realized gain of $0.2 million. In 1998, the Company paid $4.0 million, net of cash received, in connection with the purchase of Hexagen and in 1997 transferred $6.0 million to restricted cash for disbursement to diaDexus in accordance with the diaDexus joint venture agreement. In the future, net cash used by investing activities may fluctuate significantly from period to period due to the timing of strategic equity investments, capital expenditures and maturity/sales and purchases of marketable securities.

Net cash provided by financing activities was $12.5 million, $4.0 million, and $94.8 million for the years ended December 31, 1999, 1998, and 1997, respectively. Net cash provided by financing activities in 1997 was primarily due to proceeds from follow-on public stock offerings in August 1997, while net cash provided by financing activities in 1999 and 1998 was due to the issuance of common stock under the Company's stock option and employee stock purchase plans.

Subsequent to December 31, 1999, the Company raised additional funds in two financing transactions. In February 2000, the Company issued $200.0 million aggregate principal amount of 5.5% convertible subordinated notes due 2007 in a private placement, resulting in net proceeds of approximately $196.8 million. Beginning May 15, 2000, the notes are convertible at the option of the note holders into the Company's common stock at an initial conversion price of $134.839 per share, subject to adjustment. Also in February 2000, the Company issued 2,000,000 shares of its common stock in a private placement, for an aggregate purchase price of $422.0 million. Net proceeds from the sale of those shares were $398.3 million.

The Company expects its cash requirements to increase in 2000 as it: invests in its sequencing, bioinformatics, expression database development, and SNP discovery programs; invests in data-processing-related computer hardware to support its existing and new database products and to enable the on-line delivery of those products; continues to seek access to technologies through investments, research and development alliances, license agreements and/or acquisitions; makes strategic investments; and continues to make improvements in existing facilities.

Based upon its current plans, the Company believes that its existing resources will be adequate to satisfy its capital needs for at least the next twelve months. The Company's cash requirements depend on numerous factors, including the ability of the Company to attract and retain collaborators for its databases and other products and services; expenditures in connection with alliances, license agreements and acquisitions of and investments in complementary technologies and businesses; competing technological and market developments; the cost of filing, prosecuting, defending and enforcing patent claims and other intellectual property rights; the purchase of additional capital equipment, including capital equipment necessary to ensure the Company's sequencing and microarray operations remain competitive; capital expenditures required to expand the Company's facilities; and costs associated with the integration of new operations assumed through mergers and acquisitions. Changes in the Company's research and development plans or other changes affecting the Company's operating expenses may result in changes in the timing and amount of expenditures of the Company's capital resources.

EURO CONVERSION

A single currency called the euro was introduced in Europe on January 1, 1999. Eleven of the fifteen member countries of the European Union agreed to adopt the euro as their common legal currency on that date. Fixed conversion rates between these participating countries' existing currencies (the "legacy currencies") and the euro were established as of that date. The legacy currencies are scheduled to remain legal tender as denominations of the euro until at least January 1, 2002, but not later than July 1, 2002. During this transition period, parties may settle transactions using either the euro or a participating country's legal currency. This conversion to the euro had no material impact on the Company's results of operations, financial

position or cash flows. The Company will continue to evaluate the potential impact of the euro on its computer and financial systems, business processes, market risk, and price competition.

FACTORS THAT MAY AFFECT RESULTS

WE HAVE HAD ONLY LIMITED PERIODS OF PROFITABILITY AND WE EXPECT TO INCUR LOSSES IN THE FUTURE, WHICH MAY PREVENT US FROM RETURNING TO PROFITABILITY

We had net losses from inception in 1991 through 1996, reported net income in 1997 and 1998, and again incurred a net loss in 1999. Because of those losses, we had an accumulated deficit of $55.2 million as of December 31, 1999. We intend to make significant investments in sequencing, bioinformatics, expression database development and single nucleotide polymorphism, or SNP, discovery over the next year. As a result,we expect to report a net loss for the year ending December 31, 2000. We may report net losses in future periods as well. We expect that our expenditures may continue to increase in 2000 due in part to our continued investment in new product and technology development, including the continuation of our genomic sequencing, bioinformatics, expression database development, SNP-discovery programs, obligations under existing and future research and development alliances, and our increasing investment in marketing, sales and customer service. Our profitability depends on our ability to increase our revenues:

TO GENERATE SIGNIFICANT REVENUES, WE MUST OBTAIN ADDITIONAL DATABASE COLLABORATORS AND RETAIN EXISTING COLLABORATORS. While we had over 20 database agreements as of December 31, 1999, we may be unable to enter into any additional agreements. Also, our database collaborators may choose not to renew their agreements upon expiration. In 1999, for the first time one of our LifeSeq Gold database collaborators did not renew its subscription. Our database revenues are also affected by the extent to which existing collaborators expand their agreements with us to include our new database products and to the extent that existing collaborators reduce the number of products or services for which they subscribe. Some of our database agreements require us to meet performance obligations. A database collaborator can terminate its agreement before the end of its scheduled term if we breach the agreement and fail to cure the breach within a specified period.

OUR REVENUES AND PROFITABILITY WILL ALSO DEPEND ON OUR ABILITY TO GENERATE PROFITS FROM EXPRESSION DATABASES AND MICROARRAY SERVICES. We acquired Synteni, Inc. in January 1998 to provide microarray services and to generate information for expression databases. The contribution of our microarray operations to our operating results will depend on whether we can continue to obtain high-volume customers for microarray services and expression databases, whether we can continue to increase our microarray production capacity in a timely manner and with consistent volumes and quality, and the costs associated with increasing our microarray production capacity.

WE DO NOT EXPECT MILESTONE OR ROYALTY PAYMENTS TO SUBSTANTIALLY CONTRIBUTE TO REVENUES FOR SEVERAL YEARS. Part of our strategy is to license to database collaborators our know how and patent rights associated with the gene sequences and related information in our proprietary databases, for use in the discovery and development of potential pharmaceutical, diagnostic or other products. Any potential product that is the subject of such a license will require several years of further development, clinical testing and regulatory approval before commercialization.

OUR OPERATING RESULTS ARE UNPREDICTABLE AND MAY ADVERSELY IMPACT OUR STOCK PRICE

Our operating results are unpredictable and may fluctuate significantly from period to period due to a variety of factors, including:

- changes in the demand for our products and services;
- the introduction of competitive databases or services, including public domain databases;
- the pricing of access to our databases;
- the nature, pricing and timing of other products and services provided to our collaborators;

- changes in the research and development budgets of our collaborators and potential collaborators;

- depreciation expense from capital expenditures;

- acquisition, licensing and other costs related to the expansion of our operations, including operating losses of acquired businesses such as Synteni and Hexagen;

- losses and expenses related to our investments in joint ventures and businesses, including our proportionate share of operating losses of our diaDexus, LLC, joint venture with SmithKline Beecham Corporation;

- payments of milestones, license fees or research payments under the terms of our increasing number of external alliances; and

- expenses related to, and the results of, litigation and other proceedings relating to intellectual property rights (including the lawsuits filed by Affymetrix, Inc. described below).

In particular, revenues from our database business are unpredictable because:

- the timing of our database installations is determined by our collaborators;

- the sales cycle for our database products is lengthy; and

- the time required to complete custom orders can vary significantly.

We expect our expression databases to represent an increasing amount of our revenues. Also, revenues may be affected by developments in the Affymetrix litigation, which may cause potential customers to postpone or change their decision to use our microarray services.

We are investing in a number of new areas to try to broaden our business. These areas include sequencing, bioinformatics, gene expression databases, SNP discovery, molecular diagnostics, proteomics, or the large scale, high-throughput analysis of protein expression, and the online delivery of our database and software products. Because many of these address new markets or involve untested technologies, they may not generate any revenues or provide an adequate return on our investment. In these cases, we may have to recognize expenses or losses.

We have significant fixed expenses, due in part to our need to continue to invest in product development and extensive support for our database collaborators. We may be unable to adjust our expenditures if revenues in a particular period fail to meet our expectations, which would adversely affect our operating results for that period. Forecasting operating and integration expenses for acquired businesses may be particularly difficult, especially where the acquired business focuses on technologies that do not have an established market.

We believe that period-to-period comparisons of our financial results will not necessarily be meaningful. You should not rely on these comparisons as an indication of our future performance. If our operating results in any future period fall below the expectations of securities analysts and investors, our stock price will likely fall, possibly by a significant amount.

WE EXPERIENCE INTENSE COMPETITION AND RAPID TECHNOLOGICAL CHANGE AND IF WE DO NOT COMPETE EFFECTIVELY OUR REVENUES MAY DECLINE

GENOMIC BUSINESSES ARE INTENSELY COMPETITIVE. The human genome contains a finite number of genes. Our competitors may seek to identify, sequence and determine the biological function of numerous genes in order to obtain a proprietary position with respect to new genes. A number of companies, other institutions and government-financed entities are engaged in gene sequencing, gene discovery, gene expression analysis, positional cloning, the study of genetic variation, and other genomic service businesses. Many of these companies, institutions and entities have greater financial and human resources than we do.

Some of our competitors have developed databases containing gene sequence, gene expression, genetic variation or other genomic information and are marketing or plan to market their data to pharmaceutical companies. Additional competitors may attempt to establish databases containing this information in the future. We expect that competition in our industry will continue to intensify. Several large pharmaceutical

companies have formed a consortium to create a SNPs database and to make all of the information publicly available. The formation of this consortium could delay or reduce the potential revenues related to our SNP-related business.

PATENT POSITIONS OR PUBLIC DISCLOSURES MAY REDUCE THE VALUE OF OUR DATABASES. Competitors may discover and establish patent positions with respect to gene sequences in our databases. Further, certain entities engaged in gene sequencing have made the results of their sequencing efforts publicly available. In January 2000, the Celera Genomics Group of PE Corporation announced that it has DNA sequence in its database that covers 90% of the human genome and plans to complete the sequencing of the human genome by the summer of 2000. Celera has announced that it has filed a provisional patent application on newly discovered partial genes and stated its intention to file full applications on medically important discoveries. The Human Genome Project, which is coordinated by the U.S. Department of Energy and the National Institutes of Health, has announced that a consortium of laboratories associated with the Project predicts that they will produce at least 90% of the human genome sequence in a "working draft form" by the spring of 2000 and that they intend to make the information publicly available. The public availability of gene sequences or resulting patent positions covering substantial portions of the human genome or microbial or plant genomes could reduce the potential value of our databases to our collaborators. It could also impair our ability to realize royalties or other revenue from any commercialized products based on this genetic information.

COMPETITORS MAY DEVELOP SUPERIOR TECHNOLOGY. The gene sequencing machines used in our computer-aided sequencing operations are commercially available and are being used by at least one competitor. In addition, some of our competitors and potential competitors are developing proprietary sequencing technologies that may be more advanced than ours. PE Corporation began commercial shipments of a new gel-based sequencing machine, of which a large number have been provided to Celera Genomics Group. We may be unable to obtain access to sufficient quantities of these machines on acceptable terms.

In addition, a number of companies are pursuing alternative methods for generating gene expression information, including microarray technologies. These advanced sequencing or gene expression technologies may not be commercially available for us to purchase or license on reasonable terms, if at all. At least one other company currently offers microarray-based services that might be competitive with ours.

Our SNP discovery platform represents a modification of a process that is in the public domain. We are seeking patent protection for these improvements, but have not yet received any patents. Other companies could make similar or superior improvements to this process without infringing our rights, and we may not have access to those improvements. The discovery of SNPs is a competitive area. Other companies may develop or obtain access to different SNP discovery platforms, to which we may not have access, that may make our technology obsolete.

We also face competition from providers of software. A number of companies have announced their intent to develop and market software to assist pharmaceutical companies and academic researchers in managing and analyzing their own genomic data and publicly available data.

WE MUST CONTINUE TO INVEST IN NEW TECHNOLOGIES. The genomics industry is characterized by extensive research efforts, resulting in rapid technological progress. To remain competitive, we must continue to expand our databases, improve our software, and invest in new technologies. New developments are expected to continue, and discoveries by others may render our services and potential products noncompetitive.

WE ARE INVOLVED IN PATENT LITIGATION, WHICH IF NOT RESOLVED FAVORABLY COULD HARM OUR BUSINESS

In January 1998, Affymetrix filed a lawsuit in federal court alleging infringement of U.S. patent number 5,445,934 by both Synteni and Incyte. The complaint alleges that the '934 patent has been infringed by Synteni's and Incyte's making, using, selling, importing, distributing or offering to sell high density arrays in the United States and that this infringement was willful. Affymetrix seeks a permanent injunction enjoining Synteni and Incyte from further infringement of the '934 patent and seeks damages, costs, attorneys' fees and interest. Affymetrix also requests triple damages based on allegedly willful infringement.

In September 1998, Affymetrix filed an additional lawsuit alleging infringement of U.S. patent numbers 5,744,305 and 5,800,992 by Synteni and Incyte. The complaint alleges that the '305 patent has been infringed by Synteni's and Incyte's making, using, selling, importing, distributing or offering to sell high density arrays in the United States. It also alleges that the '992 patent has been infringed by the use of Synteni's and Incyte's GEM microarray technology to conduct gene expression monitoring using two-color labeling and that this infringement was willful. Affymetrix had sought a preliminary injunction enjoining Synteni and Incyte from using GEM microarray technology to conduct this kind of gene expression monitoring, and a permanent injunction enjoining Synteni and Incyte from further infringing the '305 and '992 patents.

The lawsuits were initially filed in the United States District Court for the District of Delaware. In November 1998, the court granted Incyte's motion to transfer the suits to the United States District Court for the Northern District of California. Affymetrix's request for a preliminary injunction was denied in April 1999. As a result of the assignment of the case to a new judge, all scheduled trial and pretrial dates have been vacated. The court is expected to set a new schedule in late April 2000.

In April 1999, the Board of Patent Appeals and Interferences of United States Patent and Trademark Office declared interferences between pending patent applications licensed exclusively to us and the Affymetrix '305 and '992 patents. An interference proceeding is invoked by the Patent and Trademark Office when more than one patent applicant claims the same invention. The Board of Patent Appeals and Interferences evaluates all relevant facts, including those bearing on first to invent, validity, enablement and scope of claims, and then makes a determination as to who, if anyone, is entitled to the patent on the disputed invention. In September 1999, the Board of Patent Appeals and Interferences determined that Incyte had not met its prima facie case, and ruled that patents licensed by Incyte and Synteni from Stanford University were not entitled to priority over corresponding claims in the two Affymetrix patents. We are seeking de novo review of the board decisions in the United States district court for the Northern District of California.

We believe we have meritorious defenses and intend to defend these suits vigorously. However, our defense may be unsuccessful. At this time, we cannot reasonably estimate the possible range of any loss resulting from these suits due to uncertainty about the ultimate outcome. We have spent and expect to continue to spend a significant amount of money and management time on this litigation. Also, if we are required to license any technology as a result of these suits, we do not know whether we will be able to do so on commercially acceptable terms, if at all.

WE SPEND A SUBSTANTIAL AMOUNT OF MONEY ON NEW AND UNCERTAIN BUSINESSES AND DEMAND FOR OUR PRODUCTS AND SERVICES MAY BE INSUFFICIENT TO COVER OUR COSTS, WHICH COULD IMPACT OUR PROFITABILITY

There is no precedent for our microarray-based gene expression database or service businesses or the use of SNP-based genetic variation information. The usefulness of the information generated by these businesses is unproven. Our collaborators and potential collaborators may determine that our databases, software tools and microarray-related services are not useful or cost-effective. Due to the nature and price of some of the products and services we offer, only a limited number of companies are potential collaborators for those products and services. If we do not develop these new products and services in time to meet market demand or if there is insufficient demand for these products and services, we may not be able to cover our costs of developing these products and services or earn a sufficient return on our investment.

Additional factors that may affect demand for our products and services include:

- the extent to which pharmaceutical and biotechnology companies conduct these activities in-house or through industry consortia;

- the emergence of competitors offering similar services at competitive prices;

- the extent to which the information in our databases is made public or is covered by others' patents;

- our ability to establish and enforce proprietary rights to our products;

- regulatory developments or changes in public perceptions relating to the use of genetic information and the diagnosis and treatment of disease based on genetic information; and

- technological innovations that are more advanced than the technologies that we have developed or that are available to us.

Many of these factors are beyond our control.

OUR NEW PROGRAMS RELATING TO THE ROLE OF GENETIC VARIATION IN DISEASE AND DRUG RESPONSE MAY NEVER GENERATE SIGNIFICANT REVENUES OR PROFITABLE OPERATIONS

We recently began to focus part of our business on developing databases and other products and services to assist pharmaceutical companies in a new and unproven area: the identification and correlation of genetic variation to disease and drug response. We will incur significant costs over the next several years in expanding our research and development in this area. These activities may never generate significant revenues or profitable operations.

This new aspect of our business will focus on SNPs, one type of genetic variation. The role of SNPs in disease and drug response is not fully understood, and relatively few, if any, therapeutic or diagnostic products based on SNPs have been developed and commercialized. Among other things, demand in this area may be adversely affected by ethical and social concerns about the confidentiality of patient-specific genetic information and about the use of genetic testing for diagnostic purposes.

Except for a few anecdotal examples, there is no proof that SNPs have any correlation to diseases or a patient's response to a particular drug or class of drug. Identifying statistically significant correlations is time-consuming and could involve the collection and screening of a large number of patient samples. We do not know if the SNPs we have discovered to date are suitable for these correlation studies. Nor do we currently have access to the patient samples needed or technology allowing us to rapidly and cost-effectively identify pre-determined SNPs in large numbers of patients.

Most SNPs may occur too infrequently to warrant their use in analyzing patients' genetic variation. We may have trouble identifying SNPs that both correlate with diseases or drug responses and occur frequently enough to justify their use by pharmaceutical companies.

Our success will also depend upon our ability to develop, use and enhance new and relatively unproven technologies. Our strategy of using high-throughput mutation detection processes and sequencing to identify SNPs and genes rapidly is unproven. Among other things, we will need to continue to improve the throughput of our SNP-discovery technology. We may not be able to achieve these necessary improvements, and other factors may impair our ability to develop our SNP-related products and services in time to be competitively available.

OUR STRATEGIC INVESTMENTS MAY RESULT IN LOSSES AND OTHER ADVERSE EFFECTS

We make strategic investments in joint ventures or businesses that complement our business. These investments, such as our investment in diaDexus, may:

- often be made in securities lacking a public trading market or subject to trading restrictions, either of which increases our risk and reduces the liquidity of our investment;

- require us to record losses and expenses related to our ownership interest;

- require us to record charges related to the acquisition of in-process technologies or for the impairment in the value of the securities underlying our investment; and

- require us to invest greater amounts than anticipated or to devote substantial management time to the management of research and development relationships and joint ventures.

The market values of many of these investments fluctuate significantly. We evaluate our long-term equity investments for impairment of their values on a quarterly basis. Impairment could result in future charges to our earnings. These losses and expenses may exceed the amounts that we anticipated.

OUR SALES CYCLE IS LENGTHY AND THERE IS NO GUARANTEE THAT A SUBSCRIPTION OR SERVICES AGREEMENT WILL RESULT

Our ability to obtain new subscribers for our databases, software tools and microarray and other services depends upon prospective subscribers' perceptions that our products and services can help accelerate drug discovery efforts. Our database sales cycle is typically lengthy because we need to educate our potential subscribers and sell the benefits of our tools and services to a variety of constituencies within potential subscriber companies. In addition, each database subscription and microarray services agreement involves the negotiation of unique terms. We may expend substantial funds and management effort with no assurance that a subscription or services agreement will result. Actual and proposed consolidations of pharmaceutical companies have affected the timing and progress of our sales efforts. We expect that future proposed consolidations will have similar effects.

PATENTS AND OTHER PROPRIETARY RIGHTS PROVIDE UNCERTAIN PROTECTION OF OUR PROPRIETARY INFORMATION AND OUR INABILITY TO PROTECT A PATENT OR OTHER PROPRIETARY RIGHT MAY IMPACT OUR BUSINESS AND OPERATING RESULTS

WE MAY BE UNABLE TO PROTECT OUR PROPRIETARY INFORMATION, WHICH MAY RESULT IN UNAUTHORIZED USE AND A LOSS OF REVENUE. Our business and competitive position depend upon our ability to protect our proprietary database information and software technology, but our strategy of obtaining proprietary rights in as many genes and SNPs as possible is unproven. Despite our efforts to protect this information and technology, unauthorized parties may attempt to obtain and use information that we regard as proprietary. Although our database subscription agreements require our subscribers to control access to our databases, policing unauthorized use of our databases and software may be difficult.

We pursue a policy of having our employees, consultants and advisors execute proprietary information and invention agreements when they begin working for us. However, these agreements may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure.

Our means of protecting our proprietary rights may not be adequate and our competitors may:

- independently develop substantially equivalent proprietary information and techniques;

- otherwise gain access to our proprietary information; or

- design around patents issued to us or our other intellectual property.

OUR PATENT APPLICATIONS MAY CONFLICT WITH OTHERS. Our current policy is to file patent applications on what we believe to be novel full-length and partial gene sequences obtained through our gene sequencing efforts. We have filed U.S. patent applications in which we have claimed certain partial gene sequences. We have also applied for patents in the U.S. and other countries claiming full-length gene sequences associated with cells and tissues involved in our gene sequencing program. We hold a number of issued U.S. patents on full-length genes and one issued U.S. patent claiming multiple partial gene sequences. A number of entities make certain gene sequences publicly available, which may adversely affect our ability to obtain patents on those genes.

We believe that some of our patent applications claim genes that may also be claimed in patent applications filed by others. In some or all of these applications, a determination of priority of inventorship may need to be decided in an interference before the United States Patent and Trademark Office.

ENFORCEMENT OF GENE PATENTS IS UNCERTAIN AND GENE PATENTS MAY BE FOUND UNENFORCEABLE, RESULTING IN A LOSS OF COMPETITIVE BENEFIT. One of our strategies is to obtain proprietary rights in as many genes (including partial gene sequences) and SNPs as possible. While the USPTO has issued patents covering full-length genes, partial gene sequences and SNPs, we do not know whether or how courts may enforce those patents, if that

becomes necessary. If a court finds these types of inventions to be unpatentable, or interprets them narrowly, the benefits of our strategy may not materialize.

WE MAY DECIDE TO ABANDON PATENT APPLICATIONS, WHICH COULD DIMINISH THE VALUE OF OUR PATENT PORTFOLIO AND POSSIBLY OUR FUTURE REVENUES. The USPTO has had a substantial backlog of biotechnology patent applications, particularly those claiming gene sequences. In 1996, the USPTO issued guidelines limiting the number of partial gene sequences that can be examined within a single patent application. Many of our patent applications contain more partial sequences than the maximum number allowed under these guidelines. Due to the resources needed to comply with the guidelines, we may decide to abandon patent applications for some of our partial gene sequences.

Because filing large numbers of patent applications and maintaining issued patents can be very costly, we may choose not to pursue every application. If we do not pursue patent protection for all of our full-length and partial gene sequences, the value of our intellectual property portfolio could be diminished. Because of the possible delay in obtaining allowance of some of our patent applications, and the secrecy of patent applications, we do not know if other applications having priority over ours have been filed.

WE MAY NEED TO REFILE SOME OF OUR PATENT APPLICATIONS AND THE PERIOD OF PATENT PROTECTION HAS BEEN SHORTENED, WHICH MAY AFFECT OUR POTENTIAL REVENUES AND PROFITS. The value of our patents depends in part on their duration. The U.S. patent laws were amended in 1995 to change the term of patent protection from 17 years from patent issuance to 20 years from the earliest effective filing date of the application. Because the average time from filing to issuance of biotechnology applications is at least one year and may be more than three years depending on the subject matter, a 20-year patent term from the filing date may result in substantially shorter patent protection, which may adversely affect our rights under any patents that we obtain. We may need to refile applications claiming large numbers of gene sequences and, in these situations, the patent term will be measured from the date of the earliest priority application. This would shorten our period of patent exclusivity.

INTERNATIONAL PATENT PROTECTION IS PARTICULARLY UNCERTAIN, AND OPPOSITION PROCEEDINGS IN FOREIGN COUNTRIES MAY BE COSTLY AND DIVERT MANAGEMENT RESOURCES. Biotechnology patent law outside the United States is even more uncertain than in the United States and is currently undergoing review and revision in many countries. Further, the laws of some foreign countries may not protect our intellectual property rights to the same extent as U.S. laws. We may participate in opposition proceedings to determine the validity of our or our competitors' foreign patents, which could result in substantial costs and diversion of our efforts.

WE MAY BE SUBJECT TO ADDITIONAL LITIGATION AND INFRINGEMENT CLAIMS THAT COULD BE COSTLY AND DISRUPT OUR BUSINESS

The technology that we use to develop our products, and those that we incorporate in our products, may be subject to claims that they infringe the patents or proprietary rights of others. The risk of this occurring will tend to increase as the genomics, biotechnology and software industries expand, more patents are issued and other companies attempt to discover genes and SNPs and engage in other genomic-related businesses.

As is typical in the genomics, biotechnology and software industries, we have received, and we will probably receive in the future, notices from third parties alleging patent infringement. We believe that we are not infringing the patent rights of any such third party. Except for Affymetrix, no third party has filed a patent lawsuit against us.

We may, however, be involved in future lawsuits alleging patent infringement or other intellectual property rights violations. In addition, litigation may be necessary to:

- assert claims of infringement;
- enforce our patents;
- protect our trade secrets or know-how; or
- determine the enforceability, scope and validity of the proprietary rights of others.

We may be unsuccessful in defending or pursuing these lawsuits. Regardless of the outcome, litigation can be very costly and can divert management's efforts. An adverse determination may subject us to significant liabilities or require us to seek licenses to other parties' patents or proprietary rights. We may also be restricted or prevented from manufacturing or selling our products. Further, we may not be able to obtain the necessary licenses on acceptable terms, if at all.

WE MAY ENCOUNTER PROBLEMS IN MEETING CUSTOMERS' SOFTWARE NEEDS, WHICH COULD ADVERSELY IMPACT OUR REVENUES AND THE GOODWILL OF OUR CUSTOMERS

Our databases also require software support and will need to incorporate features determined by database collaborators. If we experience delays or difficulties in implementing our database software or collaborator-requested features, we may be unable to service our collaborators.

PAST ACQUISITIONS HAVE AND ANY FUTURE ACQUISITIONS THAT WE MAY MAKE COULD ADVERSELY AFFECT OUR OPERATIONS OR FINANCIAL RESULTS

As part of our business strategy, we may acquire other assets, technologies and businesses. We acquired Synteni in January 1998 and Hexagen in September 1998.

These and any future acquisitions involve risks such as the following:

- we may be exposed to unknown liabilities of acquired companies;

- our acquisition and integration costs may be higher than we anticipated and may cause our quarterly and annual operating results to fluctuate;

- we may experience difficulty and expense in assimilating the operations and personnel of the acquired businesses, disrupting our business and diverting management's time and attention;

- we may be unable to integrate or complete the development and application of acquired technology;

- we may experience difficulties in establishing and maintaining uniform standards, controls, procedures and policies;

- our relationships with key customers of acquired businesses may be impaired, due to changes in management and ownership of the acquired businesses;

- we may be unable to retain key employees of the acquired businesses;

- we may incur amortization expenses if an acquisition results in significant goodwill or other intangible assets; and

- our stockholders may be diluted if we pay for the acquisition with equity securities.

In addition, if we acquire additional businesses that are not located near our Palo Alto, California headquarters, we may experience more difficulty integrating and managing the acquired businesses' operations.

WE MAY HAVE DIFFICULTY MANAGING OUR GROWTH, WHICH MAY IMPACT OUR ABILITY TO OPTIMIZE OUR RESOURCES

We expect to continue to experience significant growth in the number of our employees and the scope of our operations. This growth has placed, and may continue to place, a significant strain on our management and operations. Our ability to manage this growth will depend upon our ability to attract, hire and retain skilled employees. Our success will also depend on the ability of our officers and key employees to continue to implement and improve our operational and other systems and to hire, train and manage our employees.

In addition, we must continue to invest in customer support resources as the number of database collaborators and their requests for support increase. Our database collaborators typically have worldwide operations and may require support at multiple U.S. and foreign sites. To provide this support, we may need to open offices in addition to our Palo Alto, California headquarters and our offices in Fremont, California,

St. Louis, Missouri and Cambridge, England, which could result in additional burdens on our systems and resources.

WE DEPEND ON KEY EMPLOYEES IN A COMPETITIVE MARKET FOR SKILLED PERSONNEL AND THE LOSS OF THE SERVICES OF ANY OF OUR KEY EMPLOYEES WOULD MATERIALLY AFFECT OUR BUSINESS

We are highly dependent on the principal members of our management, operations and scientific staff, including Roy A. Whitfield, our Chief Executive Officer, and Randal W. Scott, our President and Chief Scientific Officer. The loss of either of these persons' services may have a material adverse effect on our business. We have not entered into any employment agreement with either of these persons and do not maintain a key person life insurance policy on the life of any employee.

Our future success also will depend in part on the continued service of our executive management team, key scientific, software, bioinformatics and management personnel and our ability to identify, hire and retain additional personnel, including customer service, marketing and sales staff. We experience intense competition for qualified personnel. We may not be able to continue to attract and retain personnel necessary for the development of our business.

OUR INABILITY TO OBTAIN NECESSARY EQUIPMENT, SUPPLIES AND DATA FROM THIRD PARTIES MAY ADVERSELY IMPACT OUR RESULTS

WE RELY ON A SMALL NUMBER OF SUPPLIERS OF GENE SEQUENCING MACHINES AND REAGENTS REQUIRED FOR GENE SEQUENCING. Although we are evaluating alternative gene sequencing machines, they may not be available in sufficient quantities or at acceptable costs. In addition, if a third party claims that our use of these machines infringes their patent rights, our use of these machines could become more costly or could be prevented. If we are unable to obtain additional machines or an adequate supply of reagents or other materials at commercially reasonable rates, our ability to identify genes and SNPs would be adversely affected.

WE RELY ON OUTSIDE SOURCES FOR TISSUE SAMPLES FROM WHICH WE ISOLATE GENETIC MATERIAL USED IN OUR OPERATIONS. Our business could be adversely affected if we lose access to some of these sources, or if they charged us higher access fees or imposed tighter restrictions on our use of the information generated from the samples.

WE CANNOT CONTROL THE PERFORMANCE OF COLLABORATORS. We may enter into research and development relationships with corporate and academic collaborators and others. The success of these relationships depends upon third parties' performance of their responsibilities. Our ability to develop these relationships is uncertain, and any established relationships may prove unsuccessful. Our collaborators may also be pursuing alternative technologies or developing alternative products on their own or in collaboration with others, including our competitors.

WE RELY ON THIRD-PARTY DATA SOURCES. We rely on scientific and other data supplied by others, including our academic collaborators and sources of tissue samples. This data could contain errors or other defects, which could corrupt our databases. In addition, we cannot guarantee that our data sources acquired this information in compliance with legal requirements. If either of these happen and become known, our business prospects could be adversely affected.

OUR ACTIVITIES INVOLVE HAZARDOUS MATERIALS AND MAY SUBJECT US TO COSTLY ENVIRONMENTAL LIABILITY

Our research and development involves the controlled use of hazardous and radioactive materials and biological waste. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and certain waste products. Although we believe that our safety procedures for handling and disposing of these materials comply with legally prescribed standards, the risk of accidental contamination or injury from these materials cannot be completely eliminated. In the event of an accident, we could be held liable for damages, and this liability could exceed our resources.

We believe that we are in compliance in all material respects with applicable environmental laws and regulations and currently do not expect to make material additional capital expenditures for environmental control facilities in the near term. However, we may have to incur significant costs to comply with current or future environmental laws and regulations.

OUR REVENUES ARE DERIVED PRIMARILY FROM THE PHARMACEUTICAL AND BIOTECHNOLOGY INDUSTRIES AND MAY FLUCTUATE SUBSTANTIALLY DUE TO REDUCTIONS AND DELAYS IN RESEARCH AND DEVELOPMENT EXPENDITURES

We expect that our revenues in the foreseeable future will be derived primarily from products and services provided to the pharmaceutical and biotechnology industries as well as to the academic community. Accordingly, our success will depend in large part upon the success of the companies within these industries and their demand for our products and services. Our operating results may fluctuate substantially due to reductions and delays in research and development expenditures by companies in these industries or by the academic community. These reductions and delays may result from factors such as:

- changes in economic conditions;

- consolidation in the pharmaceutical industry;

- changes in the regulatory environment affecting health care and health care providers;

- pricing pressures;

- market-driven pressures on companies to consolidate and reduce costs; and

- other factors affecting research and development spending.

These factors are not within our control.

OUR BUSINESS COULD BE INTERRUPTED BY NATURAL DISASTERS

We conduct our sequencing and a significant portion of our other activities at our facilities in Palo Alto, California, and conduct our microarray-related activities at our facilities in Fremont, California. Both locations are in a seismically active area. Although we maintain business interruption insurance, we do not have or plan to obtain earthquake insurance. A major catastrophe (such as an earthquake or other natural disaster) could result in a prolonged interruption of our business.

SUBSTANTIAL LEVERAGE AND DEBT SERVICE OBLIGATIONS MAY ADVERSELY AFFECT OUR CASH FLOW

We have substantial amounts of outstanding indebtedness, primarily the $200 million of convertible subordinated notes issued in February 2000. As a result of this indebtedness, our principal and interest payment obligations have increased substantially. There is the possibility that we may be unable to generate cash sufficient to pay the principal of, interest on and other amounts due in respect of our indebtedness when due.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company is exposed to interest rate risk primarily through its investments in short-term marketable securities and its note payable. The Company's investment policy calls for investment in short term, low risk instruments. As of December 31, 1999, investments in marketable securities were $37.5 million. At December 31, 1999, the Company had a fixed rate note payable balance of $0.5 million. Due to the nature of these investments and note, if market interest rates were to increase immediately and uniformly by 10% from levels as of December 31, 1999, the decline in the fair value of the portfolio would not be material.

The Company is exposed to equity price risks on the marketable portion of equity securities included in its portfolio of investments and long-term investments, entered into to further its business and strategic objectives. These investments are in small capitalization stocks in the pharmaceutical/ biotechnology industry sector, in companies with which the Company has research and development or licensing agreements. The Company typically does not attempt to reduce or eliminate its market exposure on these securities. As of December 31, 1999, long-term investments, excluding diaDexus, were $14.2 million.

The Company typically does not hedge its foreign currency exposure. Management does not believe that the Company's exposure to foreign currency rate fluctuations is material.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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REPORT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

The Board of Directors and Stockholders of Incyte Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Incyte Pharmaceuticals, Inc. as of December 31, 1999 and 1998, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity and cash flows for each of the three years in the period ended December 31, 1999. Our audits also included the financial statement schedule listed in the Index at Item 14(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits. We did not audit the financial statements of diaDexus, LLC, a joint venture, which statements reflect total assets of $11,297,000 and $20,215,000 as of December 31, 1999 and 1998 respectively, and net losses of $11,286,000, $7,928,000, and $548,000 for the years ended December 31, 1999 and 1998 and the period from inception (September 1997) through December 31, 1997. Those statements were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the losses from joint venture recorded under the equity method and other data included for diaDexus, LLC, is based solely on the report of the other auditors.

We conducted our audits in accordance with auditing standards generally accepted in the Untied States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits and the report of other auditors provide a reasonable basis for our opinion.

In our opinion, based on our audits and the report of other auditors, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Incyte Pharmaceuticals, Inc. at December 31, 1999 and 1998, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ ERNST & YOUNG LLP

Palo Alto, California
January 24, 2000

INCYTE PHARMACEUTICALS, INC.

CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT NUMBER OF SHARES AND PAR VALUE)

ASSETS

	DECEMBER 31, 1999	DECEMBER 31, 1998
Current assets:		
Cash and cash equivalents	$ 32,220	$ 50,048
Marketable securities -- available-for-sale	34,717	61,185
Accounts receivable, net	26,608	14,318
Prepaid expenses and other current assets	15,956	5,813
Total current assets	109,501	131,364
Property and equipment, net	67,293	54,429
Long-term investments	19,275	20,653
Goodwill and other intangible assets, net	14,564	16,955
Deposits and other assets	11,301	6,889
Total assets	$221,934	$230,290
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 6,501	$ 8,244
Accrued compensation	6,731	4,786
Accrued and other current liabilities	11,767	7,843
Deferred revenue	26,459	29,054
Total current liabilities	51,458	49,927
Non-current portion of capital lease obligations and note payable	194	796
Total liabilities	51,652	50,723
Stockholders' equity:		
Preferred stock, $0.001 par value; 5,000,000 shares authorized; none issued and outstanding at December 31, 1999 and 1998	--	--
Common stock, $0.001 par value; 75,000,000 shares authorized; 28,889,936 and 27,829,850 shares issued and outstanding at December 31, 1999 and 1998, respectively	29	28
Additional paid-in capital	222,805	209,192
Deferred compensation	(806)	(1,209)
Receivable from stockholders	(20)	(33)
Accumulated other comprehensive income (loss)	3,443	(10)
Accumulated deficit	(55,169)	(28,401)
Total stockholders' equity	170,282	179,567
Total liabilities and stockholders' equity	$221,934	$230,290

See accompanying notes

INCYTE PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
Revenues	$156,962	$134,811	$89,996
Costs and expenses:			
Research and development	146,833	97,192	72,452
Selling, general and administrative	37,235	25,438	13,928
Charge for the purchase of in-process research and development	--	10,978	--
Acquisition-related charges	--	1,171	--
Total costs and expenses	184,068	134,779	86,380
Income (loss) from operations	(27,106)	32	3,616
Interest and other income	5,485	7,416	4,326
Interest and other expense	(316)	(150)	(186)
Losses from joint venture	(5,631)	(1,474)	(300)
Income (loss) before income taxes	(27,568)	5,824	7,456
Provision (benefit) for income taxes	(800)	2,352	548
Net income (loss)	$(26,768)	$ 3,472	$ 6,908
Basic net income (loss) per share	$ (0.95)	$ 0.13	$ 0.28
Shares used in computing basic net income (loss) per share	28,138	26,921	24,300
Diluted net income (loss) per share	$ (0.95)	$ 0.12	$ 0.26
Shares used in computing diluted net income (loss) per share	28,138	28,899	26,498

See accompanying notes

INCYTE PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE NET INCOME (LOSS)
(IN THOUSANDS)

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
Net income (loss)	$(26,768)	$3,472	$6,908
Other comprehensive income (loss)			
Unrealized gains on marketable securities	3,618	338	127
Foreign currency translation adjustment	(165)	(404)	2
Other comprehensive income (loss)	3,453	(66)	129
Comprehensive income (loss)	$(23,315)	$3,406	$7,037

See accompanying notes

INCYTE PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(IN THOUSANDS, EXCEPT NUMBER OF SHARES)

	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	DEFERRED COMPENSATION	RECEIVABLE FROM STOCKHOLDER	ACCUMULATED OTHER COMPREHENSIVE INCOME	ACCUMULATED DEFICIT	TOTAL STOCKHOLDERS' EQUITY
Balances at January 1, 1997.....	$22	$ 81,922	$ --	$ --	$ (73)	$(37,037)	$ 44,834
Issuance of 2,755,426 shares of Common Stock, net of expenses and underwriters' fees of $5,065.....	3	87,239	--	--	--	--	87,242
Issuance of 462,434 shares of Common Stock, net of expenses of $41.....	1	3,559	--	--	--	--	3,560
Issuance of 431,879 shares of Common Stock upon exercise of stock options and 14,934 shares upon exercise of warrant.....	--	3,029	--	--	--	--	3,029
Net change in unrealized gains (losses) on marketable securities.....	--	--	--	--	127	--	127
Change in cumulative translation adjustment.....	--	--	--	--	2	--	2
Net income.....	--	--	--	--	--	6,908	6,908
Balances at December 31, 1997....	26	175,749	--	--	56	(30,129)	145,702
Adjustment to conform fiscal year of pooled entity -- Synteni (including issuance of 337,271 shares of Common Stock).....	--	3,732	(1,658)	(49)	--	(1,744)	281
Issuance of 423,030 shares of Common Stock upon exercise of stock options; 38,944 shares of Common Stock shares issued under ESPP.....	1	4,748	--	--	--	--	4,749
Issuance of 976,130 shares of Common Stock in purchase of Hexagen Limited.....	1	23,438	--	--	--	--	23,439
Tax benefit from employee stock transactions.....	--	1,525	--	--	--	--	1,525
Amortization of deferred compensation.....	--	--	449	--	--	--	449
Repayment of receivable from stockholder.....	--	--	--	16	--	--	16
Net change in unrealized gains (losses) on marketable securities.....	--	--	--	--	338	--	338
Change in cumulative translation adjustment.....	--	--	--	--	(404)	--	(404)
Net income.....	--	--	--	--	--	3,472	3,472
Balances at December 31, 1998....	28	209,192	(1,209)	(33)	(10)	(28,401)	179,567
Issuance of 980,848 shares of Common Stock upon exercise of stock options; 79,377 shares of Common Stock issued under the ESPP.....	1	13,613	--	--	--	--	13,614
Amortization of deferred compensation.....	--	--	403	--	--	--	403
Repayment of receivable from stockholder.....	--	--	--	13	--	--	13
Net change in unrealized gains (losses) on marketable securities.....	--	--	--	--	3,618	--	3,618
Change in cumulative translation adjustment.....	--	--	--	--	(165)	--	(165)
Net loss.....	--	--	--	--	--	(26,768)	(26,768)
Balances at December 31, 1999....	$29	$222,805	$ (806)	$(20)	$3,443	$(55,169)	$170,282

See accompanying notes

INCYTE PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(IN THOUSANDS)

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss)	$(26,768)	$ 3,472	$ 6,908
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	24,688	17,827	10,633
Gain on sale of long-term investments	(241)	--	--
Non-cash portion of the charge for the purchase of in-process research and development	--	10,978	--
Losses from joint venture	5,631	1,474	300
Adjustment to conform fiscal year of pooled entity	--	278	--
Changes in certain assets and liabilities:			
Accounts receivable	(12,290)	5,885	(18,451)
Prepaid expenses and other assets	(14,555)	(5,280)	(3,495)
Accounts payable	(1,743)	1,773	1,028
Accrued and other current liabilities	6,427	1,826	14,404
Deferred revenue	(2,595)	(2,000)	6,660
Net cash provided by (used in) operating activities	(21,446)	36,233	17,987
CASH FLOWS FROM INVESTING ACTIVITIES:			
Capital expenditures	(34,758)	(30,710)	(27,225)
Purchase of long-term investments	(4,181)	(7,145)	(8,537)
Proceeds from the sale of long-term investments	4,321	--	--
Purchase of Hexagen (net of cash received)	--	(3,977)	--
Transfer to restricted cash	--	--	(6,000)
Proceeds from sale of assets leased back under operating leases	--	--	1,696
Purchases of marketable securities	(22,998)	(98,512)	(53,464)
Sales of marketable securities	38,932	88,081	8,515
Maturities of marketable securities	10,000	6,900	18,225
Net cash used in investing activities	(8,684)	(45,363)	(66,790)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of common stock	13,614	4,749	93,831
Proceeds from capital leases and notes payable	--	--	1,000
Principal payments on capital lease obligations and note payable	(1,160)	(781)	(46)
Proceeds from repayment of receivable from stockholders	13	16	--
Net cash provided by financing activities	12,467	3,984	94,785
Effect of exchange rate on cash and cash equivalents	(165)	(404)	--
Net increase (decrease) in cash and cash equivalents	(17,828)	(5,550)	45,982
Cash and cash equivalents at beginning of period	50,048	55,598	9,616
Cash and cash equivalents at end of period	$ 32,220	$ 50,048	$ 55,598
SUPPLEMENTAL SCHEDULE OF CASH FLOW INFORMATION			
Interest paid	$ 316	$ 138	$ 16
Taxes paid	$ 224	$ 705	$ 252
CASH FLOW FOR ACQUISITION OF HEXAGEN			
Tangible assets acquired (excluding $1,023 cash received)		$ 3,025	
Purchased in-process research and development		10,978	
Goodwill and other intangible assets acquired		17,553	
Acquisition costs incurred		(1,029)	
Liabilities assumed		(3,112)	
Common stock issued		(23,438)	
Cash paid for acquisition (net of $1,023 cash received)		$ 3,977	

See accompanying notes

INCYTE PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization and Business. Incyte Pharmaceuticals, Inc. (the "Company") was incorporated in Delaware in April 1991. The Company designs, develops, and markets genomic information-based tools including database products, genomic data management software tools, microarray-based gene expression services and genomic reagents and related services. The Company's genomic databases integrate bioinformatics software with proprietary and, when appropriate, publicly available genetic information to create information-based tools used by pharmaceutical and biotechnology companies and academic researchers in the understanding of disease and drug discovery and development.

Principles of Consolidation. The consolidated financial statements include the accounts of Incyte Pharmaceuticals, Inc., and its wholly owned subsidiaries. All material intercompany accounts, transactions, and profits have been eliminated in consolidation.

In September 1998, the Company completed the acquisition of Hexagen Limited ("Hexagen"), which was accounted for as a purchase. The Company issued 976,130 shares of the its common stock and $5.0 million in cash in exchange for all of Hexagen's outstanding capital stock. In addition, the Company assumed Hexagen's outstanding stock options, which if fully vested and exercised, would amount to 125,909 shares of common stock. The consolidated financial statements discussed herein reflect the inclusion of the results of Hexagen from the date of acquisition, September 21, 1998.

In January 1998, the Company issued 2,340,237 shares of common stock in exchange for all of the capital stock of Synteni, Inc. ("Synteni"). The merger has been accounted for as a pooling of interests and, accordingly, the Company's financial statements and financial data for all periods prior to the acquisition were retroactively restated to include the accounts and operations of Synteni since inception. Synteni's fiscal year ended on September 30. Synteni's results of operations for the period from October 1, 1997 to December 31, 1997 were recorded directly in accumulated deficit in 1998.

Use of Estimates. The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Foreign Currency Translation. The financial statements of subsidiaries outside the United States are measured using the local currency as the functional currency. Assets and liabilities of these subsidiaries are translated at the rates of exchange at the balance sheet date. The resultant translation adjustments are included in the accumulated other comprehensive income (loss), a separate component of stockholders' equity. Income and expense items are translated at average monthly rates of exchange.

Concentrations of Credit Risk. Cash, cash equivalents, and short-term investments, trade receivables, and long term strategic investments are financial instruments which potentially subject the Company to concentrations of credit risk. The estimated fair value of financial instruments approximates the carrying value based on available market information. The Company primarily invests its excess available funds in notes and bills issued by the U.S. government and its agencies and corporate debt securities and, by policy, limits the amount of credit exposure to any one issuer and to any one type of investment, other than securities issued or guaranteed by the U.S. Government. The Company's customers are pharmaceutical, biotechnology and agricultural companies which are typically located in the United States and Europe. The Company has not experienced any significant credit losses to date and does not require collateral on receivables. The Company's long-term investments represent equity investments in a number of companies whose businesses may be complementary to the Company's business. The Company evaluates the long-term investments quarterly for impairment, and to date has not incurred a material impairment related to these investments. (See Long-Term Investments)

Cash and Cash Equivalents. Cash and cash equivalents are held in U.S. and U.K. banks or in custodial accounts with U.S. and U.K. banks. Cash equivalents are defined as all liquid investments with maturity from date of purchase of 90 days or less that are readily convertible into cash and have insignificant interest rate risk. All other investments are reported as marketable securities -- available-for-sale.

Marketable Securities-Available-for-Sale. All marketable securities are classified as available-for-sale. Available-for-sale securities are carried at fair value, based on quoted market prices, with unrealized gains and losses reported as a separate component of stockholders' equity. The amortized cost of debt securities in this category is adjusted for amortization of premiums and accretions of discounts to maturity. Such amortization is included in interest income. Realized gains and losses and declines in value judged to be other than temporary for available-for-sale securities are included in interest and other income/expense. The cost of securities sold is based on the specific identification method.

The following is a summary of the Company's investment portfolio, excluding the Company's investment in diaDexus and including cash equivalents of $2,803,000 and $26,203,000 as of December 31, 1999 and 1998, respectively.

	AMORTIZED COST	NET UNREALIZED GAINS (LOSSES)	ESTIMATED FAIR VALUE
		(IN THOUSANDS)	
DECEMBER 31, 1999			
U.S. Treasury notes and other U.S. government and agency securities	$35,043	$ (326)	$34,717
Corporate debt securities	2,800	3	2,803
Long term equity investments	9,848	4,333	14,181
	$47,691	$4,010	$51,701
DECEMBER 31, 1998			
U.S. Treasury notes and other U.S. government and agency securities	$72,635	$ 210	$72,845
Corporate debt securities	14,543	--	14,543
Long term equity investments	12,245	182	12,427
	$99,423	$ 392	$99,815

At December 31, 1999 and 1998, all of the Company's investments are classified as short-term, as the Company has classified its investments as available for sale and may not hold its investments until maturity in order to take advantage of market conditions. At December 31, 1999, marketable securities with a market value of $32,596,000 and an amortized cost of $32,846,000 had maturities under a year and marketable securities with a market value of $4,924,000 and an amortized cost of $4,997,000 had maturities over a year, but less than two years. Unrealized losses were not material and have therefore been netted against unrealized gains. Net realized gains of $272,000 and $380,000 from sales of marketable securities were included in Interest and Other Income in 1999 and 1998, respectively, and net realized losses of $25,000 losses from sales of marketable debt securities were included in Interest and Other Expense in 1997.

Accounts Receivable. Accounts receivable at December 31, 1999 and 1998 included an allowance for doubtful accounts of $234,000 and $434,000, respectively.

Property and Equipment. Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation is recorded using the straight-line method over the estimated useful lives of the

respective assets (generally two to five years). Leasehold improvements are amortized over the shorter of the estimated useful life of the assets or lease term. Property and equipment consists of the following:

	DECEMBER 31,	
	1999	1998
	(IN THOUSANDS)	
Office equipment	$ 4,630	$ 3,577
Laboratory equipment	25,297	25,665
Computer equipment	52,565	35,209
Leasehold improvements	37,941	26,026
	120,433	90,477
Less accumulated depreciation and amortization	(53,140)	(36,048)
	$ 67,293	$ 54,429

Depreciation expense, including depreciation expense of assets under capital leases, was $16,711,000, $13,420,000, and $8,758,000, for 1999, 1998, and 1997, respectively. Amortization of leasehold improvements was $5,138,000, $3,343,000, and $2,260,000 for 1999, 1998, and 1997, respectively.

Certain laboratory and computer equipment used by the Company could be subject to technological obsolescence in the event that significant advancement is made in competing or developing equipment technologies. Management continually reviews the estimated useful lives of technologically sensitive equipment and believes that those estimates appropriately reflect the current useful life of its assets. In the event that a currently unknown significantly advanced technology became commercially available, the Company would re-evaluate the value and estimated useful lives of its existing equipment, possibly having a material impact on the financial statements.

Long-Term Investments. The Company has made equity investments in a number of companies whose businesses may be complementary to the Company's business. The Company accounts for its investment in diaDexus ($5,094,000 and $8,226,000 at December 31, 1999 and 1998, respectively) under the equity method of accounting (see Joint Venture and Note 10). All other investments in which the shares are freely tradable or become freely tradable within one year of the balance sheet date are accounted for in accordance with Statement of Financial Accounting Standard ("SFAS") 115, with unrealized gains and losses being reported in accumulated other comprehensive income (loss) as a separate component of stockholders' equity. In all other cases, the cost method of accounting is used. The Company holds less than 10% of each long-term investment, other than diaDexus, and does not exert significant influence over these investments.

Joint Venture. In September 1997, the Company formed a joint venture, diaDexus, LLC with SmithKline Beecham Corporation ("SB"), which will utilize genomic and bioinformatic technologies in the discovery and commercialization of molecular diagnostics. The Company and SB each hold a 50 percent equity interest in diaDexus and the Company accounts for the investment under the equity method. See Note 10.

Goodwill and Other Intangible Assets. Goodwill and other intangible assets were generated in the acquisition of Hexagen. Goodwill is being amortized on a straight line basis over 8 years and the other intangible assets of developed technology and assembled workforce are being amortized on a straight line basis over 5 and 3 years, respectively. Goodwill and other intangible assets are evaluated quarterly for impairment.

Software Costs. In accordance with the provisions of the Financial Accounting Standards Board Statement No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased or Otherwise Marketed," the Company has capitalized software development costs incurred in developing certain products once technological feasibility of the products has been determined. At December 31, 1999 and 1998 the Company had capitalized software, net of amortization, of $8,542,000 and $6,315,000, respectively, and

recorded amortization of capitalized software of $3,418,000, $1,379,000, and $391,000 for the years ended December 31, 1999, 1998, and 1997, respectively.

Accumulated Other Comprehensive Income. Accumulated Other Comprehensive Income consists of the following:

	DECEMBER 31,	
	1999	1998
	(IN THOUSANDS)	
Unrealized gains on marketable securities	$4,010	$ 392
Cumulative Translation Adjustment	(567)	(402)
	$3,443	$ (10)

Revenue Recognition. Revenues are recognized when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed and determinable and collectibility is reasonably assured. For database collaboration agreements revenues are recognized evenly over the term of each agreement. Revenue is deferred for fees received before earned. Revenues from custom orders, such as contract sequencing, and reagents are recognized upon completion and delivery. Revenues from genomic screening services are recognized upon completion. Revenue from gene expression microarray services includes; technology access fees, which are generally recognized ratably over the access term and usage fees which are recognized at the completion of key stages in the performance of the service, in proportion to costs incurred. Generally, software revenue is allocated between license fees and maintenance fees, in accordance with SOP 97-2, with the license revenue being recognized upon installation, and maintenance fees recognized evenly over the maintenance term.

Stock-Based Compensation. The Company accounts for stock option grants to employees in accordance with APB Opinion No. 25, Accounting for Stock Issued to Employees. The Company currently grants stock options for a fixed number of shares to employees and directors with an exercise price equal to the fair value of the shares at the date of grant, and therefore records no compensation expense. Prior to the merger with Incyte, Synteni recorded deferred compensation of $1,658,000 for options issued to employees with an exercise price below the fair market value of the underlying stock. The amount is being amortized over the vesting period of the options issued.

Advertising Costs. All costs associated with advertising products are expensed in the year incurred. Advertising expense for the years ended December 31, 1999, 1998, and 1997 was $1,051,000, $1,092,000, and $772,000, respectively.

New Pronouncements. In June 1998, the FASB issued Statement No. 133, Accounting for Derivative Instruments and Hedging Activities. ("SFAS 133"). SFAS 133 established standards for accounting and reporting derivative instruments and hedging activities. In June 1999, The FASB issued Statement No. 137, Accounting for Derivative Instruments and Hedging Activities -- Deferral of the Effective Date of FASB Statement No. 133 ("SFAS 137"). This statement defers the effective date of SFAS 133 until June 15, 2000. Application of SFAS 133 will have no impact on the consolidated financial position or results of operations as currently reported.

In December 1999, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements" ("SAB 101"). Among other things, SAB 101 discusses the SEC staff's view on accounting for non-refundable up-front fees. The Company is currently evaluating SAB 101 as to whether it would have any material impact on the Company. Should the Company determine that a change in its accounting policy is necessary, such a change will be made effective January 1, 2000 and would result in a charge to results of operations for the cumulative effect of the change. This amount, if recognized, would be recorded as deferred revenue and recognized as revenue in future periods. Prior financial statements would not be restated.

NOTE 2. DATABASE AND MICROARRAY AGREEMENTS

As of December 31, 1999, the Company had entered into database collaboration agreements with over twenty pharmaceutical, biotechnology and agricultural companies. Over 83% of revenues in 1999 were derived from such collaborations. Each collaborator has agreed to pay, during the term of the agreement, annual fees to receive non-exclusive access to selected modules of the Company's databases. In addition, if a customer develops certain products utilizing the Company's technology and proprietary database information, milestone and royalty payments could potentially be received by the Company.

The Company has also entered into microarray production agreements with pharmaceutical, biotechnology and agricultural companies. The agreements range from small volume pilot agreements to large volume production agreements.

No collaborators individually contributed more than 10% of the Company's total revenues in 1999 or 1997. One of the collaborators contributed 12% of the Company's total revenues in 1998.

NOTE 3. COMMITMENTS

At December 31, 1999, the Company had signed noncancelable operating leases on multiple facilities, including facilities in Palo Alto and Fremont, California, St. Louis, Missouri and Cambridge, England. The leases expire on various dates ranging from March 2000 to March 2011. Rent expense for the years ended December 31, 1999, 1998, and 1997, was approximately $8,674,000, $5,218,000, and $3,490,000, respectively.

The Company had laboratory and office equipment with a cost of approximately $2,308,000 and $2,334,000 at December 31, 1999 and 1998, respectively, and related accumulated amortization of approximately $716,000 and $177,000 at December 31, 1999 and 1998, respectively, under capital leases. These leases are secured by the equipment leased thereunder.

At December 31, 1999, future noncancelable minimum payments under the operating and capital leases and note payable were as follows:

	OPERATING LEASES	CAPITAL LEASES AND NOTE PAYABLE
	(IN THOUSANDS)	
Year ended December 31,		
2000	$ 15,364	$ 720
2001	14,789	207
2002	11,741	--
2003	9,585	--
2004	8,001	--
Thereafter	47,001	--
Total minimum lease payments	$106,481	927
Less amount representing interest		(126)
Present value of minimum lease payments		801
Less current portion		(607)
Non-current portion		$ 194

In July 1997, Synteni obtained $1,000,000 in debt financing secured by its property and equipment. The loan is repayable in 48 equal monthly installments commencing on September 1, 1997 and carries an annual interest rate of 9%. In connection with the financing, Synteni issued a warrant to purchase 2,569 shares of Incyte equivalent common stock, exercisable for a period of seven years from the date of issue at an exercise

price of $7.79 per share. Using the Black-Scholes model to determine the fair market value of the warrant, management has determined that such fair value is nominal.

The Company has entered into a number of research and development alliances with companies and research institutions. These agreements provide for the funding of research activities by the Company and the possible payment of milestones, license fees, and, in some cases, royalties. As part of a collaborative agreement with Oxford GlycoSciences plc ("OGS") relating to the joint development of a proteomics database, the Company reimbursed OGS $5.0 million for services rendered in 1999 and has agreed to reimburse OGS up to another $5.0 million in 2000 if revenues are not sufficient to offset OGS' services rendered. The Company's commitments under any other of these agreements do not represent a significant expenditure in relation to the Company's total research and development expense.

NOTE 4. STOCKHOLDERS' EQUITY

Common Stock. At December 31, 1999, the Company had reserved a total of 6,036,364 shares of its Common Stock for issuance upon exercise of outstanding stock options and purchases under the Employee Stock Purchase Plan described below. In October 1997, the Company's Board of Directors authorized a two-for-one stock split effected in the form of a stock dividend paid on November 7, 1997 to holders of record on October 17, 1997. All share and per share data have been adjusted retroactively to reflect the split.

On May 21, 1997, the Company's stockholders approved an increase in the number of shares authorized for issuance from 20,000,000 to 75,000,000.

Preferred Stock. The Company is authorized to issue 5,000,000 shares of preferred stock, none of which was outstanding at December 31, 1999 or 1998. The Board of Directors may determine the rights, preferences and privileges of any preferred stock issued in the future.

Sales of Stock. In August 1997, the Company completed a follow-on public stock offering and issued 2,755,426 shares of common stock, including 355,426 shares covered by the exercise of the underwriters' over-allotment option, at $33.50 per share. Net proceeds from this offering were approximately $87.2 million after deducting the underwriting discount and offering expenses.

Stock Compensation Plans. The Company applies APB Opinion No. 25 and related Interpretations in accounting for its stock compensation plans. Accordingly, no compensation cost, excluding options issued by Synteni prior to the merger, has been recognized for its fixed stock option plans. Had compensation cost for the Company's three stock-based compensation plans been determined consistent with SFAS 123, the Company's pro forma net loss in 1999, 1998 and 1997 would have been approximately $40.0 million, $7.4 million, and $0.5 million, respectively. The Company's pro forma basic and diluted net loss per share in 1999, 1998, and 1997 would have been $1.42, $0.27, and $0.02 per share, respectively. The weighted average fair value of the options granted during 1999, 1998, and 1997 are estimated at $13.41, $16.59, and $14.66 per share, respectively, on the date of grant, using the Black-Scholes multiple-option pricing model with the following assumptions: dividend yield 0%, 0% and 0%, volatility of 66%, 57%, and 56%, risk-free interest rate with an average of 5.43%, 5.06%, and 6.05%, and an average expected life of 3.32, 3.79, and 3.37 years, for 1999, 1998, and 1997, respectively. The average fair value of the employees' purchase rights under the Employee Stock Purchase Plan during 1999, 1998 and 1997 is estimated at $8.14, $12.15 and $11.86, respectively, on the date of grant, using the Black-Scholes multiple-option pricing model with the following assumptions: dividend yield 0%, 0% and 0%, volatility of 66%, 57% and 56%, risk free interest rate of 5.14%, 4.75% and 5.64%, and an expected life of 6 months, respectively.

As SFAS 123 is only applicable to options granted after December 31, 1994, the pro forma effect was not fully reflected until 1998. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions, including the expected stock price

volatility and option life. Because the Company's employee stock options have characteristics significantly different from those of traded options, because changes in the subjective input assumptions can materially affect the fair value estimate, and because the Company has a relatively limited history with option behavior, in management's opinion the existing models do not necessarily provide a reliable single measure of the fair value of its employee stock options.

Summaries of stock option activity for the Company's three fixed stock option plans as of December 31, 1999, 1998 and 1997, and related information for the years ended December 31 are included in the plan descriptions below.

1991 Stock Plan. In November 1991, the Board of Directors adopted the 1991 Stock Plan (the "Stock Plan"), which was amended and restated in 1992, 1995, 1996 and 1997 for issuance of common stock to employees, consultants, and scientific advisors. Options issued under the plan shall, at the discretion of the compensation committee of the Board of Directors, be either incentive stock options or nonstatutory stock options. The exercise prices of incentive stock options granted under the plan are not less than the fair market value on the date of the grant, as determined by the Board of Directors. The exercise prices of nonstatutory stock options granted under the plan cannot be less than 85% of the fair market value on the date of the grant, as determined by the Board of Directors. Options generally vest over four years, pursuant to a formula determined by the Company's Board of Directors, and expire after ten years. On June 8, 1999, the Company's stockholders approved an increase in the number of shares of Common Stock reserved for issuance under the plan from 6,300,000 to 7,400,000.

1996 Synteni Stock Plan. In December 1996, Synteni's board of directors approved and adopted the 1996 Equity Incentive Plan ("Synteni Plan"). Under the Synteni Plan, Synteni could grant incentive stock options, nonstatutory stock options, stock bonuses or restricted stock purchase rights to purchase the aggregate equivalent of 436,100 shares of Incyte Common Stock. Incentive stock options could be granted to employees and nonstatutory options and rights to purchase restricted stock may be granted to employees, directors or consultants at exercise prices of no less than 100% and 85%, respectively, of the fair value of the common stock on the grant date, as determined by the board of directors. Options could be granted with different vesting terms from time to time and options expire no more than 10 years after the date of grant. All outstanding options at the time of the merger with Incyte were converted to options to purchase Incyte Common Stock, and the Synteni Plan was terminated.

Activity under the combined plans was as follows:

	SHARES AVAILABLE FOR GRANT	SHARES SUBJECT TO OUTSTANDING OPTIONS	
		SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Balance at January 1, 1997	478,808	2,938,086	$11.63
Additional authorization	800,000	--	--
Shares authorized under Synteni Plan	436,100	--	--
Options granted	(1,159,508)	1,159,508	25.56
Options exercised	--	(408,171)	7.27
Options canceled	109,398	(109,398)	19.27
Balance at December 31, 1997	664,798	3,580,025	16.46
Additional authorization	1,500,000	--	--
Options granted	(1,002,834)	1,002,834	28.70
Options exercised	--	(421,010)	8.52
Options canceled	207,763	(207,763)	30.73
Termination of Synteni Plan	(88,280)	--	--
Balance at December 31, 1998	1,281,447	3,954,086	19.66
Additional authorization	1,100,000	--	--
Options granted	(2,571,044)	2,571,044	27.52
Options exercised	--	(980,848)	12.71
Options canceled	669,704	(669,704)	27.52
Balance at December 31, 1999	480,107	4,874,578	$24.15

Included in the above table, in the 1998 activity, were stock options issued by Synteni to purchase 89,587 Incyte equivalent common shares at a weighted average exercise price of $1.49, in the period from October 1, 1997 to December 31, 1997. The Company recorded $1,658,000 of deferred compensation related to these options, which is being amortized over the vesting period of the options.

Options to purchase a total of 1,862,676; 2,447,539; and 2,145,403 shares at December 31, 1999, 1998, and 1997, respectively, were exercisable. Of the options exercisable, 1,713,646; 1,851,549; and 1,197,542 shares were vested at December 31, 1999, 1998, and 1997, respectively.

Non-Employee Directors' Stock Option Plan. In August 1993, the Board of Directors approved the 1993 Directors' Stock Option Plan (the "Directors' Plan"), which was amended in 1995. The Directors' Plan provides for the automatic grant of options to purchase shares of Common Stock to non-employee directors of the Company. The maximum number of shares issuable under the Directors' Plan is 400,000.

The Directors' Plan provides immediate issuance of options to purchase an initial 40,000 shares of Common Stock to each new non-employee director joining the Board. The initial options are exercisable in five equal annual installments. Additionally, members who continue to serve on the Board will receive annual option grants for 10,000 shares exercisable in full on the first anniversary of the date of the grant. All options are exercisable at the fair market value of the stock on the date of grant. Through December 31, 1999, the Company had granted options under the Directors' Plan to purchase 307,500 shares of Common Stock at weighted average exercise prices of $11.25 (287,500 and 267,500 shares of Common Stock at a weighted average exercise price of $11.18 and $8.71 at December 31, 1998 and 1997, respectively); 287,500 shares are vested and exercisable at December 31, 1999 (241,500 and 171,500 shares were vested and exercisable at

December 31, 1998 and 1997, respectively). To date, no options under the Director's Plan have been exercised or canceled. The Directors' Plan was amended in March 1998 by the Board of Directors to eliminate the grant referred to above to each new non-employee director and to reduce the annual grants from 10,000 shares to 5,000 shares.

The following table summarizes information about stock options outstanding at December 31, 1999, for the 1991 Stock Plan, the 1996 Synteni Stock Plan, and the 1993 Non-employee Directors' Stock Option Plan:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
RANGE OF EXERCISE PRICES	NUMBER OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER EXERCISABLE	WEIGHTED AVERAGE EXERCISE PRICE
$ 0.50 - 7.25	722,279	4.89	$ 3.92	695,850	$ 3.99
7.38 - 17.69	678,395	6.90	12.57	496,395	10.84
18.00 - 20.94	684,028	7.44	20.17	433,062	20.21
21.00 - 27.75	582,565	9.04	24.62	92,781	25.12
28.00 - 30.13	918,683	9.22	29.34	25,605	28.13
30.44 - 30.44	663,369	9.94	30.44	416	30.44
31.00 - 36.63	737,008	8.30	35.12	312,454	35.13
40.25 - 45.25	136,699	8.04	43.25	65,270	43.13
45.44 - 47.00	59,052	8.19	46.12	28,343	46.16
	5,182,078	7.98	23.38	2,150,176	16.31

Employee Stock Purchase Plan. On May 21, 1997, the Company's stockholders adopted the 1997 Employee Stock Purchase Plan ("ESPP"). The Company has authorized 400,000 shares of Common Stock for issuance under the ESPP. Each regular full-time and part-time employee is eligible to participate after six months of employment. The Company issued 79,377 and 38,944 shares under the ESPP in 1999 and 1998, respectively. As of December 31, 1999, 281,679 shares remain available for issuance under the ESPP. As of December 31, 1999 and 1998, $221,000 and $162,000, respectively, has been deducted from employees' payroll for the purchase of shares under the ESPP.

Stockholders Rights Plan. On September 25, 1998, the Board of Directors adopted a Stockholder Rights Plan (the "Rights Plan"), pursuant to which one preferred stock purchase right (a "Right") was distributed for each outstanding share of Common Stock held of record on October 13, 1998. One Right will also attach to each share of Common Stock issued by the Company subsequent to such date and prior to the distribution date defined below. Each Right represents a right to purchase, under certain circumstances, a fractional share of the Company's Series A Participating Preferred Stock at an exercise price of $200.00, subject to adjustment. In general, the Rights will become exercisable and trade independently from the Common Stock on a distribution date that will occur on the earlier of (i) the public announcement of the acquisition by a person or group of 15% or more of the Common Stock or (ii) ten days after commencement of a tender or exchange offer for the Common Stock that would result in the acquisition of 15% or more of the Common Stock. Upon the occurrence of certain other events related to changes in ownership of the Common Stock, each holder of a Right would be entitled to purchase shares of Common Stock, or an acquiring corporation's common stock, having a market value of twice the exercise price. Under certain conditions, the Rights may be redeemed at $0.01 per Right by the Board of Directors. The Rights expire on September 25, 2008.

NOTE 5. INCOME TAXES

The provision for income taxes consists of the following (in thousands):

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
Current			
Federal	$(832)	$2,012	$533
Foreign	(92)	165	15
State	124	175	--
Total provision (benefit) for income taxes	$(800)	$2,352	$548

Income (loss) before provision for income taxes consisted of the following (in thousands):

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
U.S.	$(27,869)	$5,536	$7,393
Foreign	301	288	63
	$(27,568)	$5,824	$7,456

The provision (benefit) for income taxes differs from the federal statutory rate as follows (in thousands):

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
Provision (benefit) at U.S. federal statutory rate	$(9,649)	$ 2,038	$ 2,610
State taxes, net of federal benefit	81	112	--
Use of net operating loss carryforwards	--	(4,208)	(3,373)
Unbenefitted net operating losses	8,604	--	1,225
Acquired purchased in-process R&D	--	3,842	--
Non-deductible acquisition costs	--	410	--
Other	164	158	86
Provision (benefit) for income tax	$ (800)	$ 2,352	$ 548

Significant components of the Company's deferred tax assets are as follows (in thousands):

	DECEMBER 31	
	1999	1998
Deferred tax assets		
Net operating loss carryforwards	$ 18,700	$ 6,200
Research credits	9,700	6,900
Capitalized research and development	7,700	6,100
Accruals and reserves	2,800	2,600
Other, net	4,500	1,200
Total deferred tax assets	43,400	23,000
Valuation allowance for deferred tax assets	(43,400)	(23,000)
Net deferred tax assets	$ --	$ --

The valuation allowance for deferred tax assets increased by approximately $20,400,000, $4,800,000, and $3,300,000 during the years ended December 31, 1999, 1998, and 1997, respectively. Approximately

$13,100,000 of the valuation allowance for deferred tax assets relates to benefits from stock option deductions which, when recognized, will be allocated directly to contributed capital.

The Company's management believes the uncertainty regarding the timing of the realization of net deferred tax assets requires a valuation allowance.

As of December 31, 1999, the Company had federal net operating loss carryforwards of approximately $52,900,000. The Company also had federal research and development tax credit carryforwards of approximately $6,600,000. The net operating loss carryforwards will expire at various dates, beginning in 2009, through 2019 if not utilized.

Utilization of the net operating losses and credits may be subject to an annual limitation, due to the "change in ownership" provisions of the Internal Revenue Code of 1986 and similar state provisions.

NOTE 6. NET INCOME (LOSS) PER SHARE

The following table sets forth the computation of basic and diluted net income (loss) per share (in thousands, except per share amounts):

	YEAR ENDED DECEMBER 31,		
	1999	1998	1997
Numerator:			
Net income (loss)	$(26,768)	$ 3,472	$ 6,908
Denominator:			
Denominator for basic net income (loss) per share -- weighted-average shares outstanding	28,138	26,921	24,300
Dilutive potential common shares -- stock options	--	1,978	2,198
Denominator for diluted net income (loss) per share	28,138	28,899	26,498
Basic net income (loss) per share	$ (0.95)	$ 0.13	$ 0.28
Diluted net income (loss) per share	$ (0.95)	$ 0.12	$ 0.26

Options and warrants to purchase 5,182,078 and 654,000 shares of common stock were outstanding at December 31, 1999 and 1998, respectively, but were not included in the computation of diluted net income (loss) per share, as their effect was anti-dilutive. There were no such anti-dilutive securities in 1997.

NOTE 7. DEFINED CONTRIBUTION PLAN

The Company has a defined contribution plan covering all domestic employees. Employees may contribute a portion of their compensation, which is then matched by the Company, subject to certain limitations. Defined contribution expense for the Company was $1,259,000, $709,000, and $520,000, in 1999, 1998, and 1997, respectively.

NOTE 8. SEGMENT REPORTING

The Company's operations are treated as one operating segment, in accordance with SFAS 131, the design, development, and marketing of genomic information-based tools, as it only reports profit and loss information on an aggregate basis to chief operating decision makers of the Company. For the year ended December 31, 1999, the Company recorded revenue from customers throughout the United States and in Canada, Austria, Belgium, France, Germany, Israel, Netherlands, Switzerland, and the United Kingdom. Export revenue for the years ended December 31, 1999, 1998, and 1997, was $43,679,000, $33,584,000, and $25,694,000, respectively.

NOTE 9. BUSINESS COMBINATIONS

Acquisitions accounted for under the purchase method of accounting

In September 1998, the Company completed the acquisition of Hexagen Limited ("Hexagen"), a privately held SNP discovery company based in Cambridge, England. The Company issued 976,130 shares of its common stock and $5.0 million in cash in exchange for all of Hexagen's outstanding capital stock. In addition, the Company assumed Hexagen's stock options, which if fully vested and exercised, would amount to 125,909 shares of its common stock. The transaction was accounted for as a purchase with a portion of the purchase price, estimated to be approximately $11.0 million, expensed in the third quarter of 1998 as a charge for the purchase of in-process research and development. The remaining portion of the purchase price, approximately $17.6 million, was allocated to goodwill ($16.3 million), developed technology ($0.7 million), and Hexagen's assembled work force ($0.6 million), which are being amortized over 8, 5 and 3 years, respectively.

The Company allocated Hexagen's purchase price based on the relative fair value of the net tangible and intangible assets acquired. In performing this allocation, the Company considered, among other factors, the technology research and development projects in process at the date of acquisition. Hexagen's in-process research and development program consisted of the development of its fSSCP technology for SNP discovery. In 1999, the Company completed the development of the fSSCP technology. There have been no significant changes in the assumptions used to value the assets of Hexagen.

The estimates used by the Company in valuing in-process research and development were based upon assumptions the Company believes to be reasonable but which are inherently uncertain and unpredictable. The Company's assumptions may be incomplete or inaccurate, and no assurance can be given that unanticipated events and circumstances will not occur. Accordingly, actual results may vary from the projected results. Any such variance may result in a material adverse effect on the financial condition and results of operations of the Company. The results of operations of Hexagen have been included in the consolidated results of the Company from the date of acquisition in September 1998.

Associated risks include the inherent difficulties and uncertainties in completing each project and thereby achieving technological feasibility and risks related to the impact of potential changes in future target markets.

The table below presents the pro forma results of operations and earnings per share for Hexagen and the Company. The transaction is assumed to be completed on January 1, 1998 for the period ended December 31, 1998 and January 1, 1997 for the period ended December 31, 1997.

	1998	1997
Revenues	$134,811	$89,996
Net income	$ 7,323	$ 271
Pro forma basic net income per share	$ 0.27	$ 0.01
Pro forma diluted net income per share	$ 0.25	$ 0.01
Pro forma shares for basic net income per share	27,340	25,276
Pro forma shares for diluted net income per share	29,459	27,588

Acquisitions accounted for under the pooling of interests method of accounting

In January 1998, the Company issued 2,340,237 shares of common stock in exchange for all of the capital stock of Synteni, a privately held microarray-based genomics company in Fremont, California. Synteni is developing and commercializing technology for generating microarrays and related software and services. The merger was accounted for as a pooling of interests and, accordingly, the Company's financial statements and financial data have been restated to include the accounts and operations of Synteni since inception.

The table below presents the separate results of operations for Incyte, and Synteni prior to the merger. Incyte's results include Synteni from January 1998.

	1998	1997
Revenues:		
Incyte	$134,811	$88,351
Synteni	--	1,645
	$134,811	$89,996
Net income (loss):		
Incyte	$ 4,532	$10,408
Synteni	--	(3,500)
Acquisition-related charges	(1,060)	--
	$ 3,472	$ 6,908

NOTE 10. JOINT VENTURE

In September 1997, the Company formed a joint venture, diaDexus, LLC ("diaDexus"), with SmithKline Beecham Corporation ("SB") which will utilize genomic and bioinformatic technologies in the discovery and commercialization of molecular diagnostics. The Company holds a 50 percent equity interest in diaDexus and accounts for the investment under the equity method. In July 1999, the Company and SB each invested an additional $2.5 million in diaDexus through convertible notes that mature in April 2000. The notes bear interest at 5.6%, and are subordinate to all other claims. The notes, principal plus accrued interest, will automatically convert into diaDexus Series C Preferred Stock upon the closing of the sale of Series C Preferred Stock of diaDexus that results in aggregate proceeds to diaDexus of at least $10 million, including the $5 million that would result from the conversion of the loans from SB and the Company.

diaDexus purchased $1.9 million of contract sequencing and microarray services from the Company in the year ended December 31, 1999 and did not have similar purchases prior to 1999. At December 31, 1999, the Company had $0.1 million of receivables outstanding from diaDexus related to these services.

The following is summary of diaDexus' financial information as of December 31, 1999, 1998 and 1997, for the years ended December 31, 1999 and 1998, and the period from inception (September 1997) through December 31, 1997 (in thousands):

	1999	1998	1997
Current assets	$ 8,786	$16,866	$ 6,625
Total assets	11,297	20,215	10,212
Current liabilities	5,957	3,565	2,658
Total liabilities	6,044	3,681	2,760
Net loss	11,286	7,928	548

NOTE 11. LITIGATION

In January 1998, Affymetrix, Inc. ("Affymetrix") filed a lawsuit in the United States District Court for the District of Delaware, subsequently transferred to the United States District Court for the Northern District of California in November 1998, alleging infringement of U.S. patent number 5,445,934 (the "'934 Patent") by both Synteni and Incyte. The complaint alleges that the '934 Patent has been infringed by the making, using, selling, importing, distributing or offering to sell in the U.S. high density arrays by Synteni and Incyte and that such infringement was willful. Affymetrix seeks a permanent injunction enjoining Synteni and Incyte from further infringement of the '934 Patent and, in addition, seeks damages, costs and attorney's fees

and interest. Affymetrix further requests that any such damages be trebled based on its allegation of willful infringement by Incyte and Synteni.

In September 1998, Affymetrix filed an additional lawsuit in the United States District Court for the District of Delaware, subsequently transferred to the United States District Court for the Northern District of California in November 1998, alleging infringement of the U.S. patent number 5,800,992 (the "992 Patent") and U.S. patent number 5,744,305 (the "'305 Patent") by both Synteni and Incyte. The complaint alleges that the '305 Patent has been infringed by the making, using, selling, importing, distributing or offering to sell in the United States high density arrays by Synteni and Incyte, that the '992 Patent has been infringed by the use of Synteni's and Incyte's GEM(TM)microarray technology to conduct gene expression monitoring using two-color labeling, and that such infringement was willful. Affymetrix seeks a permanent injunction enjoining Synteni and Incyte from further infringement of the '305 and '992 Patents and, in addition, Affymetrix had sought a preliminary injunction enjoining Incyte and Synteni from using Synteni's and Incyte's GEM microarray technology to conduct gene expression monitoring using two-color labeling as described in the '992 Patent. Affymetrix's request for a preliminary injunction was denied in May 1999. As a result of the assignment of the case to a new judge, all scheduled trial and pretrial dates have been vacated. The court is expected to set a new schedule in late April 2000.

In April 1999, the Board of Patent Appeals and Interferences of United States Patent and Trademark Office (PTO) declared interferences between pending patent applications licensed exclusively to Incyte and the Affymetrix '305 and '992 Patents. An interference proceeding is invoked by the PTO when more than one patent applicant claims the same invention. The Board of Patent Appeals and Interferences evaluates all relevant facts, including those bearing on first to invent, validity, enablement and scope of claims, and then makes a determination as to who, if anyone, is entitled to the patent on the disputed invention. In September 1999, the Board of Patent Appeals and Interferences determined that Incyte had not met its prima facie case, and ruled that the patents licensed by Incyte and Synteni from Stanford University were not entitled to priority over corresponding claims in the two Affymetrix patents. The Company is seeking de novo review of the Board decisions in the United States District Court for the Northern District of California. Incyte and Synteni believe they have meritorious defenses and intend to defend the suits vigorously. However, there can be no assurance that Incyte and Synteni will be successful in the defense of these suits. At this time, the Company cannot reasonably estimate the possible range of any loss resulting from these suits due to uncertainty regarding the ultimate outcome. Regardless of the outcome, this litigation has resulted and is expected to continue to result in substantial expenses and diversion of the efforts of management and technical personnel. Further, there can be no assurance that any license that may be required as a result of this suit or the outcome thereof would be made available on commercially acceptable terms, if at all.

NOTE 12. SUBSEQUENT EVENTS

In February 2000, in a private placement, the Company issued $200 million of convertible subordinated notes, which resulted in net proceeds of approximately $196.8 million. The notes bear interest at 5.5%, payable semi-annually on March 1 and September 1, and are due February 1, 2007. The notes are subordinate to all other indebtedness. The notes can be converted at the option of the holder at a price of $134.84 per share. The Company may redeem the notes at any time before February 7, 2003, only if the Company's stock exceeds 150% of the conversion price for 20 trading days in a period of 30 consecutive trading days. On or after February 7, 2003 the Company may redeem the notes at specific prices. Holders may require the Company to repurchase the notes upon a change in control, as defined.

In February 2000, in a private placement, the Company issued 2,000,000 of its common stock at a price of $211 per share, resulting in net proceeds of $398.3 million.

SCHEDULE II -- VALUATION AND QUALIFYING ACCOUNTS

DESCRIPTION	BALANCE AT BEGINNING OF PERIOD	CHARGED TO COSTS AND EXPENSES	DEDUCTIONS	BALANCE AT END OF PERIOD
		(IN THOUSANDS)		
Allowance for doubtful accounts -- 1997.....	$ --	$260	$ (35)	$225
Allowance for doubtful accounts -- 1998.....	225	213	(4)	434
Allowance for doubtful accounts -- 1999.....	434	--	(200)	234

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Members of
diaDexus, LLC

In our opinion, the accompanying balance sheet and the related statements of operations, of changes in members' equity and of cash flows present fairly, in all material respects, the financial position of diaDexus, LLC (a development stage company) at December 31, 1999 and 1998, and the results of its operations and its cash flows for the years ended December 31, 1999 and 1998, for the period from inception (September 1997) through December 31, 1997 and for the period from inception (September 1997) through December 31, 1999, in conformity with accounting principles generally accepted in the United States. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the financial statements, the Company has suffered recurring losses from operations and has a net capital deficiency that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are described in Note 2. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ PricewaterhouseCoopers LLP

January 17, 2000

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

BALANCE SHEET

ASSETS

	DECEMBER 31,	
	1999	1998
Current assets:		
Cash and cash equivalents	$ 8,358,000	$16,454,000
Prepaid expenses and other current assets	428,000	412,000
Total current assets	8,786,000	16,866,000
Property and equipment, net	2,442,000	3,280,000
Deposits	69,000	69,000
	$11,297,000	$20,215,000
LIABILITIES AND MEMBERS' EQUITY		
Current liabilities:		
Due to Members	$ 5,456,000	$ 2,690,000
Accounts payable	42,000	239,000
Accrued liabilities	459,000	636,000
Total current liabilities	5,957,000	3,565,000
Deferred rent	87,000	116,000
Total liabilities	6,044,000	3,681,000
Commitments (Note 8)		
Members' equity:		
Series A preferred capital; 4,400,000 units authorized, issued and outstanding	5,119,000	10,762,000
Series B preferred capital; 4,400,000 units authorized, issued and outstanding	119,000	5,762,000
Common capital; 2,200,000 units authorized; no units issued and outstanding	--	--
Additional paid-in capital	15,000	10,000
Total Members' equity	5,253,000	16,534,000
	$11,297,000	$20,215,000

The accompanying notes are an integral part of these financial statements.

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

STATEMENT OF OPERATIONS

	YEAR ENDED DECEMBER 31,		FOR THE PERIOD FROM INCEPTION (SEPTEMBER 1997) THROUGH DECEMBER 31,
	1998	1999	1999
License revenue	$ --	$ 100,000	$ 100,000
Operating expenses:			
Research and development	6,761,000	9,461,000	16,623,000
General and administrative	1,882,000	2,345,000	4,506,000
Loss from operations	(8,643,000)	(11,706,000)	(21,029,000)
Interest and other income, net	715,000	540,000	1,387,000
Interest expense	--	(120,000)	(120,000)
Net loss	$(7,928,000)	$(11,286,000)	$(19,762,000)

The accompanying notes are an integral part of these financial statements.

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

STATEMENT OF CHANGES IN MEMBERS EQUITY
FOR THE PERIOD FROM INCEPTION (SEPTEMBER 1997
THROUGH DECEMBER 31, 1999

	SERIES A PREFERRED CAPITAL		SERIES B PREFERRED CAPITAL		ADDITIONAL PAID-IN	MEMBER CONTRIBUTIONS	
	UNITS	AMOUNT	UNITS	AMOUNT	CAPITAL	RECEIVABLE	TOTAL
Issuance, at inception, of Series A preferred units at $3.41 per unit	4,400,000	$15,000,000	--	$ --	$ --	$(11,000,000)	$ 4,000,000
Issuance, at inception, of Series B preferred units at $2.27 per unit	--	--	4,400,000	10,000,000	--	(6,000,000)	4,000,000
Net loss	--	(274,000)	--	(274,000)	--	--	(548,000)
Balance at December 31, 1997	4,400,000	14,726,000	4,400,000	9,726,000	--	(17,000,000)	7,452,000
Proceeds received from Members	--	--	--	--	--	17,000,000	17,000,000
Stock-based compensation	--	--	--	--	10,000	--	10,000
Net loss	--	(3,964,000)	--	(3,964,000)	--	--	(7,928,000)
Balance at December 31, 1998	4,400,000	10,762,000	4,400,000	5,762,000	10,000	--	16,534,000
Stock-based compensation	--	--	--	--	5,000	--	5,000
Net loss	--	(5,643,000)	--	(5,643,000)	--	--	(11,286,000)
Balance at December 31, 1999	4,400,000	$ 5,119,000	4,400,000	$ 119,000	$15,000	$ --	$ 5,253,000

The accompanying notes are an integral part of these financial statements.

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

STATEMENT OF CASH FLOWS

	YEAR ENDED DECEMBER 31,		FOR THE PERIOD FROM INCEPTION (SEPTEMBER 1997) THROUGH DECEMBER 31,
	1998	1999	1999
CASH FLOW USED IN OPERATING ACTIVITIES:			
Net loss	$(7,928,000)	$(11,286,000)	$(19,762,000)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	1,657,000	1,072,000	2,731,000
Loss on disposal of property and equipment	23,000	3,000	26,000
Stock-based compensation	10,000	5,000	15,000
Changes in assets and liabilities:			
Prepaid expenses and other current assets	(319,000)	(24,000)	(428,000)
Accounts payable	239,000	(197,000)	42,000
Accrued liabilities	244,000	(177,000)	274,000
Due to Members	132,000	(2,234,000)	(1,917,000)
Deposits	2,000	--	(2,000)
Deferred rent	14,000	(29,000)	87,000
Net cash used in operating activities	(5,926,000)	(12,867,000)	(18,934,000)
CASH FLOW USED IN INVESTING ACTIVITIES:			
Purchase of property and equipment	(1,160,000)	(238,000)	(1,670,000)
Proceeds from sale of equipment	--	9,000	9,000
Net cash used in investing activities	(1,160,000)	(229,000)	(1,661,000)
CASH FLOW PROVIDED BY FINANCING ACTIVITIES:			
Proceeds from issuance of Series A Preferred Units	--	--	13,953,000
Proceeds from issuance of Series B Preferred Units	--	--	10,000,000
Proceeds from Member contributions receivable	17,000,000	--	--
Proceeds from bridge loan payable to Members	--	5,000,000	5,000,000
Net cash provided by financing activities	17,000,000	5,000,000	28,953,000
Net (decrease) increase in cash and cash equivalents	9,914,000	(8,096,000)	8,358,000
Cash and cash equivalents at beginning of period	6,540,000	16,454,000	--
Cash and cash equivalents at end of period	$16,454,000	$ 8,358,000	$ 8,358,000
SUPPLEMENTAL DISCLOSURE OF NONCASH FINANCING ACTIVITIES:			
Capital contribution of property and equipment	$ --	$ --	$ 1,047,000
Construction in-progress funded by a Member	$ 106,000	$ --	$ 2,305,000
Deposit funded by a Member	$ --	$ --	$ 67,000

The accompanying notes are an integral part of these financial statements.

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

NOTES TO FINANCIAL STATEMENTS

1. THE COMPANY AND SIGNIFICANT ACCOUNTING POLICIES

THE COMPANY

diaDexus, LLC (the "Company") was formed in Delaware as a limited liability company ("LLC") in September 1997 for the purpose of discovery and commercialization of novel molecular diagnostic products. The Company's founders and members ("Members") are SmithKline Beecham Corporation ("SmithKline Beecham") and Incyte Pharmaceuticals, Inc. ("Incyte"). The Company is in the development stage at December 31, 1999, devoting substantially all of its efforts to recruiting personnel, financial planning, establishing its facilities, defining its research and product development strategies and conducting research and development.

In connection with forming the Company, SmithKline Beecham and Incyte entered into several agreements during September 1997, including an Operating Agreement (the "Operating Agreement") and a Master Strategic Relationship Agreement (the "Master Agreement"). The Operating Agreement serves as the Company's by-laws while the Master Agreement documents certain specific matters regarding the operation of the Company. During September 1997, the Company issued 4,400,000 Series A Preferred Units to SmithKline Beecham in exchange for an initial capital contribution of $4.0 million in cash and assets and a contractual commitment for additional cash contributions of $11.0 million, which was received in two installments on April 15 and July 15, 1998. Concurrently, the Company issued 4,400,000 of Series B Preferred Units to Incyte in exchange for an initial capital contribution of $4.0 million in cash and a contractual commitment for additional cash contributions of $6.0 million, which was received in two installments on April 15 and July 15, 1998.

In addition to the above contributions, SmithKline Beecham has granted the Company various exclusive and non-exclusive rights to develop certain diagnostic tests using genes identified by SmithKline Beecham, including genes identified by SmithKline Beecham from the Human Genome Sciences, Inc. collaboration. SmithKline Beecham has also granted the Company an exclusive license for a number of diagnostic tests which are in late stage clinical validation. Incyte has provided the Company with non-exclusive access to certain of its gene sequence and expression databases for various exclusive and non-exclusive rights to diagnostic applications. The Company will pay royalties to Incyte and Human Genome Sciences, Inc. on the sale of certain products developed using their respective proprietary databases. Both SmithKline Beecham and Incyte have also non-exclusively licensed various additional technologies useful in the diagnostic field to the Company. Noncash assets received as capital contributions have been recorded in amounts equal to the Members' net book value, which was zero for all the property and rights described above.

The Operating Agreement specifies that the LLC would merge into a C corporation at the earliest of (i) the eighteen month anniversary of the Company's formation (March 1999); (ii) any time after January 1, 1999, if the Company's cash balance falls below $2.0 million, or (iii) the mutual agreement of SmithKline Beecham and Incyte. Pursuant to an agreement in principle, the Members agreed during 1999 to defer merging the LLC into a C corporation until such time as a proposed Preferred Stock financing is completed (see Note 2).

CASH AND CASH EQUIVALENTS

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. Cash equivalents at December 31, 1999 consist of a money market investment totaling $8,174,000, the carrying amount of which approximates fair value.

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

CONCENTRATION OF CREDIT RISK

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents. The Company maintains its cash and cash equivalents in a money market fund with a high-credit quality financial institution.

PROPERTY AND EQUIPMENT

Property and equipment are stated at the Company's cost, less accumulated depreciation. Assets contributed by the Members are recorded at amounts equal to the Members' net book value. Depreciation is computed using the straight-line method over the estimated remaining useful lives of the assets, which is generally one to three years. Leasehold improvements are depreciated over the shorter of their useful lives or the term of the lease.

RESEARCH AND DEVELOPMENT EXPENSES

Research and development costs are expensed as incurred.

EQUITY-BASED COMPENSATION

The Company has adopted the pro forma disclosure requirements of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"). As permitted, the Company continues to recognize equity-based compensation to employees under the intrinsic value method of accounting as prescribed by Accounting Principles Board Opinion No. 25. The pro forma effect of applying SFAS 123 is described in Note 7 to the financial statements.

Stock compensation expense for options granted to consultants has been determined in accordance with SFAS 123 and EITF 96-18 as the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measured. The fair value of options granted to consultants is periodically remeasured as the underlying options vest.

INCOME TAXES

No provision or benefit for federal and state income taxes is reported in the financial statements as the Company has elected to be taxed as a partnership. The federal and state income tax effects of the Company's results of operations are recorded by the Members in their respective income tax returns.

USE OF ESTIMATES

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

2. NEED FOR ADDITIONAL FINANCING

These financial statements are prepared on a going concern basis that contemplates the realization of assets and discharge of liabilities in the normal course of business. From inception, the Company has suffered recurring losses from operations totaling $19,762,000 and currently does not have financing sufficient for continued operations. These factors raise substantial doubt about the Company's ability to continue as a going concern. Management is currently pursuing several financing alternatives, including a private placement of Preferred Stock. There can be no assurance, however, that such a financing will be successfully completed on

terms acceptable to the Company. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

3. RELATED PARTY TRANSACTIONS

Under an Intercompany Services Agreement, SmithKline Beecham and Incyte have agreed to provide the Company with certain services, including legal, financial and research and development. Charges for these services are either based on actual costs incurred by each Member or, if available, rates charges to other customers for similar services. During 1998, the Company incurred related charges of $86,000 and $72,000 from SmithKline Beecham and Incyte, respectively, all of which has been included in research and development expense. During 1999, the Company incurred additional charges of $0 and $1,928,000 from Smithkline Beecham and Incyte, respectively, all of which has been included in research and development expense.

Additionally, SmithKline Beecham has agreed to pay, on the Company's behalf, certain costs associated with the build-out of the Company's leased facility. Such amounts were included in leasehold improvements and laboratory equipment at December 31, 1999 and 1998.

In September 1998, the Company entered into a service agreement with SmithKline Beecham and SmithKline Beecham plc. Under the agreement, SmithKline Beecham plc will employ an individual to monitor journals and databases for information on genes and proteins which may be of interest to the Company's research efforts. The term of the agreement is one year, unless otherwise modified by the Company and SmithKline Beecham plc. In consideration for such services, the Company paid a total of $200,000, all of which was included in research and development expense.

In March 1998, the Company entered into a collaboration and license agreement with Incyte and a third party (see Note 4). The agreement was terminated on January 6, 2000.

At December 31, 1999 and 1998, due to Members consisted of $2,631,000 and $2,618,000, respectively, due to SmithKline Beecham and $2,825,000 and $72,000, respectively, due to Incyte.

BRIDGE LOANS

In July 1999, the Company issued two convertible notes for $2,500,000, one to SmithKline Beecham and the other to Incyte. Interest accrues at 5.6% per annum and the principal and interest is due and payable in April 2000 (the "Repayment Date"). Should the Company complete the sale and issuance of shares of its Preferred Stock prior to the Repayment Date in one or more closings generating aggregate proceeds of at least $5,000,000, the principal amount of the notes and interest accrued thereon shall automatically convert into shares of the Company's Preferred Stock. The convertible notes will convert at the same price per share and on the same terms and conditions at which such shares of Preferred are sold to the other investors.

4. COLLABORATION AND LICENSE AGREEMENTS

In November 1999, the Company entered into a collaboration and license agreement with another company (the "Collaborator") whereby the Company will engage in a research program (the "Program") for two years to develop and commercialize certain in vitro cardiovascular diagnostic products. Under this collaboration, diaDexus will identify and select targets with potential cardiovascular diagnostic utility. The Collaborator will manufacture and deliver the antibodies required by the Program. The royalty fee structure is dependent upon various factors, including which entity bears the costs of developing the antibody and the format of the product. Through December 31, 1999, the Company has not recorded any amounts relating to this agreement.

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

In February 1999, the Company entered into a royalty-bearing license agreement with a clinical reference laboratory company whereby the Company granted the licensee the right and license to make, use, have made, and import materials or components for the sole purpose of developing tests performed on human serum for the diagnosis and/or prognosis of prostate cancer. The Company received a $100,000 non-refundable license fee, which was recognized as license revenue and is fully creditable against future royalties. Through December 31, 1999, the Company has not recorded any royalty revenue related to this license agreement.

In September 1998, the Company entered into a worldwide, exclusive, royalty-bearing license agreement whereby the Company was granted the right to develop, manufacture and sell certain products relating to diagnosis of cervical disease. The Company paid a non-refundable fee of $250,000 upon signing the agreement for access to related technology for a six month evaluation period. The Company amortized the initial fee over a six-month evaluation period. In March 1999, the Company paid an amended first milestone fee of $250,000, which was included in research and development expense in 1999. The Company had the option to terminate the agreement without penalty through the earlier of the successful completion of the predetermined development plan or September 30, 2000. In July 1999, the Company and licensee mutually agreed to terminate the agreement. The Company was relieved of any obligation or liability to make any further payments to the licensee subsequent to a final payment of $50,000 which was expensed in August 1999.

In March 1998, the Company entered into a collaboration and license agreement with Incyte and a third party (collectively, the "Licensor"). The agreement provides the Company access to certain information and databases relating to prostate disease for an initial option period which expires on the later of March 18, 1999 or six months following the completion of certain research activities, as defined. The Company may then, at its option, enter into either an exclusive or a non-exclusive license arrangement with the Licensor. Future consideration for entering into an exclusive license arrangement is $1,000,000 or $500,000 for a non-exclusive license. Additionally, should it choose to obtain either license, the Company will owe the Licensor $100,000 upon approval for sale in certain countries of each product developed as a result of the collaboration and license agreement. The $100,000 payments are creditable against future royalties on sales of the related products. On January 6, 2000, the Company, Incyte and the Licensor agreed to terminate the collaboration and license agreement.

5. PROPERTY AND EQUIPMENT

Property and equipment consists of the following:

	DECEMBER 31,	
	1999	1998
Leasehold improvements	$ 2,632,000	$ 2,111,000
Laboratory equipment	1,434,000	1,313,000
Computer equipment and software	639,000	599,000
Furniture and fixtures	449,000	428,000
Construction-in-progress	--	477,000
	5,154,000	4,928,000
Less accumulated depreciation	(2,712,000)	(1,648,000)
	$ 2,442,000	$ 3,280,000

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

6. MEMBERS' EQUITY

In accordance with the terms of the Operating Agreement, the rights and preference of the Members, as well as the allocation and distribution of net income or losses, are as follows:

PREFERRED UNITS

At December 31, 1999 and 1998, the Company had authorized and outstanding 8,800,000 Preferred Units ("Preferred Units"), of which 4,400,000 are designated Series A and 4,400,000 are designated as Series B. Each Preferred Unit is entitled to one vote on all matters, other than the election of the Board of Directors, including Member distributions. The holders of Series A and B Preferred Units are each entitled, upon approval of the majority of the units within each series, to elect two of the five Directors constituting the Board. The fifth Board member is the Company's Chief Executive Officer who was elected by the A/B Members, voting as a class (by vote of the holders of a majority of the Series A and Series B Preferred Units).

In the event the Company makes a distribution, each Preferred Unit has a distribution preference of $11.36 per unit (defined as the "Original Purchase Price"), plus a 15% per annum compounded rate of return (the "Preference Amount") on such Original Purchase Price.

If and when the Company merges into a C corporation, each Preferred Unit will automatically convert into one share of Preferred Stock. Each member will also receive 100 shares of Common Stock upon such conversion.

COMMON UNITS

At December 31, 1999, the Company had authorized 2,200,000 Common Units for issuance in connection with a unit option plan. Common Units have no voting rights and, after payment of the Preference Amount to the Preferred Unit holders, distributions (if any) are allocated ratably among holders of both the Common and Preferred Units. As of December 31, 1999, no units had been issued under the Company's option plan.

ALLOCATION OF NET LOSSES AND NET INCOME

Net losses of the Company are allocated (i) to the members of the Preferred and Common Units in proportion to their relative number of units to the extent that this would not cause such holders to have a capital deficit; (ii) to the extent any holder's capital account would equal zero the loss is allocated to all other holders in proportion to their relative ownership of units until such allocation would cause those holders to have a capital account balance of zero; (iii) thereafter, the remaining loss would be allocated to all holders in proportion to their relative number of units.

Net income of the Company is allocated (i) to the holders of Preferred Units proportionately based on their capital account deficit until all capital accounts are zero; (ii) to the holders of Preferred Units whose capital account is less than any declared but unpaid dividend in proportion to their respective unpaid dividends; (iii) to the holders of Preferred Units whose capital account is less than any unpaid Preference Amount in proportion to such amounts; (iv) to each Common Unit that has a capital account less than any distributed amount in proportion to such amounts; and (v) thereafter, to all holders in proportion to their relative number of units.

DIVIDENDS

The holders of the Preferred Units are entitled to receive a non-cumulative dividend, if and when declared by the Board, at a rate of 8% per annum of the undistributed Preference Amount attributable to each Preferred Unit, prorated for any partial year, commencing on the first date each Preferred Unit is issued and

DIADEXUS, LLC
A LIMITED LIABILITY COMPANY (A DEVELOPMENT STAGE COMPANY)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

outstanding. Dividends shall be paid from available cash after approval of at least 75% of the Preferred Unit holders.

LIQUIDATION

In the event of any liquidation of the Company, distributions, if any, will be made to all unit holders in proportion to the positive balance in their respective capital accounts, after giving cumulative effect to all contributions, distributions and allocations for all periods and payment of costs for winding up of the business, payment of debts, and establishment of appropriate reserves.

7. EMPLOYEE BENEFIT PLANS

In January 1998, the Company's Board of Directors adopted the 1997 Incentive Plan (the "1997 Plan") under which 1,200,000 shares of the Company's Common Units ("Units") were reserved for issuance to employees and consultants of the Company. During 1999, the Company increased the number of Units reserved for future issuance by 1,000,000. Options granted under the 1997 Plan are for terms not to exceed ten years. If the option is granted to an individual who, at the time of grant, owns a membership interest in the Company representing more than 10% of the voting power of all classes of membership interest of the Company or any parent or subsidiary, the exercise price of the stock option must be at least 110% of the estimated fair value of the Units at the date of grant. Exercise prices of options granted to all other persons must be at least 85% of the estimated fair value of the Units at the date of grant. Options under the 1997 Plan generally vest over four to five years. The 1997 Plan expires in 2008.

Information regarding the Company's option activity is summarized below:

	OPTIONS AVAILABLE	OPTIONS OUTSTANDING	WEIGHTED AVERAGE EXERCISE PRICE
Options authorized	1,200,000	--	$ --
Granted	(760,500)	760,500	0.36
Canceled	44,250	(44,250)	0.35
Balance at December 31, 1998	483,750	716,250	0.36
Options authorized	1,000,000	--	--
Granted	(1,055,083)	1,055,083	0.75
Canceled	433,738	(433,738)	0.47
Balance at December 31, 1999	862,405	1,337,595	0.63

The following table summarizes information about options outstanding and exercisable under the 1997 Plan at December 31, 1999:

	OPTIONS OUTSTANDING			OPTIONS EXERCISABLE	
EXERCISE PRICE PER UNIT	NUMBER OUTSTANDING	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE (YEARS)		NUMBER	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE (YEARS)
0$.35..	387,354	8.14		277,322	8.13
0$.75..	950,241	9.04		158,754	8.15
	1,337,595	8.78		436,076	8.13

Had compensation cost for the Company's option plan been determined based on the fair value at the grant date as prescribed in SFAS 123, the Company's net loss for 1999 and 1998 would have increased by $27,000 and $15,000, respectively. The fair value of each option grant is estimated on the date of grant using the minimum value method with the following assumptions used for grants during December 31, 1999 and 1998: dividend yield of zero percent, risk-free interest rates of 5.9% and 5.4%, respectively, and a weighted average expected option term of 4 and 5 years, respectively. The calculation of compensation expense recorded for options to consultants also includes volatility of 70% for both 1999 and 1998.

The Company maintains a 401(k) plan that qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the 401(k) plan, participating employees may defer a portion of their pretax earnings not to exceed certain statutorily specified amounts ($10,000 for calendar year 1999). The Company, at its discretion, may make contributions for the benefit of eligible employees. The Company has made no contributions under the 401(k) plan.

8. COMMITMENTS

The Company leases its office facilities under a noncancelable operating lease agreement which expires in September 2002 and contains renewal provisions. Future minimum lease payments under the noncancelable lease at December 31, 1999 are as follows:

Year Ending December 31,	
2000	$ 799,000
2001	818,000
2002	624,000
Total minimum lease payments	$2,241,000

Rent expense for the years ended December 31, 1999 and 1998 was $838,000 and $825,000, respectively.

In 1998, the Company entered into a noncancelable sublease agreement relating to a portion of its leased office facilities. The sublease agreement expired in August 1999, at which time the existing sublessee and the Company entered into a month-to-month lease. Rental income for the years ended December 31, 1999 and 1998 was $202,000 and $117,000, respectively.

At December 31, 1999, the Company is committed to pay Incyte $2,392,000 for certain sequencing and microarray services and products through September 2001.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not Applicable.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by this item (with respect to Directors) is incorporated by reference from the information under the caption "Election of Directors" contained in the Company's Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the Company's 2000 Annual Meeting of Stockholders to be held on June 5, 2000 (the "Proxy Statement").

The executive officers of the Company are as follows:

Roy A. Whitfield, age 46, co-founded the Company and has been Chief Executive Officer since June 1993 and a Director since June 1991. Mr. Whitfield served as President of the Company from June 1991 until January 1997 and as Treasurer of the Company between April 1991 and October 1995. Previously, Mr. Whitfield served as the President of Ideon Corporation, which was a majority-owned subsidiary of Invitron Corporation, a biotechnology company, from October 1989 until April 1991. From 1984 to 1989, he held senior operating and business development positions with Technicon Instruments Corporation, a medical instrumentation company, and its predecessor company, CooperBiomedical, Inc., a biotechnology and medical diagnostics company. Prior to his work at Technicon, Mr. Whitfield spent seven years with the Boston Consulting Group's international consulting practice. Mr. Whitfield received a B.S. with first class honors in Mathematics from Oxford University, and an M.B.A. with distinction from Stanford University. Mr. Whitfield is a director of Aurora Biosciences Corporation.

Randal W. Scott, Ph.D., age 42, co-founded the Company and has been President since January 1997. He has served as Chief Scientific Officer of the Company since March 1995, a Director since June 1991. He also served as Executive Vice President of the Company from March 1995 until January 1997 and Vice President, Research and Development of the Company from April 1991 until February 1995 and as Secretary from April 1991 to June 1998. Dr. Scott was one of Invitron's founding scientists and was employed by Invitron from March 1985 to June 1991. In 1987, Dr. Scott started the Protein Biochemistry Department at Invitron's California Research Division and later became Senior Director of Research in November 1988. Dr. Scott was responsible for developing Invitron's proprietary products and discovery programs and is an inventor of several of the Company's patents. Prior to joining Invitron, he was a Senior Scientist at Unigene Laboratories, a biotechnology company. Dr. Scott received his Ph.D. in Biochemistry from the University of Kansas.

Michael D. Lack, age 48, has been the Chief Operating Officer of the Company since July 1999. Prior to joining the Company, he was the President and Chief Executive Officer of Silicon Valley Networks. Previously, Mr. Lack served as Chief Executive Officer with several software startup companies, including Aqueduct Software and Presidio Systems, Inc. He also held various senior positions with Cadence Design Systems, Inc., including Senior Vice President of Product Operations, Division President of Integrated Circuit Design, and Division President of Systems. Mr. Lack received his B.S. in Physics from the University of California, Los Angeles.

John M. Vuko, age 49, joined the Company as the Chief Financial Officer in December 1999. Previously, Mr. Vuko was the Senior Vice President and Chief Financial Officer of Achievement Radio Holdings Inc. Prior to his work at Achievement Radio Holdings, Mr. Vuko served as Senior Vice President and Chief Financial Officer of Ross Stores, Inc., and held various positions with the Cooper family of companies, including Corporate Development Executive, Vice President, Treasurer, and Controller. Mr. Vuko received his B.A. in Accounting from San Francisco State University.

James R. Neal, age 44, has been the Executive Vice President of Sales and Marketing since July 1999. Mr. Neal served as General Manager of the Solaris Group, a division of Monsanto Company. From 1982, he also held various positions with Monsanto, including Manager of New Product Introduction, Director of Brand

Marketing and Residential Products, and Vice President of Global Business Development. Mr. Neal received his B.S. in Biology and his M.S. in Genetics and Plant Breeding from the University of Manitoba, Canada as well as an Executive M.B.A. from Washington University, St. Louis.

E. Lee Bendekgey, age 42, has been General Counsel of the Company since January 1998 and served as the Interim Chief Financial Officer from June 1999 until December 1999. Mr. Bendekgey became the Secretary of the Company in June 1998 and Executive Vice President in June 1999. Prior to joining the Company, Mr. Bendekgey was the Director of Strategic Relations at Silicon Graphics, Inc. He held various positions with SGI from March 1993, including Director of Legal Services, Products and Technology; Senior Counsel, Product Divisions; Group Counsel, Computer Systems Group; and Division Counsel, MIPS Technologies, Inc. From 1982 to 1993, Mr. Bendekgey held associate and partner positions with Graham & James, a law firm in San Francisco, where he specialized in intellectual property protection and licensing. Mr. Bendekgey received his B.A. magna cum laude in Political Science and French from Kalamazoo College and his J.D. from Stanford University.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference from the information under the captions "Election of Directors -- Compensation of Directors," "Executive Compensation," and "Report of the Compensation Committee of the Board of Directors on Executive Compensation -- Compensation Committee Interlocks and Insider Participation" contained in the Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this item is incorporated by reference from the information under the captions "Election of Directors -- Compensation of Directors," "Executive Compensation," and "Report of the Compensation Committee of the Board of Directors on Executive Compensation -- Compensation Committee Interlocks and Insider Participation" contained in the Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this item is incorporated by reference from the information contained under the caption "Certain Transactions" contained in the Proxy Statement.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

(a) DOCUMENTS FILED AS PART OF THIS REPORT:

(1) Financial Statements

Reference is made to the Index to Consolidated Financial Statements of Incyte Pharmaceuticals, Inc. and the Index to Financial Statements of diaDexus, LLC, a Limited Liability Company, under Item 8 of Part II hereof.

(2) Financial Statement Schedules

The following financial statement schedule of Incyte Pharmaceuticals, Inc. is filed as part of this Form 10-K included in Item 8 of Part II:

Schedule II -- Valuation and Qualifying Accounts for each of the three years in the period ended December 31, 1999.

All other financial statement schedules have been omitted because they are not applicable or not required or because the information is included elsewhere in the Consolidated Financial Statements or the Notes thereto.

(3) Exhibits

See Item 14(c) below. Each management contract or compensatory plan or arrangement required to be filed has been identified.

(b) REPORTS ON FORM 8-K.

The Company filed no reports on Form 8-K during the fiscal quarter ended December 31, 1999.

(c) EXHIBITS

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENT
3(i)(a)	Restated Certificate of Incorporation, as amended (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-3 (File No. 333-31307)).
3(i)(b)	Certificate of Designation of Series A Participating Preferred Stock, (incorporated by reference to the Company's Annual Report on 10-K for the year ended December 31, 1998).
3(ii)	Bylaws of the Company, as amended (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-3 (File No. 333-31307)).
4.1	Form of Common Stock Certificate (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
4.2	Rights Agreement dated as of September 25, 1998 between the Company and Chase Mellon Shareholder Services, L.L.C., which includes as Exhibit B, the rights certificate (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form 8-A (filed on September 30, 1998).
4.3	Indenture dated as of February 4, 2000 between the Company and State Street Bank and Trust Company of California, N.A., as trustee.
10.1#	1991 Stock Plan of Incyte Pharmaceuticals, Inc., as amended and restated (the "Plan") (incorporated by reference to Exhibit 10.18 to the Company's Registration Statement on Form S-8 (File No. 333-83291)).
10.2#	Form of Incentive Stock Option Agreement under the Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.3#	Form of Nonstatutory Stock Option Agreement under the Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.4#	Amended and Restated 1993 Directors' Stock Option Plan of Incyte Pharmaceuticals, Inc. (incorporated by reference to the exhibit of the same number to the Company's Annual Report on Form 10-K for the year ended December 31, 1997).
10.5#	Form of Indemnity Agreement between the Company and its directors and officers (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.6	Lease Agreement dated December 8, 1994 between the Company and Matadero Creek (incorporated by reference to Exhibit 10.16 to the Company's Annual Report on Form 10-K for the year ended December 31, 1994).
10.9	Stock Purchase Agreement dated as of June 22, 1994 between the Company and Pfizer Inc (incorporated by reference to Exhibit B to the Company's Current Report on Form 8-K dated June 23, 1994).
10.10	Registration Rights Agreement dated as of June 22, 1994 between the Company and Pfizer Inc (incorporated by reference to Exhibit C to the Company's Current Report on Form 8-K dated June 23, 1994).
10.11	Stock Purchase Agreement dated as of November 30, 1994 between the Company and The Upjohn Company (incorporated by reference to Exhibit B to the Company's Current Report on Form 8-K dated November 30, 1994, as amended by Form 8-K/A filed with the Commission on March 27, 1995).

10.12	Registration Rights Agreement dated as of November 30, 1994 between the Company and The Upjohn Company (incorporated by reference to Exhibit C to the Company's Current Report on Form 8-K dated November 30, 1994).
10.13	Registration Rights Agreement dated as of February 4, 2000 among the Company and Deutsche Bank Securities Inc. and Warburg Dillon Read LLC.
10.14	Lease Agreement dated June 19, 1997 between the Company and The Board of Trustees of the Leland Stanford Junior University.
10.15#	1997 Employee Stock Purchase Plan of Incyte Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-8 (File No. 333-31409)).
10.16#	1998 Amendment to the 1997 Employee Stock Purchase Plan of Incyte Pharmaceuticals, Inc. (incorporated by reference to Exhibit 99 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 1998).
10.17+	Master Strategic Relationship Agreement dated as of September 2, 1997 between SmithKline Beecham Corporation, Incyte Pharmaceuticals, Inc. and diaDexus, LLC (incorporated by reference to Exhibit 10.18 to the Company's Quarterly Report on Form 10-Q/A for the quarter ended September 30, 1997).
10.18#	1996 Synteni, Inc. Equity Incentive Stock Plan (incorporated by reference to Exhibit 10.19 to the Company's Registration Statement on Form S-8 (File No. 333-46639)).
10.19#	The Hexagen Limited Unapproved Company Share Option Plan 1996, as amended (incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-8 (File No. 333-67691)).
10.20	Stock Purchase Agreement dated as February 24, 2000 between the Company and the investors named therein.
21.1	Subsidiaries of the Company.
23.1	Consent of Ernst & Young LLP, Independent Auditors.
23.2	Consent of PricewaterhouseCoopers LLP, Independent Accountants.
24.1	Power of Attorney (see page 70 of this Form 10-K).
27	Financial Data Schedule.

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+ Confidential treatment has been granted with respect to certain portions of these agreements.

# Indicates management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

INCYTE PHARMACEUTICALS, INC.

Date: March 17, 2000 By /s/ ROY A. WHITFIELD
Roy A. Whitfield
Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Roy A. Whitfield, Randal W. Scott, and John M. Vuko, and each of them, his true and lawful attorneys-in-fact, each with full power of substitution, for him or her in any and all capacities, to sign any amendments to this report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or their substitute or substitutes may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

NAME	TITLE	DATE
/s/ ROY A. WHITFIELD Roy A. Whitfield	Chief Executive Officer (Principal Executive Officer) and Director	March 17, 2000
/s/ JOHN M. VUKO John M. Vuko	Chief Financial Officer (Principal Financial Officer)	March 17, 2000
/s/ TIMOTHY G. HENN Timothy G. Henn	Vice President, Finance and Corporate Controller (Principal Accounting Officer)	March 17, 2000
/s/ JEFFREY J. COLLINSON Jeffrey J. Collinson	Chairman of the Board	March 17, 2000
/s/ BARRY M. BLOOM Barry M. Bloom	Director	March 17, 2000
/s/ FREDERICK B. CRAVES Frederick B. Craves	Director	March 17, 2000
/s/ JON S. SAXE Jon S. Saxe	Director	March 17, 2000
/s/ RANDAL W. SCOTT Randal W. Scott	President	March 17, 2000

EXHIBIT INDEX

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10.16#	1998 Amendment to the 1997 Employee Stock Purchase Plan of Incyte Pharmaceuticals, Inc. (incorporated by reference to Exhibit 99 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 1998).
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24.1	Power of Attorney (see page 70 of this Form 10-K).
27	Financial Data Schedule.

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+ Confidential treatment has been granted with respect to certain portions of these agreements.

# Indicates management contract or compensatory plan or arrangement.

Copies of above exhibits not contained herein are available to any stockholder upon written request to: Investor Relations, Incyte Pharmaceuticals, Inc., 3174 Porter Drive, Palo Alto, CA 94034.

EXHIBIT 4.3

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INCYTE PHARMACEUTICALS, INC.

5.5% Convertible Subordinated Notes
Due 2007

INDENTURE

Dated as of February 4, 2000

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A.,
AS TRUSTEE

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INDENTURE dated as of February 4, 2000 between Incyte Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and State Street Bank and Trust Company of California, N.A., a national banking association, as Trustee (the "Trustee").

Both parties agree as follows for the benefit of the other and for the equal and ratable benefit of the registered holders of the Company's 5.5% Convertible Subordinated Notes Due 2007.

ARTICLE 1.

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.1 DEFINITIONS. The terms defined in this Section 1.1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.1.

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

"Agent" means any Registrar, Paying Agent or Conversion Agent.

"Applicable Procedures" means any procedures required to be followed by the Depositary, Euroclear or Clearstream Banking including, but not limited to, the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "Management Regulations" and "Instructions to Participants" of Clearstream Banking.

"Associate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as such Rule is in effect on the date of this Indenture.

"Board of Directors" means the Board of Directors of the Company or any authorized committee of the Board of Directors, except that for the purposes of Section 3.8 "Board of Directors" shall mean the entire Board of Directors of the Company.

"Business Day" means a day that is not a Legal Holiday.

"Cash" or "cash" means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

"Certificated Note" means a Security issued to a purchaser in definitive form in the form of Note attached hereto as Exhibit A that contains the Certificated Note Restricted Securities Legend, if applicable, but that does not contain the Global Note Legend, the Global Note Insert or the Global Note Transfer Schedule.

"Common Stock" means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 4.12, however, shares issuable on conversion of Securities shall include only shares of Common Stock, $0.001 par value per share (which is the class designated as Common Stock of the Company at the date of this Indenture), or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; provided that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion to which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Company" means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture and thereafter means the successor.

"Consolidated Net Worth" means, with respect to any Person, the consolidated stockholders' equity (excluding any capital stock that by its terms is, or upon the happening of an event or passage of time would be, required to be redeemed prior to the maturity of the Securities or is redeemable at the option of the holder thereof at any time prior to such maturity or is convertible or exchangeable for debt securities at any time prior to such maturity at the option of the holder thereof) of such Person and its consolidated subsidiaries, as determined in accordance with generally accepted accounting principles.

"Corporate Trust Office" of the Trustee means the office of the Trustee at which this Indenture is administered, which office initially is located at 633 West 5th Street, 12th Floor, Los Angeles, CA 90071, attention: Corporate Trust Department, (Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007).

"Default" or "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 Securities issuable or issued in whole or in part in global form, the person specified in Section 2.6(g) as the Depositary with respect to the Securities, 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.

"Global Notes" means, individually and collectively, the Regulation S Global Note and the Rule 144A Global Note.

"Holder" or "Securityholder" means the person in which name a Security is registered on the Registrar's books.

"Indenture" means this Indenture as amended or supplemented from time to time.

"Initial Purchasers" means Deutsche Bank Securities Inc. and Warburg Dillon Read LLC, as Initial Purchasers under the Purchase Agreement.

"Institutional Accredited Investor" means an institutional "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Instrument" means any agreement, indenture, instrument or other document under which any obligation is evidenced, assumed, guaranteed or secured.

"Investment" means, with respect to any Person, directly or indirectly, any advance, loan or other extension of credit or capital contribution to, or any purchase, acquisition or ownership by such Person of any capital stock, bonds, notes, debentures or other securities issued or owned by any other Person.

"Market Capitalization" means an amount determined by multiplying the number of shares of Common Stock outstanding on the applicable date by the current market price of the Common Stock (determined as provided in Section 4.6(e)) as of such date.

"Officer" means the Chairman of the Board, the President, any Vice President, the Chief Financial Officer, the Treasurer or the Secretary of the Company.

"Officers' Certificate" means a certificate signed by two Officers of the Company; provided, however, that for purposes of Section 6.4 "Officers' Certificate" means a certificate signed by the principal executive officer, principal financial officer or principal accounting officer of the Company.

"Opinion of Counsel" means a written opinion from legal counsel to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

"Payment Default" means any default in the payment of principal of (or premium, if any) or interest on Senior Indebtedness.

"Payment in full" or "paid in full" means payment in full in cash.

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

"PORTAL Market" means the Private Offerings, Resales and Trading through Automated Linkages Market operated by the National Association of Securities Dealers, Inc. or any successor thereto.

"Principal" or "principal" of a debt security, including the Securities, means the principal of the security plus, when appropriate, the premium, if any (including the Make-Whole Payment, if any), on the security.

"Purchase Agreement" means the Purchase Agreement dated February 1, 2000 among the Company, Deutsche Bank Securities Inc. and Warburg Dillon Read LLC.

"Purchase Option" means the option to purchase up to $50,000,000 in aggregate principal amount of Securities granted by the Company to the Initial Purchasers pursuant to the Purchase Agreement.

"QIB" means a "Qualified Institutional Buyer" as that term is defined in Rule 144A.

"Redemption Date" or "redemption date," when used with respect to any Security to be redeemed, means the date fixed for such redemption pursuant to this Indenture, as set forth in the form of Security annexed as Exhibit A hereto.

"Redemption Price" or "redemption price," when used with respect to any Security to be redeemed, means the price fixed for such redemption pursuant to this Indenture, as set forth in the form of Security annexed as Exhibit A hereto.

"Registration Rights Agreement" means the Registration Rights Agreement dated as of February 4, 2000 between the Company and the Initial Purchasers and certain permitted assigns.

"Regulation S" means Regulation S promulgated under the Securities Act.

"Regulation S Global Note" means a permanent global note in the form of the Note attached hereto as Exhibit A that contains the Global Note Legend, the Global Note Insert and the Global Note Transfer Schedule as each is set forth in Exhibit A hereto, and that is deposited with and is registered in the name of the Depositary, representing a series of Notes sold in reliance on Regulation S.

"Reorganization Securities" means securities of the Company or any other corporation provided for by a plan of reorganization or readjustment of the Company (a) which are equity securities that do not provide for any mandatory payments to holders thereof, including by way of dividends or mandatory redemption; or (b) the payment of which is subordinated, at least to the extent provided in Article 5 with respect to the Securities, to the payment of all Senior Indebtedness which may at the time be outstanding.

"Representative" means the indenture trustee or other trustee, agent or representative for any class of Senior Indebtedness.

"Restricted Security" means each Security, other than a Regulation S Global Note, until the earliest to occur of (a) the date on which such Note has been effectively registered under the Securities Act and disposed of in accordance with a shelf registration statement pursuant to the Registration Rights Agreement and (b) the date on which such Note is distributed to the public pursuant to Rule 144 under the Securities Act. Each Restricted Security shall bear the appropriate legend set forth in Section 2.6(g).

"Rule 144" means Rule 144 as promulgated under the Securities Act.

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

"Rule 144A Global Note" means a permanent global note in the form of the Note attached hereto as Exhibit A that contains the Global Note Insert, the Global Note Legend, the

Global Note Transfer Schedule and the Global Note Restricted Securities Legend (if applicable), as each such legend or schedule is set forth in Exhibit A hereto, and that is deposited with and registered in the name of the Depositary, representing a series of Notes sold in reliance on Rule 144A.

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

"Securities" means the 5.5% Convertible Subordinated Notes Due 2007 or any of them (each a "Security"), as amended or supplemented from time to time, that are issued under this Indenture.

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

"Senior Agent" means, on any date, the Representative of the class of Senior Indebtedness having the highest principal amount (including all revolving credit, letter of credit and other working capital commitments) then outstanding.

"Senior Indebtedness" means the following, whether outstanding upon issuance of the Notes or thereafter incurred or created: (a) the principal of and premium, if any, and interest on, and fees, costs, enforcement expenses, collateral protection expenses and other reimbursements or indemnity obligations in respect of all indebtedness or obligations of the Company to any Person, including but not limited to banks and other lending institutions, for money borrowed that is evidenced by a note, bond, debenture, loan agreement, or similar instrument or agreement (including purchase money obligations with original maturities in excess of one year and noncontingent reimbursement obligations in respect of amounts paid under letters of credit); (b) commitment or standby fees due and payable to lending institutions with respect to credit facilities available to the Company; (c) all noncontingent obligations of the Company (i) for the reimbursement of any obligor on any letter of credit, banker's acceptance, or similar credit transaction, (ii) under interest rate swaps, caps, collars, options, and similar arrangements, and (iii) under any foreign exchange contract, currency swap agreement, futures contract, currency option contract, or other foreign currency hedge; (d) all obligations of the Company for the payment of money relating to capitalized lease obligations; (e) any liabilities of others described in the preceding clauses that the Company has guaranteed or which are otherwise its legal liability; and (f) renewals, extensions, refundings, refinancings, restructurings, amendments, and modifications of any such indebtedness or guarantee; other than any indebtedness or other obligation of the Company that by its terms or the terms of the instrument creating or evidencing it is stated to be not superior in right of payment to the Notes.

"Subsidiary" means any corporation, association or other business entity of which at least a majority of the total capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by the Company or one or more of other Subsidiaries or a combination thereof.

"TIA" means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990 and as in effect on the date of this Indenture, except as provided in Section 11.3

hereof, and except to the extent any amendment to the Trust Indenture Act expressly provides for application of the Trust Indenture Act as in effect on another date.

"Transfer Restricted Security" means securities that bear or are required to bear the Legend set forth in Section 2.6(g) hereof.

"Trustee" means State Street Bank and Trust Company of California, N.A. until a successor replaces it in accordance with the provisions of this Indenture and thereafter means the successor.

"Trust Officer" means any officer in the Corporate Trust Office of the Trustee or any other officer customarily performing functions similar to those performed by any of the above-designated officers who shall, in any case, be responsible for the administration of this Indenture or have familiarity with it, and also means, with respect to a particular corporate matter, any other officer of the Trustee to whom corporate trust matters are referred because of his knowledge of and familiarity with the particular subject.

"U.S. Person" has the meaning specified in Regulation S.

SECTION 1.2 OTHER DEFINITIONS.

Term	Defined in Section
"Additional Interest"	6.12
"Affiliate Legend"	2.6(g)(iii)
"Agent Members"	2.1(b)
"Bankruptcy Law"	8.1
"Beneficial Owner"	3.10
"Certificated Note Restricted Securities Legend"	2.6(g)
"Change in Control"	3.10
"Clearstream"	2.1(a)
"Closing Price"	4.6
"Company Benefit Plan	4.6(c)
"Company Notice"	3.12
"Company Order"	2.2
"Conversion Agent"	2.3
"Conversion Price"	4.6
"Conversion Shares"	4.6(c)
"Custodian"	8.1
"Distribution Date"	4.6(c)
"Euroclear"	2.1(a)
"Event of Default"	8.1
"Exchange Act"	3.10
"Global Note Restricted Securities Legend	2.6(g)
"Legal Holiday"	12.7
"Make-Whole Payment"	3.1

Term	Defined in Section
"Optional Redemption"	3.2
"Paying Agent"	2.3
"Payment Blockage Period"	5.5
"Payment of the Securities"	5.5
"Provisional Redemption"	3.1
"Provisional Redemption Date"	3.1
"Publicly Traded Securities"	3.10
"Redemption Notice Date"	3.1
"Registrar"	2.3
"Registration Default"	6.12
"Repurchase Date"	3.10
"Repurchase Price"	3.10
"Repurchase Notice"	3.12(b)
"Restricted Stock Legend"	2.6(g)(ii)
"Rights"	4.6(c)
"Securities Act"	2.1
"Shelf Registration Statement"	6.12(a)
"Trading Days"	4.6(e)
"Trigger Event"	4.6(f)
"U.S. Government Obligations"	10.1
"Voting Shares"	3.10

SECTION 1.3 INCORPORATION BY REFERENCE OF TRUST INDENTURE ACT.

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

"Commission" means the SEC.
"indenture securities" means the Securities.
"indenture security holder" means a Securityholder.
"indenture to be qualified" means this Indenture.
"indenture trustee" or "institutional trustee" means the Trustee.
"obligor" on the indenture securities means the Company or any other obligor on the Securities.

All other terms used in this Indenture that are defined in the TIA, defined by a TIA reference to another statute or defined by SEC rule and not otherwise defined herein have the meanings assigned to them therein.

SECTION 1.4 RULES OF CONSTRUCTION.

Unless the context otherwise requires:

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

(2)an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles in effect on the date hereof, and any other reference in this Indenture to "generally accepted accounting principles" refers to generally accepted accounting principles in effect on the date hereof;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and words in the plural include the singular;

(5) provisions apply to successive events and transactions; and

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

ARTICLE 2.

THE SECURITIES

SECTION 2.1 DESIGNATION, FORM AND DATING.

The Securities shall be designated as the "5.5% Convertible Subordinated Notes Due 2007." Other than as provided in Section 2.1(a) hereof, the Securities and the Trustee's certificate of authentication to be borne by the Securities shall be substantially in the form of Exhibit A attached hereto, which is incorporated in and made part of this Indenture. The Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to the terms and provisions of the Securities and to be bound thereby. In addition to such legends as may be required pursuant to Section 2.6(g) hereof, any of the Securities may have imprinted thereon such legends or 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 stock exchange on which the Securities may be listed or any trading system in which the Securities may be admitted, or to conform to usage. Each Security shall be dated the date of its authentication.

(a) Global Notes. Securities offered and sold to QIBs in reliance on Rule 144A shall be issued initially in the form of Rule 144A Global Notes in the form of the Note attached hereto as Exhibit A, with the Global Securities Legend, the Global Note Insert and the Global Note Transfer Schedule as each is set forth in Exhibit A hereto. Such Rule 144A Global Notes shall be deposited on behalf of the purchasers of the Securities represented thereby with the Depositary at its New York office, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Rule 144A Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee as hereinafter provided. Payment of principal of and interest and premium, if any

(including the Make-Whole Payment, if any), on any Security in global form shall be made to the holder of such Security.

Securities offered and sold in reliance on Regulation S shall be issued initially in the form of Regulation S Global Notes in the form of the Note attached hereto as Exhibit A with the Global Note Legend, the Global Note Insert and the Global Note Transfer Schedule as each is set forth in Exhibit A hereto. Such Regulation S Global Notes shall be deposited on behalf of the purchaser of the Securities represented thereby with the Depositary or a custodian of the Depositary and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of the Euroclear System ("Euroclear") or Clearstream Banking ("Clearstream"), duly executed by the Company and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of the Regulation S Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

Each Global Note shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee or the Securities Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof.

The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "Management Regulations" and "Instructions to Participants" of Clearstream shall be applicable to interests in the Regulation S Global Notes that are held by the Agent Members through Euroclear or Clearstream.

Except as set forth in Section 2.6 hereof, the Global Notes may be transferred, in whole and not in part, only to another nominee of the Depositary or to a successor of the Depositary or its nominee. The Trustee and the Company shall treat the Holder of any Global Note as the owner of such Security for the purpose of receiving payment of the principal of, premium, if any (including the Make-Whole Payment, if any), and interest on such Global Note and for all other purposes whatsoever.

In addition to such legends as may be required pursuant to Section 2.6(g) hereof, any Security in global form 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 Depositary or by the National Association of Securities Dealers, Inc. in order for the Securities to be tradeable on the PORTAL Market or as may be required for the Securities to be tradeable on any other market developed for trading of securities pursuant to Rule 144A or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange upon which the Securities 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 Securities are subject.

(b) Book-Entry Provisions. This Section 2.1(b) shall apply only to Rule 144A Global Notes and the Regulation S Global Notes deposited with or on behalf of the Depositary.

The Company shall execute and the Trustee shall, in accordance with this Section 2.1(b), authenticate and deliver the Global Notes that (i) shall be registered in the name of the Depositary or the nominee of the Depositary and (ii) shall be delivered by the Trustee to the Depositary or pursuant to the Depositary's instructions or held by the Trustee as custodian for the Depositary.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights either under this Indenture with respect to any Global Note held on their behalf by the Depositary or by the Trustee as custodian for the Depositary or under such Global Note, and the Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of such Global 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 impair, as between the Depositary and its Agent Members, the operation of customary practices of such Depositary governing the exercise of the rights of an owner of a beneficial interest in any Global Note.

(c) Certificated Securities. Except as provided in Section 2.10, owners of beneficial interest in Global Notes will not be entitled to receive physical delivery of Certificated Notes. Purchasers of Securities who are not QIBs and did not purchase Securities sold in reliance on Regulation S under the Securities Act will receive Certificated Notes bearing the Certificated Note Restricted Securities Legend as set forth in Section 2.6(g) hereof. Certificated Notes will bear the Certificated Note Restricted Securities Legend set forth in Section 2.6(g) hereof unless removed in accordance with Section 2.6(g) hereof and may not be exchanged for a Global Note, or interest therein, at any time.

Pursuant to Section 2.6(g) hereof, the Certificated Securities and shares of Common Stock issuable upon conversion thereof shall be required, in certain circumstances described in Section 2.6(g), to bear legends restricting their transfer. By its acceptance of any Security or share of Common Stock bearing the aforesaid legend, each Holder acknowledges the restrictions on transfer set forth on such Security or share of Common Stock and agrees that it will transfer such Security or share of Common Stock only as provided thereon.

SECTION 2.2 EXECUTION AND AUTHENTICATION.

Two Officers of the Company shall sign the Certificated Securities for the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless. A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee shall authenticate and make available for delivery Securities for original issue in the aggregate principal amount of up to $150,000,000, upon a written order or orders of

the Company signed by two Officers or by an Officer and an Assistant Treasurer or Assistant Secretary of the Company (a "Company Order"). The Company Order shall specify the amount of Securities to be authenticated and the date on which the original issue of Securities is to be authenticated. Upon the exercise of the Purchase Option by the Initial Purchasers, additional Securities in the aggregate principal amount of up to $50,000,000 shall be executed by the Company in the aforementioned manner and delivered to the Trustee for authentication, and shall thereupon be authenticated and delivered by the Trustee upon Company Order. The aggregate principal amount of Securities outstanding under this Indenture at any time may not exceed $200,000,000, except as provided in Section 2.7.

The Trustee shall act as the initial authenticating agent. Thereafter, the Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

The Securities shall be issuable only in registered form without coupons only in denominations of $1,000 and any integral multiple thereof.

SECTION 2.3 REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "Registrar"), an office or agency where Securities may be presented for payment (the "Paying Agent"), an office or agency where Securities may be presented for conversion (the "Conversion Agent") and an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-Registrars, one or more additional Paying Agents and one or more additional Conversion Agents. The term "Registrar" includes any co-Registrar, the term "Paying Agent" includes any additional Paying Agent and the term "Conversion Agent" includes any additional Conversion Agent.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any Agent not a party to this Indenture. If the Company fails to maintain a Registrar, Paying Agent, Conversion Agent or agent for service of notices and demands, or fails to give the foregoing notice, the Trustee shall act as such. The Company or any Affiliate of the Company may act as Paying Agent (except for the purposes of Section 6.3 and Article 10), Registrar or Conversion Agent.

The Company initially appoints the Trustee as Registrar, Paying Agent, Conversion Agent and agent for service of notices and demands in connection with the Securities.

SECTION 2.4 PAYING AGENT TO HOLD MONEY IN TRUST.

If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the principal of and premium, if any (including the Make-Whole Payment, if any), or interest (together with any Additional Interest in respect thereof) on any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal of, premium, if any (including the Make-Whole Payment, if any), or interest on any of the Securities (together with any Additional Interest in respect thereof) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of the principal of and premium, if any (including the Make-Whole Payment, if any), or interest (together with any Additional Interest in respect thereof) on any Securities, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium, if any, or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 2.4, that such Paying Agent will, subject to Section 5.7:

(1) hold all sums held by it for the payment of the principal of, premium, if any (including the Make-Whole Payment, if any), or interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any payment of principal, premium, if any (including the Make-Whole Payment, if any), or interest; and

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

Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of, and premium, if any (including the Make-Whole Payment, if any), or interest (together with any Additional Interest in respect thereof) on any Security and remaining unclaimed for two years after such principal and premium, if any (including the Make-Whole Payment, if any), or interest has become due and payable shall be paid to the Company on written request of the Company, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not

be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 2.5 SECURITYHOLDER 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 Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee on or before each semi-annual interest payment date and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders.

SECTION 2.6 TRANSFER AND EXCHANGE.

(a) Transfer and Exchange of Global Notes. The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Depositary, in accordance with this Indenture and the Applicable Procedures, which shall include restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Beneficial interests in a Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Global Note in accordance with the transfer restrictions set forth in the legend in subsection (g) of this Section 2.6. Transfers of beneficial interests in the Global Notes to Persons required to take delivery thereof in the form of an interest in another Global Note shall be permitted as follows:

(i) Rule 144A Global Note to Regulation S Global Note. If, at any time, an owner of a beneficial interest in a Rule 144A Global Note deposited with the Depositary (or the Trustee as custodian for the Depositary) wishes to transfer its interest in such Rule 144A Global Note to a Person who is required or permitted to take delivery thereof in the form of an interest in a Regulation S Global Note, such owner shall, subject to the Applicable Procedures, exchange or cause the exchange of such interest for an equivalent beneficial interest in a Regulation S Global Note as provided in this Section 2.6(a)(i). Upon receipt by the Trustee of (1) instructions given in accordance with the Applicable Procedures from an Agent Member directing the Trustee to credit or cause to be credited a beneficial interest in the Regulation S Global Note in an amount equal to the beneficial interest in the Rule 144A Global Note to be exchanged, (2) a written order given in accordance with the Applicable Procedures containing information regarding the participant account of the Depositary and the Euroclear or Clearstream account to be credited with such increase, and (3) a certificate in the form of Exhibit B-2 hereto given by the owner of such beneficial interest stating that the transfer of such interest has been made in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with Rule 903 or Rule 904 of Regulation S, then the Trustee, as Registrar, shall instruct the Depositary to reduce or cause to be reduced the aggregate principal amount at maturity of the applicable Rule 144A Global Note and to increase or cause to be increased the aggregate principal amount at maturity of the applicable Regulation S Global Note by the principal amount at maturity of the beneficial interest in the Rule 144A Global Note to be exchanged, to credit or cause to be credited to the account

of the Person specified in such instructions a beneficial interest in the Regulation S Global Note equal to the reduction in the aggregate principal amount at maturity of the Rule 144A Global Note, and to debit, or cause to be debited, from the account of the Person making such exchange or transfer the beneficial interest in the Rule 144A Global Note that is being exchanged or transferred.

(ii) Regulation S Global Note to Rule 144A Global Note. If, at any time, an owner of a beneficial interest in a Regulation S Global Note deposited with the Depositary or with the Trustee as custodian for the Depositary wishes to transfer its interest in such Regulation S Global Note to a Person who is required or permitted to take delivery thereof in the form of an interest in a Rule 144A Global Note, such owner shall, subject to the Applicable Procedures, exchange or cause the exchange of such interest for an equivalent beneficial interest in a Rule 144A Global Note as provided in this Section 2.6(a)(ii). Upon receipt by the Trustee of (1) instructions from Euroclear or Clearstream, if applicable, and the Depositary, directing the Trustee, as Registrar, to credit or cause to be credited a beneficial interest in the Rule 144A Global Note equal to the beneficial interest in the Regulation S Global Note to be exchanged, such instructions to contain information regarding the participant account with the Depositary to be credited with such increase, (2) a written order given in accordance with the Applicable Procedures containing information regarding the participant account of the Depositary and (3) a certificate in the form of Exhibit B-3 attached hereto given by the owner of such beneficial interest stating (A) if the transfer is pursuant to Rule 144A, that the Person transferring such interest in a Regulation S Global Note reasonably believes that the Person acquiring such interest in a Rule 144A Global Note is a QIB and is obtaining such beneficial interest in a transaction meeting the requirements of Rule 144A and any applicable blue sky or securities laws of any state of the United States, (B) that the transfer complies with the requirements of Rule 144 under the Securities Act and any applicable blue sky or securities laws of any state of the United States or (C) if the transfer is pursuant to any other exemption from the registration requirements of the Securities Act, that the transfer of such interest has been made in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the requirements of the exemption claimed, such statement to be supported by an Opinion of Counsel from the transferee or the transferor in form reasonably acceptable to the Company and to the Registrar, then the Trustee, as Registrar, shall instruct the Depositary to reduce or cause to be reduced the aggregate principal amount at maturity of such Regulation S Global Note and to increase or cause to be increased the aggregate principal amount at maturity of the applicable Rule 144A Global Note by the principal amount at maturity of the beneficial interest in the Regulation S Global Note to be exchanged, and the Trustee, as Registrar, shall instruct the Depositary, concurrently with such reduction, to credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the applicable Rule 144A Global Note equal to the reduction in the aggregate principal amount at maturity of such Regulation S Global Note and to debit or cause to be debited from the account of the Person making such transfer the beneficial interest in the Regulation S Global Note that is being transferred.

(b) Transfer and Exchange of Certificated Notes. When Certificated Notes are presented by a Holder to the Registrar with a request: to register the transfer of the Certificated Notes; or to exchange such Certificated Notes for an equal principal amount of Certificated Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested; provided, however, that the Certificated Notes presented or surrendered for register of transfer or exchange: (i) shall be duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by

his attorney, duly authorized in writing; and (ii) in the case of a Certificated Note that is a Restricted Security, such request shall be accompanied by a Purchaser Letter, in substantially the form of Exhibit B-1 hereto, together with the following additional information and documents, as applicable: (A) if such Restricted Security is being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, or such Restricted Security is being transferred to the Company, a certification to that effect from such Holder (in substantially the form of Exhibit B-4 hereto); (B) if such Restricted Security is being transferred to a QIB in accordance with Rule 144A under the Securities Act or pursuant to an exemption from registration in accordance with Rule 144 under the Securities Act or pursuant to an effective registration statement under the Securities Act, a certification to that effect from such Holder (in substantially the form of Exhibit B-4 hereto); or (C) if such Restricted Security is being transferred in reliance on any other exemption from the registration requirements of the Securities Act, a certification to that effect from such Holder (in substantially the form of Exhibit B-4 hereto) and an Opinion of Counsel from such Holder or the transferee reasonably acceptable to the Company and to the Registrar to the effect that such transfer is in compliance with the Securities Act.

(c) Transfer of a Beneficial Interest in a Rule 144A Global Note or Regulation S Global Note for a Certificated Note.

(i) Any Person having a beneficial interest in a Global Note may upon request, subject to the Applicable Procedures, exchange such beneficial interest for a Certificated Note. Upon receipt by the Trustee of written instructions or such other form of instructions as is customary for the Depositary (or Euroclear or Clearstream, if applicable), from the Depositary or its nominee on behalf of any Person having a beneficial interest in a Global Note, and, in the case of a Restricted Security, a Purchaser Letter, in substantially the form of Exhibit B-1 hereto, together with the following additional information and documents, as applicable (all of which may be submitted by facsimile): (A) if such beneficial interest is being transferred to the Person designated by the Depositary as being the beneficial owner, a certification to that effect from such Person (in substantially the form of Exhibit B-5 hereto); (B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A under the Securities Act or pursuant to an exemption from registration in accordance with Rule 144 under the Securities Act or pursuant to an effective registration statement under the Securities Act, a certification to that effect from the transferor (in substantially the form of Exhibit B-5 hereto); or (C) if such beneficial interest is being transferred in reliance on any other exemption from the registration requirements of the Securities Act, a certification to that effect from the transferor (in substantially the form of Exhibit B-5 hereto) and an Opinion of Counsel from the transferee or the transferor reasonably acceptable to the Company and to the Registrar to the effect that such transfer is in compliance with the Securities Act, in which case the Trustee or the Custodian, at the direction of the Trustee, shall, in accordance with the standing instructions and procedures existing between the Depositary and the Custodian, cause the aggregate principal amount of the applicable Global Notes, to be reduced accordingly and, following such reduction, the Company shall execute and, the Trustee shall authenticate and deliver to the transferee a Certificated Note in the appropriate principal amount.

(ii) Certificated Notes issued in exchange for a beneficial interest in a Global Note, as applicable, pursuant to this Section 2.6(c) 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 Notes are so registered. Following any such issuance of Certificated Notes, the Trustee, as Registrar, shall instruct the Depositary to reduce or cause to be reduced the aggregate principal amount at maturity of the applicable Global Note to reflect the transfer and an endorsement shall be made on such Security in global form by the Trustee to reflect such reduction or increase.

(d) Restrictions on Transfer and Exchange of Global Notes. Notwithstanding any other provision of this Indenture (other than the provisions set forth in subsection (f) of this Section 2.6), a Global Note may not be transferred as a whole 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.

(e) Transfer and Exchange of a Certificated Note for a Beneficial Interest in a Global Note. A Certificated Note may not be transferred or exchanged for a beneficial interest in a Global Note.

(f) Authentication of Certificated Notes in Absence of Depositary. If at any time:

(i) the Depositary for the Securities notifies the Company that the Depositary is unwilling or unable to continue as Depositary for the Global Notes and a successor Depositary for the Global Notes is not appointed by the Company within 90 days after delivery of such notice; or

(ii) the Company, at its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of Certificated Notes under this Indenture, then the Company shall execute, and the Trustee shall, upon receipt of an authentication order in accordance with Section 2.2 hereof, authenticate and deliver, Certificated Notes in an aggregate principal amount equal to the principal amount of the Global Notes in exchange for such Global Notes.

(g) Legends.

(i) Every Security issued by the Company either upon original issuance or upon registration of transfer or exchange prior to the earlier of (i) the sale of such Security pursuant to an effective registration statement under the Securities Act and (ii) the expiration of two years after the date of original issuance of such Security shall be deemed a Restricted Security. Every Restricted Security shall be subject to the restrictions on transfer provided in the legend required to be borne by each Restricted Security pursuant to this Section 2.6, unless such restrictions on transfer shall be waived by the written consent of the Company, and the holder of each Restricted Security, by such Securityholder's acceptance thereof, agrees to be bound by such restrictions on transfer. Whenever any Restricted Security is presented or surrendered for

registration of transfer or for exchange for a Security registered in a name other than that of the Holder, (i) the notice of assignment set forth in Exhibit A must be properly completed, dated the date of such surrender and signed by the Holder of such Restricted Security, and (ii) the Holder of such Restricted Security shall deliver, prior to such transfer, any other documents required by the Trustee or the Company pursuant to such notice of assignment, including (A) in the case of any proposed transfer by a Holder to an Institutional Accredited Investor, a letter signed by such Institutional Accredited Investor substantially in the form of Exhibit B-1 relating to certain representations and agreements regarding restrictions on transfer of such Restricted Security and (B) in the case of any proposed transfer by a holder to a Person in reliance of Resolution S, a letter signed by the transferee substantially in the form of Exhibit B-6 relating to certain representations and agreements regarding restrictions on transfer of such Restricted Security. The Trustee shall not be required to accept for such registration of transfer or exchange any Restricted Security if such conditions in the two preceding sentences have not been satisfied. Notwithstanding the preceding three sentences, any transfer of an interest in any Security in global form by a QIB to a QIB through the facilities of The Depository Trust Company or any other United States securities clearance and settlement organization may be effected without delivery of any additional notices or documents to the Trustee or the Company, provided that such transfer does not require a change in the name (other than to another nominee of The Depository Trust Company or such other securities clearance and settlement organization) in which such Security is then registered. The restrictions imposed by this Section 2.6 upon the transferability of any particular Restricted Security shall cease and terminate upon the earlier of (i) the sale of such Restricted Security pursuant to an effective registration statement under the Securities Act and (ii) the expiration of two years after the date of original issuance of such Security. The Company shall promptly inform the Trustee in writing of the effective date of any registration statement registering the Securities under the Securities Act. Any Security as to which such restrictions on transfer have expired in accordance with their terms or have been otherwise terminated may, upon surrender of such Security for exchange to the Trustee in accordance with the provisions of this Section 2.6, be exchanged for a new Security, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.6. The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with this paragraph.

As used in this Section 2.6(g), the term "transfer" encompasses any sale, pledge, transfer or other disposition of any Restricted Security.

Until the earlier of (i) the sale of such Restricted Security pursuant to an effective registration statement under the Securities Act and (ii) the expiration of two years after the date of original issuance of such Restricted Security,

(A) any Global Note evidencing such Restricted Security (and all Global Notes issued in exchange or substitution therefor) shall bear a legend in substantially the following form (the "Global Note Restricted Securities Legend"), unless otherwise agreed by the Company (with written notice thereof to the Trustee):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY

THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(k) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT ("INSTITUTIONAL ACCREDITED INVESTOR") THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND THAT, PRIOR TO SUCH TRANSFER, DELIVERS TO THE COMPANY AND THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE SECURITY EVIDENCED HEREBY (THE FORM OF WHICH LETTER MAY BE OBTAINED FROM THE TRUSTEE), (5) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (3) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.; and

(B) any Certificated Note evidencing such Restricted Security (and all securities issued in exchange or substitution therefor, other than Common Stock, if any, issued upon conversion thereof that shall bear the legend set forth in Section 2.6(g)(ii), if applicable) shall bear a legend in substantially the following form (the "Certificated Note Restricted Securities Legend"), unless otherwise agreed by the Company (with written notice thereof to the Trustee):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(k) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A (AS INDICTED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (3) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) or (7) UNDER THE SECURITIES ACT ("INSTITUTIONAL ACCREDITED INVESTOR") (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND THAT, PRIOR TO SUCH TRANSFER, DELIVERS TO THE COMPANY AND THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE SECURITY EVIDENCED HEREBY (THE FORM OF WHICH LETTER MAY BE OBTAINED FROM THE TRUSTEE), (5) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. PRIOR TO A TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (6) ABOVE), THE HOLDER OF THIS SECURITY MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY AND THE TRUSTEE SUCH CERTIFICATES AND OTHER INFORMATION AND, IN THE CASE OF A TRANSFER PURSUANT TO CLAUSE (5) ABOVE, A LEGAL OPINION AS THEY MAY REASONABLY REQUIRE TO CONFIRM THAT ANY TRANSFER BY IT OF THIS SECURITY COMPLIES WITH THE FOREGOING RESTRICTIONS. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT

IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (3) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902) UNDER REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

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 Securities 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 custodian for Cede & Co.

If a definitive Security is issued in exchange for any portion of a Security in global form after the close of business at the office or agency where such exchange occurs on any 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 Security, but will be payable on such interest payment date only to the person to whom interest in respect of such portion of such Security in global form is payable in accordance with the provisions of this Indenture.

(ii) Until two years after the original issuance date of any Security, any stock certificate representing Common Stock issued upon conversion of such Security shall bear a legend in substantially the following form (the "Restricted Stock Legend"), unless otherwise agreed by the Company (with written notice thereof to the Trustee):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(k) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER APPLICABLE TO THIS SECURITY, THE FORM OF WHICH MAY BE OBTAINED FROM THE COMPANY OR THE TRANSFER AGENT), (3) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT ("INSTITUTIONAL

ACCREDITED INVESTOR") (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER APPLICABLE TO THIS SECURITY, THE FORM OF WHICH MAY BE OBTAINED FROM THE COMPANY OR THE TRANSFER AGENT) THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND THAT PRIOR TO SUCH TRANSFER, DELIVERS TO THE COMPANY AND THE TRANSFER AGENT A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE SECURITY EVIDENCED HEREBY (THE FORM OF WHICH LETTER MAY BE OBTAINED FROM THE COMPANY OR THE TRANSFER AGENT), (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER APPLICABLE TO THIS SECURITY, THE FORM OF WHICH MAY BE OBTAINED FROM THE COMPANY OR THE TRANSFER AGENT) OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, PRIOR TO A TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (5) ABOVE), THE HOLDER OF THIS SECURITY MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY AND THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AND, IN THE CASE OF A TRANSFER PURSUANT TO CLAUSE (4) ABOVE, A LEGAL OPINION AS THEY MAY REASONABLY REQUIRE TO CONFIRM THAT ANY TRANSFER BY IT OF THIS SECURITY COMPLIES WITH THE FOREGOING RESTRICTIONS. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (2) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

(iii) Any certificate evidencing a Security that has been transferred to an Affiliate of the Company within two years after the original issuance date of the Security, as evidenced by a notation on the Assignment Form for such transfer or in the representation letter delivered in respect thereof, shall, until two years after the last date on which the Company or any Affiliate of the Company was an owner of such Security, bear a legend in substantially the following form (the "Affiliate Legend"), unless otherwise agreed by the Company (with written notice thereof to the Trustee);

THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR

TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO INCYTE PHARMACEUTICALS, INC. OR ANY SUBSIDIARY THEREOF, (B) IN A TRANSACTION REGISTERED UNDER THE SECURITIES ACT OR (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) AND (2) THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IF THE PROPOSED TRANSFER IS PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A., AS TRUSTEE (OR A SUCCESSOR TRUSTEE, IF APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE COMPANY MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT.

Any stock certificate representing Common Stock issued upon conversion of a Security that has been transferred to an Affiliate of the Company within two years after the original issuance date of the Security, as evidenced by a notation on the Assignment Form for such transfer or in the representation letter delivered in respect thereof, shall also bear a legend in substantially the form indicated above, unless otherwise agreed by the Company (with written notice thereof to the Trustee).

(iv) Upon any sale or transfer of a Restricted Security (including any Restricted Security represented by a Global Note) pursuant to Rule 144 under the Securities Act or pursuant to an effective registration statement under the Securities Act:

(A) in the case of any Restricted Security that is a Certificated Note, the Registrar shall permit the Holder thereof to exchange such Restricted Security for a Certificated Note that does not bear the legend set forth in (i) above and rescind any restriction on the transfer of such Restricted Security upon receipt of a certification from the transferring Holder substantially in the form of Exhibit B-5 hereto; and

(B) in the case of any Restricted Security represented by a Global Note, such Restricted Security shall not be required to bear the legend set forth in (i) above, but shall continue to be subject to the provisions of Section 2.6(a) and (d) hereof; provided, however, that with respect to any request for an exchange of a Restricted Security that is represented by a Global Note for a Certificated Note that does not bear the legend set forth in (i) above, which request is made in reliance upon Rule 144, the Holder thereof shall certify in writing to the Registrar that such request is being made pursuant to Rule 144 (such certification to be substantially in the form of Exhibit B-5 hereto).

(v) Upon any sale or transfer of a Restricted Security (including any Restricted Security represented by a Global Note) in reliance on any exemption from the registration requirements of the Securities Act (other than exemptions pursuant to Rule 144A or Rule 144 under the Securities Act) in which the Holder or the transferee provides an Opinion of Counsel to the Company and the Registrar in form and substance reasonably acceptable to the Company and the Registrar (which Opinion of Counsel shall also state that the transfer restrictions contained in the legend are no longer applicable):

(A) in the case of any Restricted Security that is a Certificated Note, the Registrar shall permit the Holder thereof to exchange such Restricted Security for a Certificated Note that does not bear the legend set forth in (i) above and rescind any restriction on the transfer of such Restricted Security; and

(B) in the case of any Restricted Security represented by a Global Note, such Restricted Security shall not be required to bear the legend set forth in (i) above, but shall continue to be subject to the provisions of Section 2.6(a) and (d) hereof.

(h) Notwithstanding any provision of Section 2.5 to the contrary, in the event Rule 144(k) as promulgated under the Securities Act (or any successor rule) is amended to shorten the two-year period under Rule 144(k) (or the corresponding period under any successor rule), then in that event, from and after receipt by the Trustee of the Officers' Certificate and Opinion of Counsel provided for in this Section 2.6(h), (1) the references in the first and sixth sentences of the first paragraph of Section 2.6(g)(i) to "two years" shall be deemed for all purposes hereof to be references to such shorter period, (2) the references in the first sentence each of Sections 2.6(g)(ii) and (iii) and the last sentence of Section 2.6(g)(iii) to "two years" shall be deemed for all purposes hereof to be references to such shorter period, (3) the reference in the last sentence of Section 6.2 to "two years" shall be deemed for all purposes hereof to be a reference to such shorter period, and (4) all corresponding references in the Securities and the restrictive legends thereon (including the restrictive legends on any Common Stock issuable upon conversion of the Securities) shall be deemed for all purposes hereof to be references to such shorter period, provided that such changes shall not become effective if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws. As soon as practicable after the Company has knowledge of the effectiveness of any such amendment to shorten the two-year period under Rule 144(k) (or the corresponding period under any successor rule, unless such changes would otherwise be prohibited by, or would otherwise cause a violation of, the then-applicable federal securities law, the Company shall provide to the Trustee an Officers' Certificate and Opinion of Counsel informing the Trustee of the effectiveness of such amendment and the effectiveness of the foregoing changes to Sections 2.6(g) and 6.2. This Section 2.6(h) shall apply to successive amendments to Rule 144(k) (or any successor rule) shortening the holding period thereunder.

(i) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in Global Notes have been exchanged for Certificated Notes, redeemed, repurchased or cancelled, all Global Notes shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Certificated Notes, redeemed, repurchased or cancelled, the principal amount of Securities represented by such Global Note shall be reduced

accordingly and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction.

(j) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Certificated Notes and Global Notes at the Registrar's request.

(ii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 3.9, 4.10, 4.15 and 9.5 hereto).

(iii) The Registrar shall not be required to register the transfer of or exchange any Security selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

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

(v) The Company shall not be required:

(A) to issue, to register the transfer of or to exchange Securities during a period beginning at the opening of business 15 days before the day of any selection of Securities for redemption under Section 3.2 hereof and ending at the close of business on the day of selection; or

(B) to register the transfer of or to exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part; or

(C) to register the transfer of or to exchange a Security between a record date and the next succeeding interest payment date.

(vi) Prior to due presentment for the registration of a transfer of any Security, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Securities, and neither the Trustee, any Agent nor the Company shall be affected by notice to the contrary.

(vii) The Trustee shall authenticate Certificated Notes and Global Notes in accordance with the provisions of Section 2.2 hereof.

SECTION 2.7 REPLACEMENT SECURITIES.

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

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

Upon the issuance of any new Securities under this Section 2.7, 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) in connection therewith.

Every new Security issued pursuant to this Section 2.7 in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 2.7 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 2.8 OUTSTANDING SECURITIES.

Securities outstanding at any time are all Securities authenticated by the Trustee, except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.8 as not outstanding.

If a Security is replaced pursuant to Section 2.7, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a bona fide purchaser.

If the Paying Agent (other than the Company or an Affiliate of the Company) holds on a redemption date, repurchase date or maturity date money sufficient to pay the principal of, premium, if any (including the Make-Whole Payment, if any), and accrued interest on Securities payable on that date, then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

Subject to the restrictions contained in Section 2.9, a Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security.

SECTION 2.9 TREASURY SECURITIES.

In determining whether the Holders of the required principal amount of Securities have concurred in any notice, direction, waiver or consent, Securities owned by the Company or any other obligor on the Securities or by any Affiliate of the Company or of such other obligor shall be disregarded, except that for purposes of determining whether the Trustee shall be protected in relying on any such notice, direction, waiver or consent, only Securities which the Trustee knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

SECTION 2.10 TEMPORARY SECURITIES.

Until definitive Securities are ready for delivery, the Company may prepare and execute, and, upon the order of the Company, the Trustee shall authenticate and deliver temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company with the consent of the Trustee considers appropriate for temporary Securities. Every such temporary Security shall be executed by the Company and authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Securities. Without unreasonable delay the Company will execute and deliver to the Trustee definitive Securities and thereupon any or all temporary Securities may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 5.2 and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount at maturity of definitive Securities. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities authenticated and delivered hereunder.

SECTION 2.11 CANCELLATION.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange, payment or conversion. The Trustee and no one else shall cancel all Securities surrendered for transfer, exchange, payment (including redemption or repurchase), conversion or cancellation and shall destroy cancelled Securities and thereupon deliver a certificate of cancellation to the Company. The Company may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation or which have been converted.

SECTION 2.12 CUSIP NUMBERS.

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

ARTICLE 3.

REDEMPTION AND REPURCHASE

SECTION 3.1 RIGHT OF PROVISIONAL REDEMPTION.

The Securities may be redeemed by the Company (a "Provisional Redemption"), in whole or in part, at any time prior to February 7, 2003, upon notice as set forth in Section 3.5 at a redemption price equal to $1,000 per Security to be redeemed plus accrued and unpaid interest, if any (including Additional Interest, if any), to the date of redemption (the "Provisional Redemption Date") if (i) the closing price of the Common Stock shall have exceeded 150% of the conversion price then in effect for at least 20 Trading Days in any consecutive 30-Trading Day period ending on the Trading Day prior to the date of mailing of the notice of redemption pursuant to Section 3.5 (the "Redemption Notice Date") and (ii) the Shelf Registration Statement is effective and available for use and is expected to remain effective and available for use for the 30 days immediately following the Provisional Redemption Date. Upon any such Provisional Redemption, the Company shall make an additional payment in cash (the "Make-Whole Payment") with respect to the Securities called for redemption to Holders on the Redemption Notice Date in an amount equal to $165 per $1,000 Security, less the amount of any interest actually paid on such Security prior to the Redemption Notice Date. The Company shall make the Make-Whole Payment on all Securities called for Provisional Redemption, including any Securities converted into Common Stock pursuant to the terms hereof after the Redemption Notice Date and prior to the third business day prior to the Provisional Redemption Date.

SECTION 3.2 RIGHT OF OPTIONAL REDEMPTION.

The Company may, at its option, redeem (an "Optional Redemption") all or from time to time any part of the Securities on any date on or after February 7, 2003 and prior to maturity, upon notice as set forth in Section 3.5, and at the redemption prices set forth in paragraph 6 of the form of Security attached hereto as Exhibit A, together with accrued interest to the date of redemption.

SECTION 3.3 ELECTION TO REDEEM; NOTICE TO TRUSTEE.

If the Company elects to redeem Securities pursuant to paragraph 5 or 6 of the Securities, it shall notify the Trustee at least 60 days prior to the redemption date as fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee) of the redemption date and the principal amount of Securities to be redeemed. If fewer than all of the Securities are to be

redeemed, the record date relating to such redemption shall be selected by the Company and given to the Trustee, which record date shall not be less than 10 days after the date of notice to the Trustee.

SECTION 3.4 SELECTION OF SECURITIES TO BE REDEEMED.

If less than all of the Securities are to be redeemed, the Trustee shall, not more than 60 days prior to the redemption date, select the Securities to be redeemed by lot, pro rata or by another method the Trustee considers fair and appropriate; provided that such method is not prohibited by any stock exchange or market on which the Securities are then listed. The Trustee shall make the selection from the Securities outstanding and not previously called for redemption. Securities in denominations of $1,000 may only be redeemed in whole. The Trustee may select for redemption portions (equal to $1,000 or any multiple thereof) of the principal of Securities that have denominations larger than $1,000. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

SECTION 3.5 NOTICE OF REDEMPTION.

At least 20 days but not more than 60 days before a redemption date, the Company shall mail or cause to be mailed a notice of redemption by first-class mail to each Holder of Securities to be redeemed at such Holder's address as it appears on the Registrar's books.

The notice shall identify the Securities to be redeemed and shall state:

(1) the redemption date;

(2) the redemption price;

(3) the then current conversion price;

(4) whether such redemption is a Provisional Redemption or an Optional Redemption;

(5) if such redemption is a Provisional Redemption, the Make-Whole Amount;

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

(7) that Securities called for redemption must be presented and surrendered to the Paying Agent to collect the redemption price;

(8) that the Securities called for redemption may be converted at any time before the close of business on the third business day immediately preceding the redemption date;

(9) that Holders who wish to convert Securities must satisfy the requirements in paragraph 9 of the Securities;

(10) that, unless the Company defaults in making the redemption payment, interest on Securities called for redemption ceases to accrue on and after the redemption date and the only remaining right of the Holder is to receive payment of the redemption price upon presentation and surrender to the Paying Agent of the Securities;

(11) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date, upon presentation and surrender of such Security, a new Security or Securities in principal amount equal to the unredeemed portion thereof will be issued; and

(12) the CUSIP number of the Securities called for redemption.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at the Company's expense.

SECTION 3.6 DEPOSIT OF REDEMPTION PRICE.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust) (i) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an interest payment date) accrued interest on, all the Securities which are to be redeemed on that date other than any Securities called for redemption on that date which have been converted prior to the date of such deposit and (ii) with respect to Securities called for Provisional Redemption pursuant to Section 3.1, an amount or money sufficient to pay the Make-Whole Payment for al the Securities (or portions thereof) called for redemption (including those surrendered for conversion into Common Stock after the Redemption Notice Date and prior to the provisional Redemption Date); 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.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any predecessor security to receive interest) be paid to the Company as soon as practicable upon written request by the Company or, if then held by the Company, shall be released from such trust; provided that, with respect to a Provisional Redemption, any money so deposited for payment of the Make-Whole Payment shall remain segregated and held in trust for payment of the Make-Whole Payment which shall be made on all Securities called for Provisional Redemption, including Securities converted into Common Stock after the Redemption Notice Date and prior to the third Business Day prior to the Provisional Redemption Date.

SECTION 3.7 SECURITIES PAYABLE ON REDEMPTION DATE.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and with respect to Securities called for Provisional Redemption, the Make-Whole Payment, and from and after such date (unless the Company shall default in the payment of the

Redemption Price and accrued interest or the Make-Whole Payment, if any) such Securities shall cease to bear or accrue any interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to (but not including) the Redemption Date and, with respect to Securities called for Provisional Redemption (including Securities converted into Common Stock pursuant to the terms hereof after the Redemption Notice Date and prior to the third business day prior to the Provisional Redemption Date), the Make-Whole Payment; provided, however, that installments of interest whose stated maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities registered as such at the close of business on the relevant Record Dates according to their terms; and provided further that, with respect to a Provisional Redemption, the holder of any securities converted into Common Stock pursuant to the terms of this Indenture after the Redemption Notice Date and prior to the third Business Day prior to the Provisional Redemption Date shall have the right to the Make-Whole Payment, if any, with respect to such Securities regardless of the conversion of such Securities.

If the Company shall fail to deposit the Redemption Price (and Make-Whole Payment, if any) with the Trustee and any security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and premium, if any (including the Make-Whole Payment, if any), shall, until paid, bear and accrue interest from the Redemption Date at the rate borne by the Security.

SECTION 3.8 SECURITIES REDEEMED IN PART.

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

SECTION 3.9 CONVERSION ARRANGEMENT ON CALL FOR REDEMPTION.

In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Trustee in trust for the Holders, on or before the Redemption Date, an amount not less than the applicable Redemption Price of such Securities, together with interest accrued to the Redemption Date, and, in connection with a Provisional Redemption, the Make-Whole Payment. Notwithstanding anything to the contrary contained in this Article 3, the obligation of the Company to pay the Redemption Price of such Securities, together with interest accrued to, but excluding, the Redemption Date and, in connection with a Provisional Redemption, the Make-Whole Payment, 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 shall be filed with the Trustee prior to the Redemption Date, any Securities 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 (notwithstanding anything to the contrary contained in Article 4) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the Redemption Date (and the right to convert any such Securities shall be deemed to have been extended through such time), subject to payment of the above amount as aforesaid (including the Make-Whole Payment, if any, with respect to all Securities called for Provisional Redemption). 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 Securities. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture, and the Company agrees to indemnify the Trustee from, and hold it harmless against, any loss, liability or expense arising out of or in connection with any such arrangement for the purchase and conversion of any Securities between the Company and such purchasers to which the Trustee has not consented in writing, including the costs and expenses incurred by the Trustee in the defense of any claim or liability arising out of or in connection with the exercise or performance of any of its powers, duties, responsibilities or obligations under this Indenture. Nothing in the preceding sentence shall be deemed to limit the rights and protections afforded to the Trustee in Article 9 hereof, including, but not limited to, the right to the indemnification pursuant to Section 9.7.

SECTION 3.10 REPURCHASE OF SECURITIES AT OPTION OF THE HOLDER UPON CHANGE IN CONTROL.

If at any time that Securities remain outstanding there shall have occurred a Change in Control (as hereinafter defined), Securities shall be repurchased by the Company at the option of the Holder thereof, at a purchase price (the "Repurchase Price") equal to the principal amount thereof plus accrued interest up to and including the Repurchase Date (as hereinafter defined), on the date (the "Repurchase Date") fixed by the Company that is not less than 45 days nor more than 60 days after the date of the Company Notice (as hereinafter defined), subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.12(b).

At the option of the Company, the Repurchase Price may be paid in cash or, subject to the fulfillment by the Company of the conditions set forth in Section 3.11, by delivery of shares of Common Stock in accordance with Section 3.11. Whenever in this Indenture there is a reference to the principal of any Security as of any time, such reference shall be deemed to include reference to the Repurchase Price payable in respect of such Security to the extent that such Repurchase Price is, was or would be so payable at such time, and express mention of the Repurchase Price in any provision of this Indenture shall not be construed as excluding the Repurchase Price in those provisions of this Indenture when such express mention is not made.

Any rights of Holders, contractual or otherwise, arising under or pursuant to any offer to repurchase Securities made by the Company under this Section 3.10 shall be subordinated in right of payment to all Senior Indebtedness to the same extent as the Securities are subordinated to Senior Indebtedness under the provisions of Article 5 and such offer to repurchase shall provide that, if at the time the Securities are required to be repurchased pursuant to such offer, payment of the Securities is not permitted pursuant to the provisions of Article 5, the Company shall use its best efforts to obtain all necessary waivers from, or to repay in full, the holders of

Senior Indebtedness in order to permit such repurchase. Notwithstanding the foregoing, any failure by the Company to comply with this Section 3.10 to offer to repurchase, or to repurchase, the Securities shall be a default in the performance by the Company hereunder.

A "Change in Control" shall be deemed to have occurred at such time after the original issuance of the Securities as any of the following occur:

(1) a "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act, except that a person shall be deemed to be the "beneficial owner" 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, of more than 50% of the total voting power of all outstanding Voting Shares;

(2) the Company shall consolidate with or merge into any other Person or sell, convey, transfer or lease all or substantially all of its properties and assets to any Person other than a Subsidiary, or any other Person shall consolidate with or merge into the Company (other than, in the case of this clause 3.10(2), pursuant to any consolidation or merger where Persons who are shareholders of the Company immediately prior thereto become the Beneficial Owners of shares of capital stock of the surviving company entitling such Persons to exercise more than 50% of the total voting power of all classes of such surviving company's capital stock entitled to vote generally in the election of directors).

(3) a change in the Board of Directors of the Company in which the individuals who constituted the Board of Directors of the Company at the beginning of the two-year period immediately preceding such change (together with any other director whose election by the Board of Directors of the Company or whose nomination for election by the stockholders of the Company was approved by a vote of at least a majority of the directors then in office either who were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors then in office.

provided, however, that a Change in Control shall not be deemed to have occurred if either (a) the closing price per share of the Common Stock for any five Trading Days within the period of 10 consecutive Trading Days ending immediately after the later of the Change in Control or the public announcement of the Change in Control (in the case of a Change in Control under clause (1) above) or ending immediately before the Change in Control (in the case of a Change in Control under clauses (2) and (3) above) shall equal or exceed 105% of the Conversion Price in effect on each such Trading Day, or (b)(i) at least 90% of the consideration (excluding cash payments for fractional shares) in the transaction or transactions constituting the Change in Control consists of shares 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 Change in Control) (such securities being referred to as "Publicly Traded Securities") and as a result of such transaction or transactions the Securities become convertible solely into such Publicly Traded Securities and (ii) the consideration in the transaction or transactions constituting the Change in Control consists of cash, Publicly Traded Securities or a combination of cash and Publicly Traded Securities with an aggregate fair market value (which,

in the case of Publicly Traded Securities, shall be equal to the average closing price of such Publicly Traded Securities during the 10 consecutive Trading Days commencing with the sixth trading day following consummation of the transaction or transactions constituting the Change in Control) is at least 105% of the conversion price in effect on the date immediately preceding the date of consummation of such Change in Control.

"Beneficial owner" shall be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act, as in effect on the date of execution of the Indenture, except that a person shall be deemed to be the "beneficial owner" of all securities that such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time.

"Voting Shares" means all outstanding shares of any class or classes (however designated) of capital stock of the Company entitled to vote generally in the election of the Board of Directors of the Company.

SECTION 3.11 CONDITIONS AND PROCEDURES RELATING TO THE COMPANY'S ELECTION TO PAY THE REPURCHASE PRICE IN COMMON STOCK.

(a) The Company may elect to pay the Repurchase Price by delivery of shares of Common Stock pursuant to Section 3.10 so long as the following conditions precedent are satisfied:

(i) The shares of Common Stock deliverable in payment of the Repurchase Price shall have a fair market value as of the Repurchase Date of not less than the Repurchase Price. For purposes of Section 3.10 and this Section 3.11, the fair market value of shares of Common Stock shall be determined by the Company and shall be equal to 95% of the average of the Closing Prices of the Common stock for the five consecutive Trading Days immediately preceding and including the third Trading Day prior to the Repurchase Date:

(ii) The shares of Common Stock to be issued upon repurchase of Notes pursuant to Section 3.10 shall not require registration under any federal securities law before such shares may be freely transferable without being subject to any transfer restrictions under the Securities Act upon repurchase pursuant to this Article 3 or, if such registration is required, such registration shall be completed and shall become effective prior to the Repurchase Date, and (B) shall not require registration with or approval of any governmental authority under any state law or any other federal law before such shares may be validly issued or delivered upon repurchase pursuant to this Article 3, or if such registration is required or such approval must be obtained, such registration shall be completed or such approval shall be obtained prior to the Repurchase Date;

(iii) The shares of Common Stock to be issued upon repurchase of Notes pursuant to this Article 3 are, or shall have been, approved for listing on the Nasdaq National Market or the New York Stock Exchange or listed on another national securities exchange, in any case, prior to the Repurchase Date; and

(iv) All shares of Common Stock which may be issued upon repurchase of Notes pursuant to this Article 3 will be issued out of the Company's authorized but unissued Common Stock and, will upon issue, be duly and validly issued and fully paid and non-assessable and free of any preemptive or similar rights.

If all of the conditions are set forth in this Section 3.11(a) are not satisfied in accordance with the terms hereof, the Repurchase Price shall be paid by the Company only in cash.

(b) Any issuance of shares of Common Stock in respect of the Repurchase Price shall be deemed to have been effected immediately prior to the close of business on the Repurchase Date and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such repurchase shall be deemed to have become on the Repurchase Date the holder or holders of record of the shares represented thereby; provided, however, that any surrender for repurchase on a date when the stock transfer books of the Company shall be closed shall constitute the Person or Persons in whose name or names the certificate or certificates for such shares are to be issued as the record holder or holders thereof for all purposes at the opening of business on the next succeeding day on which such stock transfer books are open. No payment or adjustment shall be made for dividends or distributions on any Common Stock issued upon repurchase of any Note pursuant to this Article 3 declared prior to the Repurchase Date.

(c) No fractions of shares shall be issued upon repurchase of Notes pursuant to this Article 3. If more than one Note shall be repurchased from the same Holder and the Repurchase Price shall be payable in shares of Common Stock, the number of full shares which shall be issuable upon such repurchase shall be computed on the basis of the aggregate principal amount of the Notes so repurchased. Instead of any fractional share of Common Stock which would otherwise be issuable on the repurchase of any Note or Notes pursuant to this Article 3, the Company will deliver to the applicable Holder its check for the current market value of such fractional share. The current market value of a fraction of a share is determined by multiplying the Closing Price of a full share on the Trading Day immediately preceding the Repurchase Date by the fraction, and rounding the result to the nearest cent.

(d) Any issuance and delivery of certificates for shares of Common Stock on repurchase of Notes pursuant to this Article 3 shall be made without charge to the Holder of Notes being repurchased for such certificates or for any tax or duty in respect of the issuance or delivery of such certificates or the Notes represented thereby; provided, however, that the Company shall not be required to pay any tax or duty which may be payable in respect of (i) income of the Holder or (ii) any transfer involved in the issuance or delivery of certificates for shares of Common Stock in a name other than that of the Holder of the Notes being repurchased, and no such issuance or delivery shall be made unless and until the Person requesting such issuance or delivery has paid to the Company the amount of any such tax or duty or has established, to the satisfaction of the Company, that such tax or duty has been paid.

SECTION 3.12 NOTICE; METHOD OF EXERCISING REPURCHASE RIGHT.

Within 30 days after the occurrence of a Change in Control, the Company shall mail a written notice (the "Company Notice") by first-class mail to the Trustee and to each Holder (and

to beneficial owners as required by applicable law) and shall cause a copy of such notice to be published in a daily newspaper of national circulation. The notice shall include the form of a Repurchase Notice (as defined below) to be completed by the Holder and shall state:

(1) the date of such Change in Control and, briefly, the events causing such Change in Control;

(2) the date by which the Repurchase Notice pursuant to this Section 3.12 must be given;

(3) the Repurchase Date;

(4) the Repurchase Price;

(5) whether the Repurchase Price will be paid in the form of cash or Common Stock as provided in this Indenture and that such determination is irrevocable;

(6) briefly, the conversion rights of the Securities including, without limitation, the current Conversion Price and any adjustments thereto;

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

(8) whether the lenders under the Company's Senior Indebtedness will permit the payment of the Repurchase Price;

(9) that Securities as to which a Repurchase Notice has been given may be converted into Common Stock only to the extent that the Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(10) the procedures that the Holder must follow to exercise rights under Section 3.10;

(11) the procedures for withdrawing a Repurchase Notice, including a form of notice of withdrawal;

(12) that the Holder must satisfy the requirements set forth in the Securities in order to convert the Securities; and

(13) the CUSIP number of the Securities as to which a Repurchase Notice has been given.

(b) A Holder may exercise its rights specified in Section 3.10 upon delivery of a written notice of the exercise of such rights (a "Repurchase Notice") to the Paying Agent at any time prior to the close of business on the third Business Day prior to the Repurchase Date, stating:

(1) the certificate number of each Security that the Holder will deliver to be repurchased,

(2) the portion of the principal amount of each Security that the Holder will deliver to be repurchased, which portion must be $1,000 or an integral multiple thereof; and

(3) that such Security shall be repurchased pursuant to the terms and conditions specified in this Indenture.

The delivery of such Security to the Paying Agent prior to, on or after the Repurchase Date (together with all necessary endorsements) at the office of the Paying Agent shall be a condition to the receipt by the Holder of the Repurchase Price therefor; provided, however, that such Repurchase Price shall be so paid pursuant to Section 3.10 only if the Security so delivered to the Paying Agent shall conform in all respects to the description thereof set forth in the related Repurchase Notice.

The Company shall repurchase from the Holder thereof, pursuant to Section 3.10, a portion of a Security if the principal amount of such portion is $1,000 or an integral multiple of $1,000. Provisions of this Indenture that apply to the repurchase of all of a Security pursuant to Sections 3.10 through 3.17 also apply to the repurchase of such portion of such Security.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Repurchase Notice contemplated by this Section 3.12(b) shall have the right to withdraw such Repurchase Notice in whole or in a portion thereof that is $1,000 or an integral multiple thereof at any time prior to the close of business on the Business Day prior to the Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.13.

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

SECTION 3.13 EFFECT OF REPURCHASE NOTICE.

Upon receipt by the Paying Agent of the Repurchase Notice specified in Section 3.12(b), the Holder of the Security in respect of which such Repurchase Notice was given shall (unless such Repurchase Notice is withdrawn as specified below) thereafter be entitled to receive solely the Repurchase Price with respect to such Security. Such Repurchase Price shall be paid to such Holder promptly following the later of (i) the Repurchase Date with respect to such Security (provided the conditions in Section 3.12(b) have been satisfied) and (ii) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.12(b). Securities in respect of which a Repurchase Notice has been given by the Holder thereof may not be converted into shares of Common Stock on or after the date of the delivery of such Repurchase Notice unless such Repurchase Notice has first been validly withdrawn.

A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered by the Holder to the office of the Paying Agent at any time prior to the close of business on the Business Day prior to the Repurchase Date to which it relates, specifying:

(1) the certificate number of each Security in respect of which such notice of withdrawal is being submitted;

(2) the principal amount of the Security or portion thereof with respect to which such notice of withdrawal is being submitted; and

(3) the principal amount, if any, of such Security that remains subject to the original Repurchase Notice and that has been or will be delivered for repurchase by the Company.

SECTION 3.14 DEPOSIT OF REPURCHASE PRICE.

On or before the Repurchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.4) an amount of money or a number of shares of Common Stock, as provided herein, sufficient to pay the aggregate Repurchase Price of all the Securities or portions thereof that are to be repurchased as of such Repurchase Date. The manner in which the deposit required by this Section 3.14 is made by the Company shall be at the option of the Company, provided that such deposit shall be made in a manner such that the Trustee or the Paying Agent shall have immediately available funds on the Repurchase Date; provided further, that if such payment is made on the Repurchase 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.

If the Paying Agent holds, in accordance with the terms hereof, money or shares of Common Stock, as provided herein, sufficient to pay the Repurchase Price of any Security tendered for repurchase on the Business Day prior to the Repurchase Date, then, on and after the Repurchase Date, such Security will cease to be outstanding and interest on such Security will cease to accrue and will be deemed paid, whether or not such Security is delivered to the Paying Agent, and all other rights of the Holder in respect thereof shall terminate (other than the right to receive the Repurchase Price upon delivery of such Security).

SECTION 3.15 SECURITIES REPURCHASED IN PART.

Any Security that is to be repurchased 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 Security, without service charge, a new Security or Securities, or such authorized denomination or denominations as may be requested by such Holder, in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security so surrendered that is not repurchased.

SECTION 3.16 COMPLIANCE WITH SECURITIES LAWS UPON REPURCHASE OF SECURITIES.

In connection with any offer to repurchase or repurchase of Securities under Section 3.10 hereof (provided that such offer or repurchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) at the time of such offer or repurchase), the Company shall (i) comply with Rule 13e-4 and Rule 14e-1 under the Exchange Act, (ii) file the related Schedule 13E-4 (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with all federal and state securities laws so

as to permit the rights of the Holders and obligations of the Company under Sections 3.10 through 3.17 to be exercised in the time and in the manner specified therein.

SECTION 3.17 REPAYMENT TO THE COMPANY.

Subject to the provisions of Section 5.7, to the extent that the aggregate amount of cash or the number of shares of Common Stock, as provided herein, deposited by the Company pursuant to Section 3.14 exceeds the aggregate Repurchase Price of the Securities or portions thereof to be repurchased, then, promptly after the Business Day following the Repurchase Date, the Trustee or the Paying Agent, as the case may be, shall return any such excess to the Company.

ARTICLE 4.

CONVERSION

SECTION 4.1 CONVERSION PRIVILEGE.

At any time after 90 days following the latest date of original issuance of the Securities and prior to the close of business on February 1, 2007, a Holder of a Security may convert such Security into Common Stock, at the conversion price then in effect, together with those rights specified in Section 4.15 hereof; provided that, if such Security is called for redemption pursuant to Article 3, such conversion right shall terminate at the close of business on the third business day before the redemption date for such Security (unless the Company shall default in making the redemption payment then due, in which case the conversion right shall terminate on the date such default is cured and such Security is redeemed). The number of shares of Common Stock issuable upon conversion of a Security shall be determined by dividing the principal amount of the Security or portion thereof surrendered for conversion by the conversion price in effect on the conversion date. The initial conversion price is set forth in paragraph 9 of the Securities and is subject to adjustment as provided in this Article 4.

A Holder may convert a portion of a Security equal to $1,000 or any integral multiple thereof. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

A Security in respect of which a Holder has delivered a Repurchase Notice pursuant to Section 3.12(b) exercising the option of such Holder to require the Company to repurchase such Security may be converted only if such Repurchase Notice is withdrawn by a written notice of withdrawal delivered to the Paying Agent prior to the close of business on the Repurchase Date in accordance with Section 3.13.

A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted his Securities into Common Stock and, upon such conversion, only to the extent such Securities are deemed to have been converted into Common Stock pursuant to this Article 4.

SECTION 4.2 CONVERSION PROCEDURE.

To convert a Security, a Holder must (i) complete and manually sign the conversion notice on the back of the Security and deliver such notice to the Conversion Agent, (ii) surrender the Security to the Conversion Agent, (iii) furnish appropriate endorsements and transfer documents if required by the Registrar or the Conversion Agent and (iv) pay any transfer or other tax, if required by Section 4.4. The date on which the Holder satisfies all of the foregoing requirements is the conversion date. As soon as practicable after the conversion date, the Company shall deliver to the Holder through the Conversion Agent a certificate for the number of whole shares of Common Stock issuable upon the conversion and cash in lieu of any fractional shares pursuant to Section 4.3.

The person in whose name the certificate is registered shall be deemed to be a stockholder of record on the conversion date; provided, however, that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the person or persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the person or persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; provided, further, that such conversion shall be at the Conversion Price in effect on the date that such Security shall have been surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such person shall no longer be a Holder of such Security.

No payment or adjustment will be made for accrued interest on a converted Security or for dividends or distributions on shares of Common Stock issued upon conversion of a Security, but if any Holder surrenders a Security for conversion between the record date for the payment of an installment of interest and the next interest payment date, then, notwithstanding such conversion, the interest payable on such interest payment date shall be paid to the Holder of such Security on such record date. In such event, such Security, when surrendered for conversion, must be accompanied by delivery of a check or draft payable to the Conversion Agent in an amount equal to the interest payable on such interest payment date on the portion so converted. If such payment does not accompany such Security, the Security shall not be converted; provided, however, that no such check or draft shall be required if such Security has been called for redemption between such record date and the date three business days after such interest payment date, or if such Security is surrendered for conversion on the interest payment date. If the Company defaults in the payment of interest payable on the interest payment date, the Conversion Agent shall repay such funds to the Holder.

If a Holder converts more than one Security at the same time, the number of shares of Common Stock issuable upon the conversion shall be based on the aggregate principal amount of Securities converted.

Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder, a new Security equal in principal amount to the unconverted portion of the Security surrendered.

SECTION 4.3 ADJUSTMENTS BELOW PAR VALUE.

Before taking any action which would cause an adjustment decreasing the Conversion Price so that the shares of Common Stock issuable upon conversion of the Securities would be issued for less than the par value of such Common Stock, the Company will take all corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of such Common Stock at such adjusted Conversion Price.

SECTION 4.4 TAXES ON CONVERSION.

If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon such conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

SECTION 4.5 COMPANY TO PROVIDE STOCK.

The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion of all outstanding Securities for shares of Common Stock. The shares of Common Stock or other securities issued upon conversion of the Securities shall bear any legend required in accordance with Section 2.6(g) hereof.

No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon conversion of Securities. If more than one Security shall be surrendered for conversion at one time by the same holder, the number of full shares which shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be issuable upon the conversion of any Security or Securities, the Company shall make an adjustment thereof in cash at the current market value thereof. For these purposes, the current market value of a share of Common Stock shall be the Closing Price on the first day (which is not a Legal Holiday) immediately preceding the day on which the Securities (or specified portions thereof) are deemed to have been converted.

The Company covenants that all shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

SECTION 4.6 ADJUSTMENT OF CONVERSION PRICE.

The conversion price (the "Conversion Price") shall be that price set forth in paragraph 9 of the form of Security attached hereto as Exhibit A and shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall (i) pay a dividend or other distribution in shares of Common Stock to holders of Common Stock, (ii) subdivide its outstanding Common Stock into a greater number of shares, (iii) combine its outstanding Common Stock into a smaller number of shares, or (iv) reclassify its outstanding Common Stock, the Conversion Price in effect immediately prior thereto shall be adjusted so that the Holder of any Security thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which it would have owned or have been entitled to receive had such Security been converted immediately prior to the happening of such event. An adjustment made pursuant to this subsection (a) shall become effective immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of subdivision or combination.

(b) In case the Company shall issue rights, warrants or options to all or substantially all holders of its Common Stock entitling them (for a period commencing no earlier than the record date described below and expiring not more than 45 days after such record date) to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share less than the current market price per share of Common Stock (as determined in accordance with subsection (e) below) at the record date for the determination of stockholders entitled to receive such rights, warrants or options, the Conversion Price in effect immediately prior thereto shall be adjusted so that the Conversion Price shall equal the price determined by multiplying the Conversion Price in effect immediately prior to such record date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding on such record date, plus the number of shares which the aggregate subscription or purchase price for the total number of shares of Common Stock offered by the rights, warrants or options so issued (or the aggregate conversion price of the convertible securities offered by such rights, warrants or options) would purchase at such current market price, and of which the denominator shall be the number of shares of Common Stock outstanding on such record date plus the number of additional shares of Common Stock offered by such rights, warrants or options (or into which the convertible securities so offered by such rights, warrants or options are convertible). Such adjustment shall be made successively whenever any such rights, warrants or options are issued, and shall become effective immediately after such record date. If at the end of the period during which such rights, warrants or options are exercisable not all rights, warrants or options shall have been exercised, the adjusted Conversion Price shall be immediately readjusted to what it would have been upon application of the foregoing adjustment substituting the number of additional shares of Common Stock actually issued (or the number of shares of Common Stock issuable upon conversion of convertible securities actually issued) for the total number of shares of Common Stock offered (or the convertible securities offered).

(c) In case the Company shall distribute to all or substantially all holders of its Common Stock any shares of capital stock of the Company (other than Common Stock) or evidences of its indebtedness, cash, other securities or other assets, or shall distribute to all or

substantially all holders of its Common Stock rights, warrants or options to subscribe for or purchase any of its securities (excluding (i) those rights and warrants referred to in subsection (b) above; (ii) those dividends, distributions, subdivisions and combinations referred to in subsection(a) above; and (iii) dividends and distributions paid in cash from retained earnings in an aggregate amount that, combined together with (A) all other such cash distributions made within the preceding 12 months in respect of which no adjustment has been made under this Section 4.6 and (B) the fair market value of consideration payable in respect of any repurchases (including by way of tender offers) by the Company or any of its Subsidiaries or Affiliates, or any employee benefit plan for the benefit of employees of the Company or any of its Subsidiaries or Affiliates (a "Company Benefit Plan"), of Common Stock concluded within the preceding 12 months, in each case in respect of which no adjustment has been made under this Section 4.6, does not exceed 12.5% of Market Capitalization as of the record date for such distribution), then in each such case the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the date of such distribution or purchase by a fraction of which the numerator shall be the current market price per share (as defined in subsection (e) below) of the Common Stock on the record date mentioned below less the fair market value on such record date (as determined by the Board of Directors of the Company, whose determination shall be conclusive evidence of such fair market value) of the portion of the capital stock or evidences of indebtedness, securities or assets so distributed or of such rights, warrants or options, in each case as applicable to one share of Common Stock, and of which the denominator shall be the current market price per share (as defined in subsection (e) below) of the Common Stock on such record date. Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such distribution. Notwithstanding the foregoing, in the event that the Company shall distribute (AA) rights, warrants or options (other than those referred to in subsection (b) above) ("Rights") pro rata to holders of Common Stock, the Company may, in lieu of making any adjustment pursuant to this Section 4.6, or (BB) rights issued pursuant to the Company's Rights Agreement, dated September 25, 1998, pro rata to holders of Common Stock the Company shall, make proper provision so that each holder of a Security who converts such Security (or any portion thereof) after the record date for such distribution and prior to the expiration or redemption of the Rights shall be entitled to receive upon such conversion, in addition to the Conversion Shares, a number of Rights to be determined as follows: (x) if such conversion occurs on or prior to the date for the distribution to the holders of Rights of separate certificates evidencing such Rights (the "Distribution Date"), the same number of Rights to which a holder of a number of shares of Common Stock equal to the number of Conversion Shares is entitled at the time of such conversion in accordance with the terms and provisions of and applicable to the Rights; and (y) if such conversion occurs after the Distribution Date, the same number of Rights to which a holder of the number of shares of Common Stock into which the principal amount of the Security so converted was convertible immediately prior to the Distribution Date would have been entitled on the Distribution Date in accordance with the terms and provisions of, and applicable to, the Rights. If the Company implements a new stockholder rights plan, the Company agrees that such rights plan will provide that upon conversion of the Notes, the Holders of the Common Stock issued upon

conversion shall receive the rights issued under such plan, whether or not such rights have separated from the Common Stock at the time of such conversion. If the rights under such new plan have become separated from the Common Stock prior to the conversion of a Security, the Holders of the Common Stock issued upon conversion shall receive the Rights that they would have received if the Security had been converted immediately prior to the separation of the Rights.

(d) In case the Company or any of its Subsidiaries or any Company Benefit Plan shall repurchase (including by way of tender offer) shares of Common Stock, and the fair market value of the sum of (i) the aggregate consideration paid for such Common Stock, (ii) the aggregate fair market value of cash dividends and distributions of the type described in clause (iii) of the preceding paragraph (c) paid within the twelve (12) months preceding the date of purchase of such shares of Common Stock in respect of which no adjustment pursuant to this Section 4.6 previously has been made, and (iii) the aggregate fair market value of any amounts previously paid for the repurchase of Common Stock of a type described in this paragraph (d) within the twelve (12) months preceding the date of purchase of such shares of Common Stock in respect of which no adjustment pursuant to this Section 4.6 previously has been made, exceeds 12.5% of Market Capitalization on the date of, and after giving effect to, such repurchase, then the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the date of such distribution or purchase by a fraction of which the numerator shall be the current market price per share (as defined in subsection (e) below) of the Common Stock on the date of such repurchase, less the amount of cash so distributed (through dividend, distribution or repurchase of shares) applicable to one share of Common Stock and of which the denominator shall be the current market price per share (as defined in subsection (e) below) of the Common Stock on the date of such repurchase. Such adjustment shall become effective immediately after the date of such repurchase.

(e) For the purpose of any computation under subsections (b), (c) and (d) above, the current market price per share of Common Stock on any date shall be deemed to be the average of the Closing Prices for 20 consecutive Trading Days commencing 30 Trading Days before the record date with respect to any distribution, issuance or other event requiring such computation. The Closing Price for each day shall be (i) the last sale price, or the closing bid price if no sale occurred, of such class of stock on the principal securities exchange on which such class of stock is listed, if the Common Stock is listed or admitted for trading on any national securities exchange, (ii) the last reported sale price of Common Stock on The Nasdaq Stock Market, or any similar system of automated dissemination of quotations of securities prices then in common use, if so quoted, or (iii) if not quoted as described in clause (i), the mean between the high bid and low asked quotations for Common Stock as reported by the National Quotation Bureau Incorporated if at least two securities dealers have inserted both bid and asked quotations for such class of stock on at least 5 of the 10 preceding days. If the Common Stock is quoted on a national securities or central market system, in lieu of a market or quotation system described above, the Closing Price shall be determined in the manner set forth in clause (iii) of the preceding sentence if bid and asked quotations are reported but actual transactions are not, and in the manner set forth in clause (ii) of the preceding sentence if actual transactions are reported. If none of the conditions set forth above is met, the Closing Price of Common Stock on any day or the average of such last reported sale prices for any period shall be the fair market value of such class of stock as determined by a member firm of the New York Stock Exchange, Inc. selected by the Company. As used herein the term "Trading Days" with respect to Common Stock means (i) if the Common Stock is listed or admitted for trading on any national securities exchange,

days on which such national securities exchange is open for business or (ii) if the Common Stock is quoted on The Nasdaq Stock Market or any similar system of automated dissemination of quotations of securities prices, days on which trades may be made on such system.

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

(1) are deemed to be transferred with such shares of Common Stock,

(2) are not exercisable, and

(3) are also issued in respect of future issuances of Common Stock,

shall not be deemed distributed for purposes of this Section 4.6 until the occurrence of the earliest Trigger Event. In addition, in the event of any distribution of rights, warrants or options, or any Trigger Event with respect thereto, that shall have resulted in an adjustment to the Conversion Price under this Section 4.6, (1) in the case of any such rights, warrants or options which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder of Common Stock with respect to such rights, warrants or options (assuming such holder had retained such rights, warrants or options), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of any such rights, warrants or options all of which shall have expired without exercise by any holder thereof, the Conversion Price shall be readjusted as if such issuance had not occurred.

(g) In any case in which this Section 4.6 shall require that an adjustment be made immediately following a record date established for purposes of Section 4.6, the Company may elect to defer (but only until five Business Days following the filing by the Company with the Trustee of the certificate described in Section 4.10 below) issuing to the holder of any Security converted after such record date the shares of Common Stock and other capital stock of the Company issuable upon such conversion over and above the shares of Common Stock and other capital stock of the Company issuable upon such conversion only on the basis of the Conversion Price prior to adjustment; and, in lieu of the shares the issuance of which is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate evidence of the right to receive such shares.

SECTION 4.7 NO ADJUSTMENT.

No adjustment in the Conversion Price shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price as last adjusted; provided, however, that any adjustments which by reason of this Section 4.7 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations

under this Article 4 shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be.

No adjustment need be made for rights to purchase Common Stock or issuances of Common Stock pursuant to a Company plan for reinvestment of dividends or interest.

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

To the extent that the Securities become convertible into cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

SECTION 4.8 EQUIVALENT ADJUSTMENTS.

In the event that, as a result of an adjustment made pursuant to Section 4.6 above, the holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of capital stock of the Company other than shares of its Common Stock, thereafter the Conversion Price of such other shares so receivable upon conversion of any Securities shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Article 4.

SECTION 4.9 ADJUSTMENT FOR TAX PURPOSES.

The Company shall be entitled to make such reductions in the Conversion Price, in addition to those required by Section 4.6, as it in its discretion shall determine to be advisable in order that any stock dividends, subdivision of shares, distribution of rights to purchase stock or securities, or a distribution or securities convertible into or exchangeable for stock hereafter made by the Company to its stockholders shall not be taxable.

SECTION 4.10 NOTICE OF ADJUSTMENT.

Whenever the Conversion Price is adjusted, or Securityholders become entitled to other Securities or due bills, the Company shall promptly mail to Securityholders a notice of the adjustment and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment and the Trustee may conclusively assume that, unless and until such certificate is received by it, no such adjustment is required.

SECTION 4.11 NOTICE OF CERTAIN TRANSACTIONS.

In case:

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

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

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

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

the Company shall cause to be filed with the Trustee and to be mailed to each holder of Securities at its address appearing on the list, provided for in Section 2.5 of this Indenture, as promptly as possible but in any event at least fifteen days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, warrants or options, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

SECTION 4.12 EFFECT OF RECLASSIFICATION, CONSOLIDATION, MERGER OR SALE ON CONVERSION PRIVILEGE.

If any of the following shall occur, namely: (i) any reclassification or change of outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination); (ii) any consolidation, combination or merger to which the Company is a party other than a merger in which the Company is the continuing corporation and which does not result in any reclassification of, or change (other than a change in name, or par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding shares of Common Stock; or (iii) any sale or conveyance of all or substantially all of the property or business of the Company, then the Company, or such successor or purchasing corporation, as the case may be, shall, as a condition precedent to such reclassification, change, consolidation, merger, sale or conveyance, execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of shares of stock and other securities and property (including cash) receivable upon such reclassification, change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security immediately prior to such reclassification, change, consolidation, merger, sale or conveyance. Such supplemental indenture shall provide for adjustments of the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Price provided for in this Article 4. The foregoing, however, shall not in any way affect the right a holder of a Security may otherwise have, pursuant to clause (ii) of the last

sentence of subsection (c) of Section 4.6, to receive Rights upon conversion of a Security. If, in the case of any such consolidation, merger, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock includes shares of stock or other securities and property of a corporation other than the successor or purchasing corporation, as the case may be, in such consolidation, merger, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors of the Company shall reasonably consider necessary by reason of the foregoing. The provision of this Section 4.12 shall similarly apply to successive consolidations, mergers, sales or conveyances. Notwithstanding the foregoing, a distribution by the Company to all or substantially all holders of its Common Stock for which an adjustment to the Conversion Price or provision for conversion of the Securities may be made pursuant to Section 4.6 hereof shall not be deemed to be a sale or conveyance of all or substantially all of the property or business of the Company for purposes of this Section 4.12.

In the event the Company shall execute a supplemental indenture pursuant to this Section 4.12, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefor, the kind or amount of shares of stock or securities or property (including cash) receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, consolidation, merger, sale or conveyance, any adjustment to be made with respect thereto and that all conditions precedent have been complied with.

SECTION 4.13 TRUSTEE'S DISCLAIMER.

The Trustee has no duty to determine when an adjustment under this Article 4 should be made, how it should be made or what such adjustment should be made, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 4.10. The Trustee makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article 4.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 4.12, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 4.12.

SECTION 4.14 VOLUNTARY REDUCTION.

The Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least 20 days or such longer period as may be required by law and if the reduction is irrevocable during the period; provided, that in no event may the Conversion Price be less than the par value of a share of Common Stock.

ARTICLE 5.

SUBORDINATION

SECTION 5.1 SECURITIES SUBORDINATED TO SENIOR INDEBTEDNESS.

The Company covenants and agrees, and each holder of Securities by his acceptance thereof likewise covenants and agrees, that all Securities are subject to the provisions of this Article 5; and each Person holding any Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions and acknowledges that such provisions are for the benefit of, and shall be enforceable directly by, the holders of Senior Indebtedness.

Each holder of Securities authorizes and directs the Trustee on such holder's behalf to take such action as may be necessary or appropriate, in the sole discretion of the Trustee, to acknowledge or effectuate the subordination between the holders of Securities and the holders of Senior Indebtedness as provided in this Article and appoints the Trustee as such holder's attorney-in-fact for any and all such purposes.

The payment of the principal of, premium, if any (including the Make-Whole Payment, if any), and interest on and any other payment due pursuant to this Indenture or any Securities issued hereunder (including, without limitation, the payment or deposit of the redemption price or repurchase price pursuant to Article 3 and any deposit pursuant to Section 6.3) shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter created, incurred, assumed or guaranteed.

SECTION 5.2 SECURITIES SUBORDINATED TO PRIOR PAYMENT OF ALL SENIOR INDEBTEDNESS ON DISSOLUTION, LIQUIDATION, REORGANIZATION, ETC., OF THE COMPANY.

Upon any payment or distribution of the assets of the Company of any kind or character, whether in cash, property or securities (including any collateral at any time securing the Securities), to creditors upon any dissolution, winding-up, total or partial liquidation, or reorganization of the Company (whether voluntary or involuntary, or in bankruptcy, insolvency, reorganization, liquidation, or receivership proceedings, or upon an assignment for the benefit of creditors, or any marshalling of the assets and liabilities of the Company, or otherwise), then in such event:

(a) all Senior Indebtedness (including principal thereof and interest thereon) shall first be paid in full before any Payment of the Securities (as defined in Section 5.5) is made;

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (including any collateral at any time securing the Securities) (other than Reorganization Securities), to which the Holders or the Trustee on behalf of the Holders would be entitled except for the provisions of this Article 5, including any such payment or distribution which may be payable or deliverable by reason of the payment of another debt of the Company being subordinated to the payment of the Securities, shall be paid

or delivered by any debtor, Custodian or other person making such payment or distribution, directly to the holders of the Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the principal of and interest on the Senior Indebtedness held or represented by each, for application to payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full after giving effect to any concurrent payment or distribution, or provision therefor, to the holders of such Senior Indebtedness; and

(c) in the event that, notwithstanding the foregoing provisions of this Section 5.2, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (other than Reorganization Securities), shall be received by the Trustee or the Holders before all Senior Indebtedness is paid in full, such payment or distribution (subject to the provisions of Sections 5.6 and 5.7) shall be held in trust for the benefit of, and shall be immediately paid or delivered by the Trustee or such Holders, as the case may be, to the holders of Senior Indebtedness remaining unpaid, or their Representative or Representatives, ratably according to the aggregate amounts remaining unpaid on account of the principal of and interest on the Senior Indebtedness held or represented by each, for application to the payment of all Senior Indebtedness remaining unpaid, to the extent necessary to pay all Senior Indebtedness in full after giving effect to any concurrent payment or distribution, or provision therefor, to or for the holders of such Senior Indebtedness.

The Company shall give prompt notice to the Trustee of any dissolution, winding-up, liquidation or reorganization of the Company.

Upon any distribution of assets of the Company referred to in this Article 5, the Trustee, subject to the provisions of Sections 9.1 and 9.2, and the Holders shall be entitled to rely upon any order or decree by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceeding is pending, or a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee or to the Holders, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 5; provided that the foregoing shall apply only if such court, trustee, liquidating trustee or other person has been fully apprised of the provisions of this Article.

SECTION 5.3 SECURITYHOLDERS TO BE SUBROGATED TO RIGHT OF HOLDERS OF SENIOR INDEBTEDNESS.

Subject to the prior payment in full of all Senior Indebtedness, the Holders shall be subrogated (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the Company applicable to the Senior Indebtedness until the principal of and interest on the Securities shall be paid in full, and for purposes of such subrogation, no payments or distributions to the holders of Senior Indebtedness of assets, whether in cash, property or securities, distributable to the holders

of Senior Indebtedness under the provisions hereof to which the Holders would be entitled except for the provisions of this Article 5, and no payment pursuant to the provisions of this Article 5 to the holders of Senior Indebtedness by the Holders shall, as among the Company, its creditors other than the holders of Senior Indebtedness, and the Holders, be deemed to be a payment by the Company to or on account of Senior Indebtedness, it being understood that the provisions of this Article 5 are, and are intended, solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of Senior Indebtedness, on the other hand.

SECTION 5.4 OBLIGATIONS OF THE COMPANY UNCONDITIONAL.

Nothing contained in this Article 5 or elsewhere in this Indenture or in any Security is intended to or shall impair the obligation of the Company, which is absolute and unconditional, to pay to the Holders the principal of and interest on the Securities, as and when the same shall become due and payable in accordance with the terms of the Securities, or to affect the relative rights of the Holders and other creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon the happening of an Event of Default under this Indenture, subject to the provisions of Article 8, and the rights, if any, under this Article 5 of the holders of Senior Indebtedness in respect of assets, whether in cash, property or securities, of the Company received upon the exercise of any such remedy.

SECTION 5.5 COMPANY NOT TO MAKE PAYMENT WITH RESPECT TO SECURITIES IN CERTAIN CIRCUMSTANCES.

Upon the occurrence of a Payment Default, unless and until the amount of such Senior Indebtedness then due shall have been paid in full, or such default shall have been cured or waived or shall have ceased to exist, the Company shall not pay principal of, premium, if any (including the Make-Whole Payment, if any), or interest on the Securities or any other amount due pursuant to this Indenture or any Securities or make any deposit pursuant to Article 3 or Section 6.3 or 10.1 and shall not repurchase, redeem or otherwise retire any Securities (collectively, "a Payment of the Securities").

Unless Section 5.2 shall be applicable, upon (1) the occurrence of a default on Senior Indebtedness (other than a Payment Default) that occurs and is continuing that permits the holders of such Senior Indebtedness (or their Representative or Representatives) to accelerate its maturity and (2) receipt by the Company and the Trustee from the Senior Agent of written notice of such occurrence and the imposition of a Payment Blockage Period hereunder, then the Company shall not make any Payment of the Securities for a period (the "Payment Blockage Period") commencing on the earlier of the date of receipt by the Company or the Trustee of such notice from the Senior Agent and ending on the earlier of (subject to any blockage of payments that may then be in effect under subsection (a) of this Section) (x) the date 179 days after such date, (y) the date such default shall have been cured or waived in writing or shall have ceased to exist or such Senior Indebtedness shall have been discharged, or (z) the date such Payment Blockage Period shall have been terminated by written notice to the Company or the Trustee from the Senior Agent, after which, in case of clause (x), (y) or (z), as the case may be, the Company shall resume making any and all required payments. Notwithstanding any other provision of this Agreement, only one Payment Blockage Period may be commenced within any

consecutive 365-day period, and no event of default with respect to any Senior Indebtedness which existed or was continuing on the date of the commencement of any Payment Blockage Period with respect to such Senior Indebtedness shall be, or can be made, the basis for the commencement of a second Payment Blockage Period whether or not within a period of 365 consecutive days unless such event of default shall have been cured or waived for a period of not less than 90 consecutive days. In no event will a Payment Blockage Period extend beyond 179 days.

In the event that, notwithstanding the foregoing provisions of this Section 5.5, any Payment of the Securities shall be made by or on behalf of the Company and received by the Trustee, any Holder or any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment shall be segregated and held in trust), which payment was prohibited by this Section 5.5, then, unless and until the amount of Senior Indebtedness then due, as to which a default shall have occurred, shall have been paid in full, or such default shall have been cured or waived, such payment (subject, in each case, to the provisions of Sections 5.6 and 5.7) shall be held in trust for the benefit of, and shall be immediately paid over to, the holders of Senior Indebtedness or their Representative or Representatives, ratably according to the aggregate amounts remaining unpaid on account of the principal of and interest on the Senior Indebtedness held or represented by each, for application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of Senior Indebtedness. The Company shall give prompt written notice to the Trustee of any default under any Senior Indebtedness or under any agreement pursuant to which Senior Indebtedness may have been issued.

SECTION 5.6 NOTICE TO TRUSTEE.

The Company shall give prompt written notice to the Trustee of any fact known to the Company which would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this Article 5 or any other provision of this Indenture, the Trustee shall not at any time be charged with knowledge of the existence of any facts which would prohibit the making of any payment to or by the Trustee, unless and until the Trustee shall have received notice thereof from the Company or from the holder or holders of Senior Indebtedness or from their Representative or Representatives; and, prior to the receipt of any such notice, the Trustee, subject to the provisions of Sections 9.1 and 9.2, shall be entitled to assume conclusively that no such facts exist.

The Trustee shall be entitled to rely on the delivery to it of a written notice by a person representing himself to be a holder of Senior Indebtedness (or a Representative of such holder) to establish that such notice has been given by a holder of Senior Indebtedness or a Representative of any such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 5, the Trustee may request such person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such person, the extent to which such person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of each person under this

Article 5, and if such evidence is not furnished, the Trustee may defer any payment to such person pending judicial determination as to the right of such person to receive such payment.

SECTION 5.7 APPLICATION BY TRUSTEE OF MONIES DEPOSITED WITH IT.

Money or U.S. Government Obligations deposited in trust with the Trustee pursuant to Sections 6.3 and 10.1 and not in violation of this Article 5 shall be for the sole benefit of Securityholders and shall thereafter not be subject to the subordination provisions of this Article 5. Otherwise, any deposit of monies by the Company with the Trustee or any Paying Agent (whether or not in trust) for the payment of the principal of or interest on any Securities shall be subject to the provisions of Sections 5.1, 5.2, 5.3 and 5.5; except that, if two Business Days prior to the date on which by the terms of this Indenture any such monies may become payable for any purpose (including, without limitation, the payment of either the principal of or interest on any Security), the Trustee shall not have received with respect to such monies the notice provided for in Section 5.6, then the Trustee or any Paying Agent shall have full power and authority to receive such monies and to apply such monies to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date. This Section 5.7 shall be construed solely for the benefit of the Trustee and the Paying Agent and shall not otherwise affect the rights that holders of Senior Indebtedness may have to recover any such payments from the Holders in accordance with the provisions of this Article 5.

SECTION 5.8 SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF COMPANY OR HOLDERS OF SENIOR INDEBTEDNESS.

No right of any present or future holders of any Senior Indebtedness to enforce subordination, as herein provided, shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or be otherwise charged with. The holders of any Senior Indebtedness may extend, renew, modify or amend the terms of such Senior Indebtedness or any security therefor and release, sell or exchange such security and otherwise deal freely with the Company, all without affecting the liabilities and obligations of the parties to this Indenture or the Holders. No amendment of this Article 5 or any defined terms used herein or any other Sections referred to in this Article 5 which adversely affects the rights hereunder of holders of Senior Indebtedness, shall be effective unless the holders of such Senior Indebtedness (required pursuant to the terms of such Senior Indebtedness to give such consent) have consented thereto.

SECTION 5.9 TRUSTEE TO EFFECTUATE SUBORDINATION.

Each holder of a Security by his acceptance thereof authorizes and directs the Trustee in his behalf to take such action as may be necessary or appropriate to acknowledge and effectuate the subordination provided in this Article 5 and appoints the Trustee his attorney-in-fact for any and all such purposes.

SECTION 5.10 RIGHT OF TRUSTEE TO HOLD SENIOR INDEBTEDNESS.

The Trustee, in its individual capacity, shall be entitled to all of the rights set forth in this Article 5 in respect of any Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

SECTION 5.11 ARTICLE 5 NOT TO PREVENT EVENTS OF DEFAULT.

The failure to make a Payment of the Securities by reason of any provision in this Article 5 shall not be construed as preventing the occurrence of an Event of Default under Section 8.1.

SECTION 5.12 NO FIDUCIARY DUTY CREATED TO HOLDERS OF SENIOR INDEBTEDNESS.

Notwithstanding any other provision in this Article 5, the Trustee shall not be determined to owe any fiduciary duty to the holders of Senior Indebtedness by virtue of the provisions of this Article 5.

SECTION 5.13 ARTICLE APPLICABLE TO PAYING AGENTS.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article 5 shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article 5 in addition to or in place of the Trustee; provided, however, that Sections 5.6, 5.10 and 5.12 shall not apply to the Company if it acts as Paying Agent.

SECTION 5.14 CERTAIN CONVERSION DEEMED PAYMENT.

For the purposes of this Article only, (1) the issuance and delivery of junior securities upon conversion of Securities in accordance with Article 4 shall not be deemed to constitute a payment or distribution on account of the principal of or premium or interest on Securities or on account of the purchase or other acquisition of Securities, and (2) the payment, issuance or delivery of cash, property or securities (other than junior securities) upon conversion of a Security shall be deemed to constitute payment on account of principal of such Security. For the purposes of this Section, the term "junior securities" means (a) shares of any stock of any class of the Company and (b) securities of the Company which are subordinated in right of payment to all Senior Indebtedness which may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Securities are so subordinated as provided in this Article. Nothing contained in this Article or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Indebtedness and the Holders of the Securities, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 4.

ARTICLE 6.

COVENANTS

SECTION 6.1 PAYMENT OF SECURITIES.

The Company covenants and agrees that it will duly and punctually pay or cause to be paid the principal amount at maturity, Redemption Price (and, if applicable, Make-Whole Payment), Repurchase Price and interest, in respect of each of the Securities at the places, at the respective times and in the manner provided herein and in the Securities. Each installment of interest on the Securities may be paid by mailing checks for the interest payable to or upon the written order of the holders of Securities entitled thereto as they shall appear on the registry books of the Company; provided that with respect to any holder of Securities with an aggregate principal amount equal to or in excess of $5 million, at the request of such holder in writing the Company shall pay interest on such holder's Securities by wire transfer in immediately available funds.

SECTION 6.2 SEC REPORTS; 144A INFORMATION.

The Company shall file all reports and other information and documents which it is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, and within 15 days after it files them with the SEC, the Company shall file copies of all such reports, information and other documents with the Trustee. The Company will cause any quarterly and annual reports which it mails to its stockholders to be mailed to the Holders of the Securities.

In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will prepare, for the first three quarters of each fiscal year, quarterly financial statements substantially equivalent to the financial statements required to be included in a report on Form 10-Q under the Exchange Act. The Company will also prepare, on an annual basis, complete audited consolidated financial statements including, but not limited to, a balance sheet, a statement of income and retained earnings, a statement of cash flows and all appropriate notes. All such financial statements will be prepared in accordance with generally accepted accounting principles consistently applied, except for changes with which the Company's independent accountants concur, and except that quarterly statements may be subject to year-end adjustments. The Company will cause a copy of such financial statements to be filed with the Trustee and mailed to the Holders of the Securities within 50 days after the close for each of the first three quarters of each fiscal year and within 95 days after the close of each fiscal year. The Company will also comply with the other provisions of TIA 314(a).

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 beneficial owner of a Security, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such holder, to such beneficial owner or to a prospective purchaser designated by such Securityholder or beneficial owner, as the case may be, in order to permit compliance by such Securityholder or beneficial owner with Rule 144A under the Securities Act in connection with the resale of such Note by such Securityholder or beneficial owner; provided, however, the Company shall not be

required to furnish such information in connection with any request made on or after the date which is two years from the later of (i) the date such Note (or any predecessor Note) was acquired from the Company or (ii) the date such Note (or any predecessor Note) was last acquired from an "affiliate" of the Company within the meaning of Rule 144 under the Securities Act. "Rule 144A Information" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

SECTION 6.3 LIQUIDATION.

Subject to the provisions of Article 5, insofar as they may be applicable hereto, the Board of Directors or the stockholders of the Company may not adopt a plan of liquidation which plan provides for, contemplates, or the effectuation of which is preceded by (a) the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company otherwise than substantially as an entirety (Article 7 of this Indenture being the Article which governs any such sale, lease, conveyance or other disposition substantially as an entirety), and (b) the distribution of all or substantially all of the proceeds of such sale, lease, conveyance or other disposition and of the remaining assets of the Company to the holders of the capital stock of the Company, unless the Company shall in connection with the adoption of such plan make provision for, or agree that prior to making any liquidating distributions to the holders of capital stock of the Company it will make provision for, the satisfaction of the Company's obligations hereunder and under the Securities as to the payment of principal and interest. The Company shall be deemed to have made provision for such payments only if (1) the Company irrevocably deposits in trust with the Trustee money or U.S. Government Obligations maturing as to principal and interest in such amounts and at such times as are sufficient, without consideration of any reinvestment of such interest, to pay the principal of and interest on the Securities then outstanding to maturity and to pay all other sums payable by it hereunder, or (2) there is an express assumption of the due and punctual payment of the Company's obligations hereunder and under the Securities and the performance and observance of all covenants and conditions to be performed by the Company hereunder, by the execution and delivery of a supplemental indenture in form reasonably satisfactory to the Trustee by a person who acquires, or will acquire (otherwise than pursuant to a lease) a portion of the assets of the Company, and which person will have Consolidated Net Worth (immediately after the acquisition) equal to not less than the Consolidated Net Worth of the Company (immediately preceding such acquisition), and which is a corporation organized under the laws of the United States, any State thereof or the District of Columbia; provided, however, that the Company shall not make any liquidating distribution to the holders of capital stock of the Company described in the first sentence of this Section 6.3 until after the Company shall have certified to the Trustee with an Officers' Certificate at least five days prior to the making of any liquidating distribution that it has complied with the provisions of this Section 6.3.

SECTION 6.4 COMPLIANCE CERTIFICATES.

The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company, an Officers' Certificate as to the signer's knowledge of the Company's compliance with all conditions and covenants on its part contained in this Indenture and stating whether or not the signer knows of any default or Event of Default. If such signer knows of such a default or Event of Default, the Certificate shall describe the default or Event of Default and the

efforts to remedy the same. For the purposes of this Section 6.4, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture. The Certificate need not comply with Section 12.4 hereof.

SECTION 6.5 NOTICE OF DEFAULTS.

The Company will give notice to the Trustee, promptly upon becoming aware thereof, of the existence of any Event of Default hereunder.

SECTION 6.6 PAYMENT OF TAXES AND OTHER CLAIMS.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all material taxes, assessments and governmental charges levied or imposed upon the Company, directly or by reason of its ownership of any Subsidiary or upon the income, profits or property of the Company; and (2) all material lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien upon the property of the Company; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which adequate provision has been made.

SECTION 6.7 CORPORATE EXISTENCE.

Subject to Section 6.3 and Article 7, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and rights (charter and statutory); provided, however, that the Company shall not be required to preserve any right if the Company shall determine that the preservation is no longer desirable in the conduct of the Company's business and that the loss thereof is not, and will not be, adverse in any material respect to the Holders.

SECTION 6.8 MAINTENANCE OF PROPERTIES.

Subject to Section 6.3, the Company will cause all material properties owned, leased or licensed in the conduct of its business 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 and thereto, 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 while any Securities are outstanding; provided, however, that nothing in this Section 6.8 shall prevent the Company from doing otherwise if, in the judgment of the Company, the same is desirable in the conduct of the Company's business and is not, and will not be, adverse in any material respect to the Holders.

SECTION 6.9 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 6.10 MAINTENANCE OF OFFICE OR AGENCY.

The Company will maintain in The City of New York an office or agency where Securities may be presented or surrendered for payment or repurchase, where Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The office of the agent of the Trustee in The City of New York shall be such office or agency of the Company, unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designation; 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 City of New York for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such office or agency.

SECTION 6.11 RESALE OF CERTAIN SECURITIES; REPORTING ISSUER.

During the period beginning on the last date of original issuance of the Securities and ending on the date that is two years from such date, the Company will not, and will use all reasonable efforts not to permit any of its "affiliates" (as defined under Rule 144 under the Securities Act or any successor provision thereto) to, resell (x) any Securities which constitute "restricted securities" under Rule 144 or (y) any securities into which the Securities have been converted under this Indenture which constitute "restricted securities" under Rule 144, that in either case have been reacquired by any of them. The Trustee shall have no responsibility in respect of the Company's performance of its agreement in the preceding sentence.

SECTION 6.12 REGISTRATION RIGHTS.

(a) The Company agrees that the Holders (and any Person that has a beneficial interest in a Security) from time to time of Registrable Securities (as such term is defined in the Registration Rights Agreement) are entitled to the benefits of the Registration Rights Agreement. Pursuant to the Registration Rights Agreement, the Company has agreed for the benefit of the Holders from time to time of Registrable Securities, at the Company's expense, (i) to file within 90 days after the first date of original issuance of the Securities, a shelf registration statement (the "Shelf Registration Statement") with the Commission with respect to resales of the Transfer Restricted Securities, (ii) to use all reasonable efforts to cause such Shelf Registration Statement to be declared effective by the Commission not later than 180 days after the first date of original issuance of the Securities, and (iii) to use all reasonable efforts to maintain such Shelf

Registration Statement continuously effective under the Securities Act subject to and in accordance with the terms of the Registration Rights Agreement.

Additional interest (the "Additional Interest") with respect to the Securities shall be assessed if an Event (as defined in the Registration Rights Agreement) occurs. Additional Interest shall accrue on the Securities over and above the interest set forth in the title of the Securities from and including the date on which any such Event shall occur, to but excluding the date on which such Event has been cured (in the manner described in the Registration Rights Agreement), at a rate of 0.50% per annum.

(b) Any amounts of Additional Interest due pursuant to clause (a) of this Section 6.12 shall be payable in cash on the regular interest payment dates. The amount of Additional Interest shall be determined by multiplying the applicable Additional Interest rate by the principal amount of the Securities, multiplied by a fraction, the numerator of such period (determined on the basis of a 360-day year comprised of twelve 30-day months), and the denominator of which is 360.

Whenever in this Indenture there is mentioned, in any context, the payment of the principal of, premium, if any, or interest on, or in respect of, any Security, such mention shall be deemed to include mention of the payment of Additional Interest provided for in this Section to the extent that, in such context, Additional Interest are, were or would be payable in respect thereof pursuant to the provisions of this Section 6.12 and express mention of the payment of Additional Interest (if applicable) in any provisions hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

SECTION 6.13 ADDITIONAL INTEREST.

If Additional Interest is payable pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee a certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such interest is payable. Unless and until a Trust Officer receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

SECTION 6.14 STAY, EXTENSION AND USURY LAWS.

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

SUCCESSOR CORPORATION

SECTION 7.1 WHEN COMPANY MAY MERGE, ETC.

The Company shall not consolidate with or merge into any other Person, or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and shall not permit any Person (other than a Subsidiary wholly-owned by the Company) to consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) in case the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation, partnership or trust, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental thereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in accordance with Section 4.12;

(b) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

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

SECTION 7.2 SUCCESSOR CORPORATION SUBSTITUTED.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 7.1, the successor person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Notes.

ARTICLE 8.

DEFAULT AND REMEDIES

SECTION 8.1 EVENTS OF DEFAULT.

An "Event of Default" occurs if:

(1) the Company defaults in the payment of interest (including Additional Interest) on any Security when the same becomes due and payable and the default continues for a period of 30 days;

(2) the Company defaults in the payment of the principal of any Security when the same becomes due and payable at maturity, upon redemption or otherwise;

(3) the Company fails to comply with any other covenant, warranty or agreement contained in the Securities or this Indenture and the default continues for the period and after the notice specified below;

(4) the Company or any Subsidiary shall fail to pay when due and owing principal of, premium, if any, or interest on any indebtedness for borrowed money or upon acceleration of such indebtedness under the terms of the instruments evidencing such indebtedness (provided, however, such acceleration is not withdrawn, cancelled or otherwise annulled within 10 days following the occurrence of such acceleration); provided, however, no such Event of Default shall exist under this Section 8.1(4) unless the aggregate amount of such principal, premium, if any, and interest is in excess of $10,000,000;

(5) the Company or any Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

A. commences a voluntary case or proceeding;

B. consents to the entry of an order for relief against it in an involuntary case or proceeding;

C. consents to the appointment of a Custodian of it or for all or substantially all of its property; or

D. makes a general assignment for the benefit of its creditors; or

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

A. is for relief against the Company or any Subsidiary in an involuntary case or proceeding;

B. appoints a Custodian of the Company or any Subsidiary or for all or substantially all of the property of any of them; or

C. orders the liquidation of the Company or any Subsidiary;

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

The term "Bankruptcy Law" means Title 11, U.S. Code or any similar Federal or state law for the relief of debtors. For purposes of this Section 8.1, the term "Custodian" means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

A default under clause (3) is not an Event of Default until the Trustee notifies the Company, or the Holders of at least 25% in principal amount of the Securities then outstanding notify the Company and the Trustee, of the default, and the Company does not cure the default within 60 days after receipt of such notice. The notice given pursuant to this Section 8.1 must specify the default, demand that it be remedied and state that the notice is a "Notice of Default." When a default is cured, it ceases.

Subject to the provisions of Sections 9.1 and 9.2, the Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to a Trust Officer at the Corporate Trust Office of the Trustee by the Company, the Paying Agent, any Holder or an agent of any Holder.

SECTION 8.2 ACCELERATION.

If an Event of Default (other than an Event of Default specified in Section 8.1(5) or (6)) occurs and is continuing, the Trustee may, by notice to the Company, or the Holders of at least 25% in principal amount of the Securities then outstanding may, by notice to the Company and the Trustee, and the Trustee shall, upon the request of such Holders, declare all unpaid principal of and accrued interest to the date of acceleration on the Securities then outstanding (if not then due and payable) to be due and payable upon any such declaration, and the same shall become and be immediately due and payable. If an Event of Default specified in Section 8.1(5) or (6) occurs, all unpaid principal of and accrued interest on the Securities then outstanding shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholder.

The Holders of a majority in principal amount of the Securities then outstanding by notice to the Trustee may rescind an acceleration and its consequences if (i) all existing Events of Default, other than the nonpayment of the principal of and accrued interest on the Securities which has become due solely by such declaration of acceleration, have been cured or waived; (ii) the Company has paid or deposited with the Trustee a sum sufficient to pay (a) all overdue interest on the Securities; (b) the principal of any Security which has become due otherwise then by such declaration of acceleration, and (c) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration; (iii) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (iv) all payments due to the Trustee and any predecessor Trustee under Section 9.7 have been made. No such rescission shall affect any subsequent default or impair any right consequent thereon. Anything herein contained to the contrary notwithstanding, in the event of any acceleration pursuant to this Section 8.2, the Company shall not be obligated to pay any premium which it would have had to pay if it had

then elected to redeem the Securities pursuant to paragraph 5 or 6 of the Securities, except in the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding payment of the premium which it would have had to pay if it had then elected to redeem the Securities pursuant to paragraph 5 or 6 of the Securities, in which case an equivalent premium shall also become and be immediately due and payable to the extent permitted by law.

SECTION 8.3 OTHER REMEDIES.

In case of an Event of Default hereunder, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder 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 to the extent permitted by law.

SECTION 8.4 WAIVER OF DEFAULTS AND EVENTS OF DEFAULT.

Subject to Section 8.7, the Holders of a majority in principal amount of the Securities then outstanding by notice to the Trustee may waive an existing default or Event of Default and its consequences, except a default in the payment of the principal of (or premium, if any) or interest on any Security as specified in clauses (1) and (2) of Section 8.1, or a default in respect of a covenant or provision hereof which cannot be modified or amended pursuant to Section 11.2 without the consent of the holder of each Note affected thereby. When a default or Event of Default is waived, it is cured and ceases.

SECTION 8.5 CONTROL BY MAJORITY.

The Holders of a majority in principal amount of the Securities then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture; provided that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 8.6 LIMITATION ON SUITS.

A Securityholder may not pursue any remedy with respect to this Indenture or the Securities (except actions for payment of overdue principal or interest or for the conversion of the Securities pursuant to Article 4) unless:

(1) the Holder gives to the Trustee written notice of a continuing Event of Default;

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

(3) such Holder or Holders offer to the Trustee indemnity reasonably 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 the request and the offer of indemnity; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Securities then outstanding.

A Securityholder may not use any provision of this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over such other Securityholder, or to enforce any rights under this Indenture other than in the manner herein provided and for the equal and ratable benefit of all the Securityholders.

SECTION 8.7 RIGHTS OF HOLDERS TO RECEIVE PAYMENT.

Notwithstanding any other provision of this Indenture (but subject to Article 5 hereof), the right of any Holder of a Security to receive payment of principal of (and premium, if any) and interest on the Security, on or after the respective dates on which such payments are due as expressed in the Security, or to convert the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

SECTION 8.8 COLLECTION SUIT BY TRUSTEE.

If an Event of Default in the payment of principal or interest specified in Section 8.1(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or another obligor on the Securities for the whole amount of principal and accrued interest remaining unpaid, together with interest on overdue principal and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate per annum borne by the Securities and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

SECTION 8.9 TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company (or any other obligor on the Securities), its creditors or its property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any

such claims and to distribute the same, and any Custodian in any such judicial proceeding is hereby authorized by each Securityholder 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 Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 9.7, and to the extent that such payment of the reasonable compensation, expenses, disbursements and advances in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the Securityholders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or the Trustee to authorize or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding.

SECTION 8.10 PRIORITIES.

Subject to Article 5, if the Trustee collects any money pursuant to this Article 8, it shall pay out the money in the following order:

First, to the Trustee for amounts due under Section 9.7;

Second, to Securityholders for amounts due and unpaid on the Securities for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

Third, to the Company.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 8.10.

SECTION 8.11 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 in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, 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 8.11 does not apply to a suit made by the Trustee, a suit by a Holder pursuant to Section 8.7, or a suit by any Holder, or group of Holders, of more than 10% in principal amount of the Securities then outstanding.

SECTION 8.12 RESTORATION OF RIGHTS AND REMEDIES.

If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any

reason, or has been determined adversely to the Trustee or to such Securityholder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Securityholders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Securityholders shall continue as though no such proceeding had been instituted.

SECTION 8.13 RIGHTS AND REMEDIES CUMULATIVE.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 2.7, no right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 8.14 DELAY OR OMISSION NOT WAIVER.

No delay or omission of the Trustee or of any Securityholder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Securityholders, as the case may be.

ARTICLE 9.

TRUSTEE

SECTION 9.1 DUTIES OF TRUSTEE.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee need perform only those duties as are specifically set forth in this Indenture and no others; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved, and no provision of this Indenture shall be construed to relieve the Trustee, from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 9.1;

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

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 8.5.

(d) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity reasonably satisfactory to it against any loss, liability, expense or fee.

(e) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c) and (d) of this Section 9.1.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

SECTION 9.2 RIGHTS OF TRUSTEE.

Subject to Section 9.1:

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

(b) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, it may require an Officers' Certificate or an Opinion of Counsel, which shall conform to Section 12.4(b). The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Certificate or Opinion.

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

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes in good faith to be authorized or within its rights or powers.

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

SECTION 9.3 INDIVIDUAL RIGHTS OF TRUSTEE.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or an affiliate of the Company with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee is subject to Sections 9.10 and 9.11.

SECTION 9.4 TRUSTEE'S DISCLAIMER.

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities other than its certificate of authentication.

SECTION 9.5 NOTICE OF DEFAULT OR EVENTS OF DEFAULT.

If a default or an Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee shall mail to each Securityholder notice of the default or Event of Default within 90 days after it occurs. Except in the case of a default or an Event of Default in payment of the principal of or interest on any Security, the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interest of Securityholders.

SECTION 9.6 REPORTS BY TRUSTEE TO HOLDERS.

If such report is required by TIA 313, within 60 days after each May 15, beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA 313(a). The Trustee also shall comply with TIA 313(b) (2) and (c).

A copy of each report at the time of its mailing to Securityholders shall be mailed to the Company and filed with the SEC and each stock exchange, if any, on which the Securities are listed. The Company shall notify the Trustee whenever the Securities become listed on any stock exchange and any changes in the stock exchanges on which the Securities are listed.

SECTION 9.7 COMPENSATION AND INDEMNITY.

The Company shall pay to the Trustee from time to time reasonable compensation for its services (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Company shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances incurred or made by it. Such expenses may include the reasonable compensation, disbursements and expenses of Trustee's agents and counsel.

The Company shall indemnify the Trustee for, and hold it harmless against, any loss, liability or expense incurred by it in connection with its duties under this Indenture or any action or failure to act as authorized or within the discretion or rights or powers conferred upon the Trustee hereunder. The Trustee shall notify the Company promptly of any claim asserted against

the Trustee for which it may seek indemnity. The Trustee shall have the option of undertaking the defense of such claims; provided, however, that if the Trustee opts not to defend itself, the Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement without its written consent.

The Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by it through its own negligent action, failure to act or willful misconduct.

When the Trustees incurs expenses or renders services after an Event of Default specified in Section 8.1(6) or (7) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

SECTION 9.8 REPLACEMENT OF TRUSTEE.

The Trustee may resign by so notifying the Company; provided, however, no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 9.8. The Holders of a majority in principal amount of the Securities then outstanding may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee with the Company's written consent. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 9.10;

(2) the Trustee is adjudged a bankrupt or an insolvent;

(3) a receiver or other public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting as trustee.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee.

If a successor Trustee does not take office within 45 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of 10% in principal amount of the Securities then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 9.10 any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee and be released from its obligations (exclusive of any liabilities Trustee may have incurred while acting as Trustee) hereunder, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail notice of its succession to each Securityholder.

Notwithstanding replacement of the Trustee pursuant to this Section 9.8, the Company's obligations under Section 9.7 hereof shall continue for the benefit of the retiring Trustee.

SECTION 9.9 SUCCESSOR TRUSTEE BY MERGER, ETC.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets (including the administration of this Indenture) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee, provided such transferee corporation shall qualify and be eligible under Section 9.10.

SECTION 9.10 ELIGIBILITY; DISQUALIFICATION.

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust process, having (together with any Person directly or indirectly controlling the Trustee) a combined capital and surplus of at least $25,000,000, subject to supervision or examination by federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, 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. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified above in this Article.

SECTION 9.11 PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY.

The Trustee shall comply with TIA 311(a), excluding any creditor relationship listed in TIA 311(b). A trustee who has resigned or been removed shall be subject to TIA 311(a) to the Government Obligations in accordance with Section 10.1; provided, however, that if the Company has made any payment of the principal of or premium (including the Make-Whole Payment, if any) or interest on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive any such payment from the money or U.S. Government Obligations held by the Trustee or the Paying Agent.

ARTICLE 10.

SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 10.1 TERMINATION OF COMPANY'S OBLIGATIONS.

The Company may terminate all of its obligations under the Securities and this Indenture (except those obligations referred to in the immediately succeeding paragraph) if all Securities previously authenticated and delivered (other than destroyed, lost or stolen Securities which have been replaced or paid or Securities for whose payment money has theretofore been held in trust and thereafter repaid to the Company, as provided in Section 10.3) have been delivered to the

Trustee for cancellation and the Company has paid all sums payable by it hereunder, or if the Company irrevocably deposits in trust with the Trustee money or U.S. Government Obligations maturing as to principal and interest in such amounts and at such times as are sufficient, without consideration of any reinvestment of such interest, to pay the principal of and premium, if any (including the Make-Whole Payment, if any), and interest on the Securities then outstanding to maturity or to the date fixed for redemption and to pay all other sums payable by it hereunder. The Company may make an irrevocable deposit pursuant to this Section 10.1 only if at such time it is not prohibited from doing so under the provisions of Article 5 and the Company shall have delivered to the Trustee and any such Paying Agent an Officers' Certificate to that effect and that all other conditions to such deposit have been complied with.

The Company's obligations in paragraphs 9 and 13 of the Securities, in Sections 6.1, 6.2, 9.7, 9.8 and 10.4, and in Articles 2 and 4 shall survive until the Securities are no longer outstanding. Thereafter, the Company's obligations in such paragraph 13 and in Section 9.7 shall survive.

After such irrevocable deposit, the Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under the Securities and this Indenture, except for those surviving obligations specified above.

"U.S. Government Obligations" means direct non-callable obligations of, or non-callable obligations guaranteed by, the United States of America for the payment of which guarantee or obligation the full faith and credit of the United States is pledged.

SECTION 10.2 APPLICATION OF TRUST MONEY.

The Trustee or the Paying Agent shall hold in trust, for the benefit of the Holders, money or U.S. Government Obligations deposited with it pursuant to Section 10.1, and shall apply the deposited money and the money from U.S. Government Obligations in accordance with this Indenture to the payment of the principal of and interest on the Securities. Money and U.S. Government Obligations so held in trust and deposited in compliance with Section 10.1 and Article 5 shall not be subject to the subordination provisions of Article 5.

SECTION 10.3 REPAYMENT TO COMPANY.

Subject to Section 10.1, the Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or U.S. Government Obligations held by them at any time.

The Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years after a right to such money has matured; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment, may at the expense of the Company cause to be published once in a newspaper of general circulation in The City of New York or mail to each Holder entitled to such money notice that such money remains unclaimed and that after a date specified therein, which shall be at least 30 days from the date of such publication or mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After that,

Holders entitled to money must look to the Company for payment unless an abandoned property law designates another person.

SECTION 10.4 REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 10.1 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.1 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with Section 10.1; provided, however, that if the Company has made any payment of the principal of or premium (including the Make-Whole Payment, if any) or interest on any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive any such payment from the money or U.S. Government Obligations held by the Trustee or the Paying Agent.

ARTICLE 11.

AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 11.1 WITHOUT CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to or consent of any Securityholder:

(a) to comply with Sections 4.12, 6.3 and 7.1;

(b) to cure any ambiguity, omission, defect or inconsistency, or to make any other change that does not adversely affect the rights of any Securityholder;

(c) to make provisions with respect to the conversion right of the Holders pursuant to Section 4.6(c);

(d) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities; or

(e) to comply with the provisions of the TIA or with any requirement of the SEC arising solely as a result of the qualification of this Indenture under the TIA.

SECTION 11.2 WITH CONSENT OF HOLDERS.

The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to any Securityholder but with the written consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding. The Holders of a majority in aggregate principal amount of the Securities then outstanding may waive compliance in a particular instance by the Company with any provision of this Indenture or the Securities without

notice to any Securityholder. Subject to Section 11.4, without the written consent of each Securityholder affected, however, an amendment, supplement or waiver, including a waiver pursuant to Section 8.4, may not:

(a) change the stated maturity date of the principal of, or any installment of interest on, any Security;

(b) reduce the principal amount of, or the rate of interest on, or any premium (including the Make-Whole Payment, if any) payable on, any Security, whether upon acceleration, redemption or otherwise;

(c) change the currency for payment of principal of, or premium (including the Make-Whole Payment, if any) or interest (including Additional Interest) on any Security;

(d) impair the right to institute suit for the enforcement of any payment of principal of, or premium or interest on any Security when due;

(e) adversely affect the conversion rights provided in Article 4 hereof;

(f) modify the provisions of Article 5 hereof with respect to the subordination of the Securities in a manner adverse to the holders;

(g) modify the obligation of the Company hereunder to purchase Securities upon a Change of Control in a manner adverse to the holders;

(h) reduce the percentage of principal amount of Securities necessary to modify or amend this Indenture or to consent to any waiver provided for in this Indenture;

(i) waive a default in the payment of the principal of or premium (including the Make-Whole Payment, if any) or interest (including Additional Interest) on any Security; or

(j) make any changes in Section 8.4, 8.7 or this sentence.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section becomes effective, the Company shall mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

An amendment under this Section 11.2 may not make any change that adversely affects the rights under Article 5 of any holder of an issue of Senior Indebtedness unless the holders of that issue, pursuant to its terms, consent to the change.

SECTION 11.3 COMPLIANCE WITH TRUST INDENTURE ACT.

Every amendment to or supplement of this Indenture or the Securities shall comply with TIA as in effect at the date of such amendment or supplement.

SECTION 11.4 REVOCATION AND EFFECT OF CONSENTS.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of a Security if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective.

After an amendment, supplement or waiver becomes effective, it shall bind every Securityholder, unless it makes a change described in any of clauses (a) through (h) of Section 11.2. In that case the amendment, supplement or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

SECTION 11.5 NOTATION ON OR EXCHANGE OF SECURITIES.

If an amendment, supplement or waiver changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

SECTION 11.6 TRUSTEE TO SIGN AMENDMENTS, ETC.

The Trustee shall sign any amendment or supplement authorized pursuant to this Article 11 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing or refusing to sign such amendment or supplement, the Trustee shall be entitled to receive and, subject to Section 9.1 shall be fully protected in relying upon, an Opinion of Counsel stating that such amendment or supplement is authorized or permitted by this Indenture. The Company may not sign an amendment or supplement until the Board of Directors approves it.

ARTICLE 12.

MISCELLANEOUS

SECTION 12.1 TRUST INDENTURE ACT CONTROLS.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the TIA through operation of Section 318(c) thereof, upon qualification of this Indenture thereunder such imposed duties shall control.

SECTION 12.2 NOTICES.

Any notice or communication shall be given in writing and delivered in person or mailed by first class mail, postage prepaid, addressed as follows:

If to the Company:

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

Attention: Chief Financial Officer

If to the Trustee:

State Street Bank and Trust
Company of California, N.A.
633 West 5th Street, 12th Floor
Los Angeles, CA 90071

Attention: Corporate Trust Department
(Incyte Pharmaceuticals, Inc.
5.5% Convertible Subordinated
Notes Due 2007)

Such notices or communications shall be effective when received.

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

Any notice or communication mailed to a Securityholder shall be mailed by first class mail to him at his address shown on the register kept by the Registrar.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication to a Securityholder is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 12.3 COMMUNICATIONS BY HOLDERS WITH OTHER HOLDERS.

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

SECTION 12.4 CERTIFICATE AND OPINION AS TO CONDITIONS PRECEDENT.

(a) 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 at the request of the Trustee:

(1) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent (including any covenants compliance with which constitutes a condition 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 (including any covenants compliance with which constitutes a condition precedent) have been complied with.

(b) Each Officers' Certificate and Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture (other than annual certificates provided pursuant to Section 6.4 hereof) shall include:

(1) a statement that the person making such certificate or opinion 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 certificate or opinion are based;

(3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with; provided, however, that with respect to matters of fact an Opinion of Counsel may rely on Officers' Certificates or certificates of public officials.

SECTION 12.5 RECORD DATE FOR VOTE OR CONSENT OF SECURITYHOLDERS.

The Company (or, in the event deposits have been made pursuant to Section 6.3 or 10.1, the Trustee) may set a record date for purposes of determining the identity of Securityholders entitled to vote or consent to any action by vote or consent authorized or permitted under this Indenture, which record date shall be the later of 10 days prior to the first solicitation of such vote or consent or the date of the most recent list of Securityholders furnished to the Trustee pursuant to Section 2.5 hereof prior to such solicitation. If a record date is fixed, those persons who were Holders of Securities at such record date (or their duly designated proxies), and only those persons, shall be entitled to take such action by vote or consent or to revoke any vote or consent previously given, whether or not such persons continue to be Holders after such record date.

SECTION 12.6 RULES BY TRUSTEE, PAYING AGENT, REGISTRAR.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or the Paying Agent may make reasonable rules for its functions.

SECTION 12.7 LEGAL HOLIDAYS.

A "Legal Holiday" is a Saturday, or a Sunday or a day on which state or Federally chartered banking institutions in New York or the city and state where the Trust Office of the

Trustee is located (which initially is Los Angeles, California) are not required to be open. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

SECTION 12.8 GOVERNING LAW.

The laws of the State of New York shall govern this Indenture and the Securities without regard to principles of conflicts of law.

SECTION 12.9 NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 12.10 NO RECOURSE AGAINST OTHERS.

All liability described in paragraph 18 of the Securities of any director, officer, employee or stockholder, as such, of the Company is waived and released.

SECTION 12.11 SUCCESSORS.

All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 12.12 MULTIPLE COUNTERPARTS.

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent the same agreement.

SECTION 12.13 SEPARABILITY.

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

SECTION 12.14 TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents, cross-reference sheet 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.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the 4th day of February, 2000.

INCYTE PHARMACEUTICALS, INC.

By: /s/ John M. Vuko

Title: Chief Financial Officer

STATE STREET BANK AND TRUST
COMPANY OF CALIFORNIA, N.A., as Trustee

By: /s/ Scott C. Emmons

Title: Vice President

EXHIBIT A

FORM OF SECURITY
(Certificated Note - Rule 144A Global Note - Regulation S Permanent Global Note)

Number _____ CUSIP [45337CAA0]
CINS [U45236AA1]

[GLOBAL NOTE LEGEND:

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO INCYTE PHARMACEUTICALS, INC. 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 DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFER IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.]

[GLOBAL NOTE RESTRICTED SECURITIES LEGEND:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(k) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN

THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT ("INSTITUTIONAL ACCREDITED INVESTOR") THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND THAT, PRIOR TO SUCH TRANSFER, DELIVERS TO THE COMPANY AND THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE SECURITY EVIDENCED HEREBY (THE FORM OF WHICH LETTER MAY BE OBTAINED FROM THE TRUSTEE), (5) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (3) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902 UNDER) REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT

[CERTIFICATED NOTE RESTRICTED SECURITIES LEGEND:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(k) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "AFFILIATE" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN

THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A (AS INDICTED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (3) IN AN OFFSHORE TRANSACTION (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY), (4) TO AN INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a)(1) (2), (3) or (7) UNDER THE SECURITIES ACT ("INSTITUTIONAL ACCREDITED INVESTOR") (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) THAT IS ACQUIRING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION, AND THAT, PRIOR TO SUCH TRANSFER, DELIVERS TO THE COMPANY AND THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THE SECURITY EVIDENCED HEREBY (THE FORM OF WHICH LETTER MAY BE OBTAINED FROM THE TRUSTEE), (5) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER ON THE REVERSE OF THIS SECURITY) OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. PRIOR TO A TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (6) ABOVE), THE HOLDER OF THIS SECURITY MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY AND THE TRUSTEE SUCH CERTIFICATES AND OTHER INFORMATION AND, IN THE CASE OF A TRANSFER PURSUANT TO CLAUSE (5) ABOVE, A LEGAL OPINION AS THEY MAY REASONABLY REQUIRE TO CONFIRM THAT ANY TRANSFER BY IT OF THIS SECURITY COMPLIES WITH THE FOREGOING RESTRICTIONS. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION OR (3) NOT A U.S. PERSON AND IS OUTSIDE THE UNITED STATES WITHIN THE MEANING OF (OR AN ACCOUNT SATISFYING THE REQUIREMENTS OF PARAGRAPH (k)(2) OF RULE 902) UNDER REGULATION S UNDER THE SECURITIES ACT. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT

[FORM OF FACE OF SECURITY]

INCYTE PHARMACEUTICALS, INC.

5.5% Convertible Subordinated Note Due 2007

Incyte Pharmaceuticals, Inc., a Delaware corporation, promises to pay to _____ or registered assigns, the principal sum of _____ Dollars ($_____) on February 1, 2007 and to pay interest on the principal amount of this Note beginning February 4, 2000 at the rate of 5.5% per annum.

Interest Payment Dates: February 1 and August 1
Record Dates: January 15 and July 15

This Note is convertible at such times and as specified on the other side of this Note. Additional provisions of this Note are set forth on the other side of this Note.

Dated: February 4, 2000

INCYTE PHARMACEUTICALS, INC.

By:

Name:
Title:

[SEAL]

Attest:

- ---
Name:
Title:

Trustee's Certificate of Authentication:

This is one of the Securities referred to in the within mentioned Indenture.

STATE STREET BANK AND TRUST COMPANY OF CALIFORNIA, N.A., as Trustee
By:

Authorized Signatory

[FORM OF REVERSE SIDE OF SECURITY]

INCYTE PHARMACEUTICALS, INC.

5.5% Convertible Subordinated Note Due 2007

1. Interest.

Incyte Pharmaceuticals, Inc., a Delaware corporation (the "Company"), promises to pay interest on the principal amount of this Note at the rate per annum shown above. The Company shall pay interest semi-annually on February 1 and August 1 of each year, commencing August 1, 2000. Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from February 4, 2000. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Holder of this Note is entitled to the benefits of the Registration Rights Agreement, dated February 4, 2000, among the Company, Deutsche Bank Securities Inc. and Warburg Dillon Read LLC.

2. Method of Payment.

The Company will pay interest on this Note (except defaulted interest) to the person who is the registered Holder of this Note at the close of business on the January 15 and July 15 next preceding the interest payment date. The Holder must surrender this Note to the Paying Agent to collect payment of principal. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. The Company, however, may pay principal and interest by its check payable in such money. It may mail an interest check to the Holder's registered address.

3. Paying Agent, Registrar and Conversion Agent.

Initially, State Street Bank and Trust Company of California, N.A. (the "Trustee") will act as Paying Agent, Registrar and Conversion Agent. The Company may change any Paying Agent, Registrar or Conversion Agent without notice to the holder. The Company or any of its Subsidiaries may act as Paying Agent, Registrar or Conversion Agent.

4. Indenture; Limitations.

This Note is one of a duly authorized issue of Notes of the Company designated as its 5.5% Convertible Subordinated Notes Due 2007 (the "Notes"), issued under an Indenture dated as of February 4, 2000 (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 (15 U.S.C. 77aaa-77bbbb), as amended by the Trust Indenture Reform Act of 1990, as in effect on the date hereof or, from and after the date that the Indenture shall be qualified thereunder, as in effect on such date. This Note is subject to all such terms, and the holder of this Note is referred to the Indenture and said Act for a statement of them.

The Notes are subordinated unsecured obligations of the Company limited to up to $150,000,000 aggregate principal amount plus an additional principal amount not exceeding $50,000,000 in the aggregate as may be issued upon the exercise by the Initial Purchasers, in whole or in part, of the Purchase Option.

5. Provisional Redemption.

The Notes may be provisionally redeemed by the Company, in whole or in part, at any time prior to February 7, 2003, at a Redemption Price equal to $1,000 per Security to be redeemed plus accrued and unpaid interest, if any (including Additional Interest, if any) to the Redemption Date if (i) the closing price of the Common Stock shall have exceeded 150% of the conversion price then in effect for at least 20 Trading Days in any consecutive 30-Trading Day period ending on the Trading Day prior to the date of mailing of the notice of Provisional Redemption, which date shall be no more than 60 nor less than 20 days prior to the Redemption Date and (ii) the Shelf Registration Statement is effective and available for use and is expected to remain effective and available for use for the 30 days immediately following the Redemption Date. Upon any such Provisional Redemption, the Company shall make an additional Make-Whole Payment in cash with respect to the Securities called for redemption to Holders on the date of mailing of the notice of Provisional Redemption in an amount equal to $165 per $1,000 Security, less the amount of any interest actually paid on such Security prior to such date. The Company shall make the Make-Whole Payment on all Securities called for Provisional Redemption, including any Securities converted after the date of mailing of the notice of Provisional Redemption and prior to the Redemption Date.

6. Optional Redemption.

The Notes may be redeemed at the Company's option, in whole or in part, at any time and from time to time on and after February 7, 2003. The redemption price for the Notes, expressed as a percentage of the principal amount, is 102.2 % if the Notes are redeemed in the period beginning February 7, 2003 and ending February 1, 2004, and is as follows for the 12-month periods beginning February 1 as follows:

Year	Percentage
2004	101.1%
2005 and thereafter	100.0%

together in the case of any such redemption with accrued interest to the date of redemption, but any interest payment that is due and payable on or prior to such date of redemption will be payable to the Holders of such Notes, or one or more predecessor Notes, of record at the close of business on the relevant record dates referred to on the face hereof, all as provided in the Indenture.

7. Notice of Redemption.

Notice of redemption will be mailed by first class mail at least 20 days but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at his registered address. Notes in denominations larger than $1,000 may be redeemed in part, but only in whole

multiples of $1,000. On and after the redemption date, subject to the deposit with the Paying Agent of funds sufficient to pay the redemption price, interest ceases to accrue on Notes or portions of them called for redemption.

8. Repurchase of Notes at Option of Holder upon a Change in Control.

If at any time that Notes remain outstanding there shall have occurred a Change in Control (as defined in the Indenture), at the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to repurchase all or any part specified by the Holder (so long as the principal amount of such part is $1,000 or an integral multiple thereof) of the Notes held by such Holder on the Repurchase Date. The Holder shall have the right to withdraw any Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent in accordance with the terms of the Indenture. The Repurchase Price is payable in cash or, at the Company's option but subject to the satisfaction of certain conditions set forth in the Indenture, in shares of Common Stock valued at 95% of the average Closing Prices of the Common Stock for the five Trading Days preceding and including the third Trading Day prior to the Repurchase Date.

9. Conversion.

At any time after 90 days following the latest date of original issuance of the Notes and prior to the close of business on February 1, 2007, a Holder of a Note may convert such Note into shares of Common Stock of the Company; provided, however, that if the Note is called for redemption, the conversion right will terminate at the close of business on the third business day before the redemption date of such Note (unless the Company shall default in making the redemption payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Note is redeemed). The initial conversion price is $134.839 per share, subject to adjustment under certain circumstances as described in the Indenture. The number of shares issuable upon conversion of a Note is determined by dividing the principal amount converted by the conversion price in effect on the conversion date. Upon conversion, no adjustment for interest or dividends will be made. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the current market price (as defined in the Indenture) of the Common Stock on the last trading day prior to the date of conversion.

To convert a Note, a Holder must (a) complete and sign the conversion notice set forth below and deliver such notice to the Conversion Agent, (b) surrender the Note to the Conversion Agent, (c) furnish appropriate endorsements or transfer documents if required by the Registrar or the Conversion Agent and (d) pay any transfer or similar tax, if required. If a Holder surrenders a Note for conversion between the record date for the payment of an installment of interest and the next interest payment date, the Note must be accompanied by payment of an amount equal to the interest payable on such interest payment date on the principal amount of the Note or portion thereof then converted; provided, however, that no such payment shall be required if such Note has been called for redemption between such record date and the date five business days after such interest payment date, or if such Note is surrendered for conversion on the interest payment date. A Holder may convert a portion of a Note equal to $1,000 or any integral multiple thereof.

A Note in respect of which a Holder had delivered a Repurchase Notice exercising the option of such Holder to require the Company to repurchase such Note may be converted only if the notice of exercise is withdrawn as provided above and in accordance with the terms of the Indenture.

10. Subordination.

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company, as defined in the Indenture. Any Holder by accepting this Note agrees to and shall be bound by such subordination provisions and authorizes the Trustee to give them effect.

In addition to all other rights of Senior Indebtedness described in the Indenture, the Senior Indebtedness shall continue to be Senior Indebtedness and entitled to the benefits of the subordination provisions irrespective of any amendment, modification or waiver of any terms of any instrument relating to the Senior Indebtedness or any extension or renewal of the Senior Indebtedness.

11. Denominations, Transfer, Exchange.

The Notes are in registered form without coupons in denominations of $1,000 and integral multiples thereof. A Holder may register the transfer of or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or other governmental charges that may be imposed by law or permitted by the Indenture.

[Global Note Insert:

The aggregate principal amount of the Note in global form represented hereby may from time to time be reduced or increased to reflect exchanges of a part of this Note in global form for definitive Notes or exchanges of definitive Notes for a part of this Note in global form or conversions or redemptions of a part of this Note in global form or cancellations of a part of this Note in global form or transfers of definitive Notes in return for a part of this Note in global form or transfers of a part of this Note in global form effected by delivery of definitive Notes, in each case, and in any such case, by means of notations on the Schedule of Exchanges, Conversions, Redemptions, Cancellations and Transfers on the last page hereof. Notwithstanding any provision of this Note to the contrary, (i) exchanges of a part of this Note in global form for definitive Notes, (ii) exchanges of definitive Notes for a part of this Note in global form, (iii) conversions or redemptions of a part of this Note in global form, (iv) cancellations of a part of this Note in global form, (v) transfers of definitive Notes in return for a part of this Note in global form and (vi) transfers of a part of this Note in global form effected by delivery of definitive Notes may be effected without the surrendering of this Note in global form, provided that appropriate notations on the Schedule of Exchanges, Conversions, Redemptions, Cancellations and Transfers are made by the Trustee, or the Custodian at the direction of the Trustee, to

reflect the appropriate reduction or increase, as the case may be, in the aggregate principal amount of this Note in a global form resulting therefrom or as a consequence thereof.]

12. Persons Deemed Owners.

The registered holder of a Note may be treated as the owner of it for all purposes.

13. Unclaimed Money.

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Company at its request. After that, Holders entitled to money must look to the Company for payment unless an abandoned property law designates another person.

14. Amendment, Supplement, Waiver.

Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of a majority in principal amount of the Notes then outstanding and any past default or compliance with any provision may be waived in a particular instance with the consent of the Holders of a majority in principal amount of the Notes then outstanding. Without the consent of or notice to any Holder, the Company and the Trustee may amend or supplement the Indenture or the Notes to, among other things, provide for uncertificated Notes in addition to or in place of certificated Notes, or to cure any ambiguity, omission, defect or inconsistency or make any other change that does not adversely affect the rights of any Holder.

15. Successor Corporation.

When a successor corporation assumes all the obligations of its predecessor under the Notes and the Indenture, the predecessor corporation will be released from those obligations.

16. Defaults and Remedies.

An Event of Default is: default for 30 days in payment of interest on the Notes; default in payment of principal on the Notes when due; failure by the Company for 60 days after notice to it to comply with any of its other agreements contained in the Indenture or the Notes; default by the Company or any Subsidiary with respect to its obligation to pay principal of or interest on indebtedness for borrowed money aggregating more than $10 million or the acceleration of such indebtedness if not withdrawn within 10 days from the date of such acceleration; and certain events of bankruptcy, insolvency or reorganization of the Company or any of its subsidiaries. If an Event of Default (other than as a result of certain events of bankruptcy, insolvency or reorganization) occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding may declare all unpaid principal of and accrued interest to the date of acceleration on the Notes then outstanding to be due and payable immediately, all as and to the extent provided in the Indenture. If an Event of Default occurs as a result of certain events of bankruptcy, insolvency or reorganization, all unpaid principal of and accrued interest on the Notes then outstanding shall become due and payable immediately without any

declaration or other act on the part of the Trustee or any Holder, all as and to the extent provided in the Indenture. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may require indemnity satisfactory to it before it enforces the Indenture or the Notes. Subject to certain limitations, Holders of a majority in principal amount of the Notes then outstanding may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing default (except a default in payment of principal or interest) if it determines that withholding notice is in their interests. The Company is required to file periodic reports with the Trustee as to the absence of default.

17. Trustee Dealings with the Company.

State Street Bank and Trust Company of California, N.A., the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or an Affiliate of the Company, and may otherwise deal with the Company or an Affiliate of the Company, as if it were not the Trustee.

18. No Recourse Against Others.

A director, officer, employee or stockholder, 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 or by reason of, such obligations or their creation. The Holder of this Note by accepting this Note waives and releases all such liability. The waiver and release are part of the consideration for the issue of this Note.

19. Discharge Prior to Maturity.

If the Company deposits with the Trustee or the Paying Agent money or U.S. Government Obligations sufficient to pay the principal of and interest on the Notes to maturity as provided in the Indenture, the Company will be discharged from the Indenture except for certain Sections thereof.

20. Authentication.

This Note shall not be valid until the Trustee or an authenticating agent signs the certificate of authentication on the other side of this Note.

21. Abbreviations and Definitions.

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

All capitalized terms used in this Note and not specifically defined herein are defined in the Indenture and are used herein as so defined.

22. Indenture to Control.

In the case of any conflict between the provisions of this Note and the Indenture, the provisions of the Indenture shall control.

The Company will furnish to any Holder, upon written request and without charge, a copy of the Indenture. Requests may be made to: Incyte Pharmaceuticals, Inc., 3174 Porter Drive, Palo Alto, California 94304, Attention: Chief Financial Officer.

TRANSFER NOTICE

This Transfer Notice Relates to $_____ principal amount of the 5.5% Convertible Subordinated Notes Due 2007 of Incyte Pharmaceuticals, Inc., a Delaware corporation, held by _____ (the "Transferor").

(I) or (we) assign and transfer this Convertible Note to

- ---

(Print or type assignee's name, address and zip code)

- ---

- ---

(Insert assignee's social security or tax I.D. no.)

and irrevocably appoint _____ agent to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Your Signature:

(Sign exactly as your name appears on the other side of this Convertible Note)

Date:

Signature Guarantee:(1)

In connection with any transfer of any of the Notes evidenced by this certificate occurring prior to the date that is three years after the later of the date of original issuance of such Notes and the last date, if any, on which such Notes were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Notes are being transferred:

CHECK ONE BOX BELOW

(1) [ ] to Incyte Pharmaceuticals, Inc.; or

(2) [ ] pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

(3) [ ] pursuant to and in compliance with Regulation S under the Securities Act of 1933, as amended; or

(4) [ ] to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended, that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter can be obtained from the Trustee); or

- ---

(1) Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

(5) [ ] pursuant to another available exemption from the registration requirements of the Securities Act of 1933; or

(6) [ ] pursuant to an effective registration statement under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof; provided, however, that if box (2), (3), (4) or (5) is checked, the Trustee may require, prior to registering any such transfer of the Notes such legal opinions, certifications and other information as the Company has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

Unless the box below is checked, the undersigned confirms that such Note is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended (an "Affiliate"):

7. [ ] The transferee is an Affiliate of the Company.

Signature

Date

Signature Guarantee(1)

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.

- ----------

(1) Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

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

Dated:

[Signature of executive officer of purchaser]

Name:

Title:

CONVERSION NOTICE

To Incyte Pharmaceuticals, Inc.:

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion below designated, into Common Stock of Incyte Pharmaceuticals, Inc. in accordance with the terms of the Indenture referred to in this Note, and directs that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Any holder of Notes, upon exercise of its conversion rights in accordance with the terms of the Indenture and the Security, agrees to be bound by the terms of the Registration Rights Agreement relating to the Common Stock issuable upon conversion of the Notes.

[ ] Convert whole

[ ] Convert in part
Amount of Note to be converted ($1,000 or integral multiples thereof):
$

Signature (sign exactly as name appears on the other side of this Note)

Signature Guarantee:(1)

- ---

(1) Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

If you want the stock certificate made out in another person's name, complete the following for such person:

- ---
Name

- ---
Social Security or Taxpayer Identification Number

- ---
Street Address

- ---
City, State and Zip Code

OPTION OF HOLDER TO ELECT REPURCHASE

If you want to elect to have this Note repurchased by the Company pursuant to Section 3.10 of the Indenture, check the box:

[ ]

If you want to elect to have only part of this Note repurchased by the Company pursuant to Section 3.10 of the Indenture, state the principal amount (which shall be $1,000 or a multiple thereof) to be repurchased:
$_____

Dated:

- ---------- ----------

Signature (sign exactly as name appears on the other side of this Note)

- ----------

Signature Guarantee:(1)

- ----------

(1) Signature must be guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange.

[Schedule A to Exhibit A

GLOBAL NOTE TRANSFER SCHEDULE

Changes to Principal Amount of Global Security

Date	Principal Amount of Securities by which this Global Security Is to Be Reduced or Increased, and Reason for Reduction or Increase	Remaining Principal Amount of this Global Security (following increase or decrease)	Authorized Signature of officer of Trustee or Note Custodian

Schedule to be maintained by Depositary in cooperation with Trustee.]

EXHIBIT B-1

FORM OF PURCHASER LETTER FOR INSTITUTIONAL ACCREDITED INVESTORS

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

State Street Bank and Trust Company of California, N.A.
633 West 5th Street, 12th Floor
Los Angeles, CA 90071
Attn: Corporate Trust Department
(Incyte Pharmaceuticals, Inc. 5.5%
Convertible Subordinated Notes Due 2007)

Re: Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007

Dear Ladies and Gentlemen:

We are delivering this letter in connection with an offering of one or more of the 5.5% Convertible Subordinated Notes Due 2007 (the "Notes"), which are convertible into shares of Common Stock, par value $.001 per share, of Incyte Pharmaceuticals, Inc. (the "Company"), all as described in the Offering Memorandum relating to the Offering.

We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a) (1), (2), (3) or (7) under the Securities Act of 1933 (the "Securities Act") or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a) (1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor");

(ii) (A) any purchase of Notes by us will be for our own account or for the account of one or more other Institutional Accredited Investors or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501(a)(7) under the Securities Act and for each of which the undersigned exercises sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a)(2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a)(5)(A) of the Securities Act that is acquiring Notes as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

(iii) in the event that we purchase any Notes, we will acquire Notes having a minimum principal amount of not less than $250,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Notes;

(v) we are not acquiring Notes with a view to distribute or with any present intention of offering or selling Notes or the Common Stock issuable upon conversion thereof, except as permitted below; provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within its control; and

(vii) we have received a copy of the Offering Memorandum and acknowledge that we have had access to such financial and other information, and have been afforded the opportunity to access such financial and other information, and have been afforded the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Notes.

We understand that the Notes are being offered in a transaction not involving any public offering within the United States within the meaning of the Securities Act and that the Notes and the shares of Common Stock issuable upon conversion thereof (collectively, the "Securities") have not been registered under the Securities Act. We agree, on our own behalf and on behalf of each account for which we acquire any Securities, that if in the future we decide to resell or otherwise transfer such Securities, such Securities may be resold or otherwise transferred only (i) to the Company or any subsidiary thereof; or (ii) inside the United States to a person who is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A; or (iii) inside the United States to an Institutional Accredited Investor that, prior to such transfer, furnished to the transfer agent or registrar for such securities a signaled letter containing certain representations and agreements relating to the restrictions on transfer or such securities (the form of which letter can be obtained from such transfer agent or registrar). or (iv) outside the United States in a transaction meeting the requirements of Rule 904 under the Securities Act, or (v) pursuant to the exemption for registration provided by Rule 144 under the Securities Act (if applicable); or (vi) pursuant to a registration statement which has been declared effective under the Securities Act (and which constitutes to be effective at the time of such transfer). We agree that any such transfer of Securities referred to in this paragraph shall be in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction and in accordance with the legends set forth on the Securities.

We further agree to provide any person purchasing any of the Securities from us, other than pursuant to clause (vi) above, a notice advising such purchaser that resales of such securities are restricted as stated herein. We understand that the registrar and transfer agent for the Securities will not be required to accept for registration of transfer any Securities except upon presentation of evidence satisfactory to the Company that we have complied with the foregoing restrictions on transfer. We further understand that any Securities will be in the form of definitive physical certificates and that such certificates will bear a legend (unless the sale of the Securities has been registered under the Securities Act) reflecting the substance of this paragraph.

We acknowledge that the Company, others and you will rely upon our confirmations, acknowledgements and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

(Name of Purchaser)

Dated: _____, _____

By: _____

Name: _____

Title: _____

Address:

_____

_____

Exhibit B-2

FORM OF CERTIFICATE FOR EXCHANGE OR REGISTRATION OF TRANSFER
FROM RULE 144A GLOBAL NOTE TO REGULATION S GLOBAL NOTE
(Pursuant to Section 2.6(a) (i) of the Indenture)

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

State Street Bank and Trust Company of California, N.A.
633 West 5th Street, 12th Floor
Los Angeles, CA 90071
Attn: Corporate Trust Department
(Incyte Pharmaceuticals, Inc. 5.5%
Convertible Subordinated Notes Due 2007)

Re: Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007

Dear Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of February 4, 2000 (the "Indenture"), between Incyte Pharmaceuticals, Inc., as issuer (the "Company") and State Street Bank and Trust Company of California, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to U.S. $150,000,000 principal amount of Notes which are evidenced by one or more Rule 144A Global Notes (CUSIP No. 45337CAA0) and held with the Depositary in the name of _____ (the "Transferor"). The Transferor has requested a transfer of such beneficial interest in the Notes to a Person who will take delivery thereof in the form of an equal principal amount of Notes evidenced by one or more Regulation S Global Notes (CINS No. U45236AA1), which amount, immediately after such transfer, is to be held with the Depositary through Euroclear or Clearstream Banking or both (Common Code _____).

In connection with such request and in respect of such Notes, the Transferor hereby certifies that such transfer has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with Rule 903 or Rule 904 under the United States Securities Act of 1933, as amended (the "Securities Act"), and accordingly the Transferor hereby further certifies that:

(1) The offer of the Notes was not made to a person in the United States;

(2) either:

(a) at the time the buy order was originated, the transferee was outside the United States or the Transferor and any person acting on its behalf

reasonably believed and believes that the transferee was outside the United States; or

(b) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither the Transferor nor any person acting on its behalf knows that the transaction was prearranged with a buyer in the United States;

(3) no directed selling efforts have been made in contravention of the requirements of Rule 904(b) of Regulation S;

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(5) upon completion of the transaction, the beneficial interest being transferred as described above is to be held with the Depositary through Euroclear or Clearstream Banking or both (Common Code _____).

(6) With respect to transfers made in reliance on Rule 144, the Notes are being transferred in a transaction permitted by Rule 144 under the Securities Act; and with respect to transfer made in reliance on Rule 144A, that such Notes are being transferred in accordance with Rule 144A under the Securities Act to a transferee that the Transferor reasonably believes is purchasing the Notes for its own account or an account with respect to which the transferee exercises sole investment discretion and the transferee and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, in a transaction meeting the requirements of Rule 144A and in accordance with applicable securities laws of any state of the United States or any other jurisdiction.

In addition, if the sale is made during a restricted period and the provisions of Rule 903(c)(2) or (3) or Rule 904(c)(1) of Regulation S are applicable thereto, we confirm that such sale has been made in accordance with the applicable provisions of Rule 903(c)(2) or (3) or Rule 904(c)(1), as the case may be.

Upon giving effect to this request to exchange a beneficial interest in a Rule 144A Global Note for a beneficial interest in a Regulation S Global Note, the resulting beneficial interest shall be subject to the restrictions on transfer applicable to Regulation S Global Notes pursuant to the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and Deutsche Bank Securities Inc. and Warburg Dillon Read LLC, the initial purchasers of such Notes being transferred, and you and each of them is entitled to rely on the contents of this certificate. Terms used in this certificate and not otherwise defined in the Indenture have the meanings set forth in Regulation S under the Securities Act.

[Insert Name of Transferor]

By:

Name:
Title:

Dated: ,
---

cc: Incyte Pharmaceuticals, Inc.
Deutsche Bank Securities Inc.
Warburg Dillon Read LLC

Exhibit B-3

FORM OF CERTIFICATE FOR EXCHANGE OR REGISTRATION OF TRANSFER
FROM REGULATION S GLOBAL NOTE TO RULE 144A GLOBAL NOTE
(Pursuant to Section 2.6(a)(ii) of the Indenture)

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

State Street Bank and Trust Company of California, N.A.
633 West 5th Street, 12th Floor
Los Angeles, CA 90071
Attn: Corporate Trust Department (Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007)

Re: Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007

Dear Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of February 4, 2000 (the "Indenture"), among Incyte Pharmaceuticals, Inc., as issuer (the "Company") and State Street Bank and Trust Company of California, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to U.S. $_____ principal amount of Notes which are evidenced by one or more Regulation S Global Notes (CINS No. U45236AA1) and held with the Depositary through [Euroclear] [Clearstream Banking] (Common Code _____) in the name of _____ (the "Transferor"). The Transferor has requested a transfer of such beneficial interest in the Notes to a Person who will take delivery thereof in the form of an equal principal amount of Notes evidenced by one or more Rule 144A Global Notes (CUSIP No. 45337CAA0), to be held with the Depositary.

In connection with such request and in respect of such Notes, the Transferor hereby certifies that:

[CHECK ONE]

[ ] such transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act") , and, accordingly, the Transferor hereby further certifies that the Notes are being transferred to a Person that the Transferor reasonably believes is purchasing the Notes for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A;

or

[ ] such transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

[ ] such transfer is being effected pursuant to an effective registration statement under the Securities Act;

or

[ ] such transfer is being effected pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A or Rule 144, and the Transferor hereby further certifies that the Notes are being transferred in compliance with the transfer restrictions applicable to the Global Notes and in accordance with the requirements of the exemption claimed, which certification is supported by an Opinion of Counsel, provided by the transferor or the transferee (a copy of which the Transferor has attached to this certification) in form reasonably acceptable to the Company and to the Registrar, to the effect that such transfer is in compliance with the Securities Act;

and such Notes are being transferred in compliance with any applicable blue sky securities laws of any state of the United States.

Upon giving effect to this request to exchange a beneficial interest in Regulation S Global Notes for a beneficial interest in Rule 144A Global Notes, the resulting beneficial interest shall be subject to the restrictions on transfer applicable to Rule 144A Global Notes pursuant to the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and Deutsche Ban Securities Inc. and Warburg Dillon Read LLC, the initial purchasers of such Notes being transferred, and you and each of them is entitled to rely on the contents of this certificate. Terms used in this certificate and not otherwise defined in the Indenture have the meanings set forth in Regulation S under the Securities Act.

[Insert Name of Transferor]

By:

Name:
Title:

Dated: ,
---

cc: Incyte Pharmaceuticals, Inc.
Deutsche Bank Securities Inc.
Warburg Dillon Read LLC

Exhibit B-4

FORM OF CERTIFICATE FOR EXCHANGE OR REGISTRATION OF TRANSFER
OF CERTIFICATED NOTES
(Pursuant to Section 2.6(b) of the Indenture)

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

State Street Bank and Trust Company of California, N.A.
633 West 5th Street, 12th Floor
Los Angeles, CA 90071
Attn: Corporate Trust Department (Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007)

Re: Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007

Dear Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of February 4, 2000 (the "Indenture"), among Incyte Pharmaceuticals, Inc., as issuer (the "Company") and State Street Bank and Trust Company of California, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This certificate relates to U.S. $_____ aggregate principal amount of Notes which are held in Certificated Form (CUSIP No. 45337CAA0) in the name of _____ (the "Transferor") and is executed in connection with the exchange or transfer of such securities.

In connection with such request and in respect of the Notes surrendered to the Trustee herewith for exchange (the "Surrendered Notes"), the Holder of such Surrendered Notes hereby certifies that:

[CHECK ONE]

the Surrendered Notes are being acquired for the Transferor's own account, without transfer;

or

the Surrendered Notes are being transferred to the Company;

or

the Surrendered Notes are being transferred pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the Surrendered Notes are being transferred to a Person that the Transferor reasonably believes is purchasing the Surrendered Notes for its own

account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A, in each case in a transaction meeting the requirements of Rule 144A;

or

[ ] the Surrendered Notes are being transferred in a transaction permitted by Rule 144 under the Securities Act;

or

[ ] the Surrendered Notes are being transferred pursuant to an effective registration statement under the Securities Act;

or

[ ] such transfer is being effected pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A or Rule 144, and the Transferor hereby further certifies that the Notes are being transferred in compliance with the transfer restrictions applicable to the Global Notes and in accordance with the requirements of the exemption claimed, which certification is supported by an Opinion of Counsel, provided by the transferor or the transferee (a copy of which the Transferor has attached to this certification) in form reasonably acceptable to the Company and to the Registrar, to the effect that such transfer is in compliance with the Securities Act;

and the Surrendered Notes are being transferred in compliance with any applicable blue sky securities laws of any state of the United States.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and Deutsche Bank Securities Inc. and Warburg Dillon Read LLC, the initial purchasers of such Notes being transferred and you and each of them is entitled to rely on the contents of this certificate. Terms used in this certificate and not otherwise defined in the Indenture have the meanings set forth in Regulation S under the Securities Act.

[Insert Name of Transferor]

By:

Name:

Title:

Dated: ,

---

cc: Incyte Pharmaceuticals, Inc.
Deutsche Bank Securities Inc.
Warburg Dillon Read LLC

Exhibit B-5

FORM OF CERTIFICATE FOR EXCHANGE OR REGISTRATION OF TRANSFER
FROM RULE 144A GLOBAL NOTE OR REGULATION S GLOBAL NOTE
TO CERTIFICATED NOTE
(Pursuant to Section 2.6(c) of the Indenture)

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

State Street Bank and Trust Company of California, N.A.
633 West 5th Street, 12th Floor
Los Angeles, CA 90071
Attn: Corporate Trust Department (Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007)

Re: Incyte Pharmaceuticals, Inc. 5.5% Convertible Subordinated Notes Due 2007

Dear Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of February 4, 2000 (the "Indenture"), among Incyte Pharmaceuticals, Inc., as issuer (the "Company") and State Street Bank and Trust Company of California, N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to U.S. $_____ aggregate principal amount of Convertible Notes which are held [in the form of the [Global] [Regulation S] Security (CUSIP No. 45337CAA0 / CINSNo. U45236AA1) with the Depositary] in the name of [_____] (the "Transferor") to effect the transfer of the Securities.

In connection with such request and in respect of the Notes surrendered to the Trustee herewith for exchange (the "Surrendered Notes"), the Holder of such Surrendered Notes hereby certifies that the Notes are being exchanged or transferred in accordance with the transfer restrictions set forth in the Notes and that:

[CHECK ONE]

[ ] the Surrendered Notes are being transferred to the beneficial owner of such Notes;

or

[ ] the Surrendered Notes are being transferred pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the

Surrendered Notes are being transferred to a Person that the Transferor reasonably believes is purchasing the Surrendered Notes for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A, in each case in a transaction meeting the requirements of Rule 144A;

or

[ ] the Surrendered Notes are being transferred in a transaction permitted by Rule 144 under the Securities Act;

or

[ ] the Surrendered Notes are being transferred pursuant to an effective registration statement under the Securities Act;

or

[ ] such transfer is being effected pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A or Rule 144, and the Transferor hereby further certifies that the Notes are being transferred in compliance with the transfer restrictions applicable to the Global Notes and in accordance with the requirements of the exemption claimed, which certification is supported by an Opinion of Counsel, provided by the transferor or the transferee (a copy of which the Transferor has attached to this certification) in form reasonably acceptable to the Company and to the Registrar, to the effect that such transfer is in compliance with the Securities Act;

and the Surrendered Notes are being transferred in compliance with any applicable blue sky securities laws of any state of the United States.

[IF TRANSFER OR EXCHANGE FROM REGULATION S GLOBAL NOTE ALSO INCLUDE:

1. We are either not a U.S. person (as defined below) or we have purchased our beneficial interest in the above referenced Regulation S Global Note in a transaction that is exempt from the registration requirements under the Securities Act.

2. We are delivering this certificate in connection with obtaining a beneficial interest in Certificated Securities in exchange for our beneficial interest in the Regulation S Global Note.

For purposes of this certificate, "U.S. person" means (i) any individual resident in the United States, (ii) any partnership or corporation organized or incorporated under the laws of the United States, (iii) any estate of which an executor or administrator is a U.S. person (other than an estate governed by foreign law and of which at least one executor or administrator is a non-U.S. person who has sole or shared investment discretion with respect to its assets, (iv) any trust of which any trustee is a U.S. person (other than a trust of which at least one trustee is a non-U.S. person who has sole or shared investment discretion with respect to its assets and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person), (v) any agency or branch of a foreign entity located in the United States, (vi) any non-discretionary or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person, (vii) any discretionary or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated or (if an individual) resident in the United States (other than such an account held for the benefit or account of a non-U.S. person), (viii) any partnership or corporation organized or incorporated under the laws of a foreign jurisdiction and formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act (unless it is organized or incorporated, and owned, by accredited investors within the meaning of Rule 501(a) under the Securities Act who are not natural persons, estates or trusts); provided, however, that the term "U.S. person" shall not include (A) a branch or agency of a U.S. person that is located and operating outside the United States for valid business purposes as a locally regulated branch or agency engaged in the banking or insurance business, (B) any employee benefit plan established and administered in accordance with the law, customary practices and documentation of a foreign country and (C) the international organizations set forth in Section 902(o) (7) of Regulation S under the Securities Act and any other similar international organizations, and their agencies, affiliates and pension plans.]

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and Deutsche Bank Securities Inc. and Warburg Dillon Read LLC, the initial purchasers of such Notes being transferred and you and each of them is entitled to rely on the contents of this certificate. Terms used in this certificate and not otherwise defined in the Indenture have the meanings set forth in Regulation S under the Securities Act.

[Insert Name of Transferor]

By:

Name:

Title:

Dated: ,

Exhibit B-6

FORM OF LETTER OF REPRESENTATION TO BE DELIVERED
BY PURCHASERS OF NOTES PURSUANT TO REGULATION S

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

Deutsche Bank Securities Inc.
Warburg Dillon Read LLC
c/o Deutsche Bank Securities Inc.
101 California Street, 48th Floor
San Francisco, California 94111

Ladies and Gentlemen:

We are delivering this letter of representation in connection with our purchase of 5.5% Convertible Subordinated Notes Due 2007 (the "Notes") of Incyte Pharmaceuticals, Inc., as described in the Offering Memorandum relating to such offering.

We hereby certify that:

1. we are not a "U.S. person" within the meaning of Rule 902(k) of Regulation S under the United States Securities Act of 1933 (the "Securities Act");

2. the Notes are not being purchased on behalf of or for the account or benefit of a "U.S. person";

3. we agree to resell such Notes only in accordance with the provisions of Rule 901 through 905 of Regulation S, pursuant to registration under the Securities Act, or pursuant to an available exemption from registration; and

4. we agree not to engage in hedging transactions with regard to the Notes unless in compliance with the Securities Act.

We acknowledge that you, the Company, the Transfer Agent for the Notes and others will rely upon our representations set forth herein, and we agree to notify you promptly in writing if any of our representations herein ceases to be accurate and complete.

THE LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

(Name of Purchaser)

By:
Name:
Title:

EXHIBIT 10.13

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the "Agreement") is made and entered into as of February 4, 2000, by and among Incyte Pharmaceuticals, Inc., a Delaware corporation (the "Company"), Deutsche Bank Securities Inc. and Warburg Dillon Read LLC (the "Initial Purchasers").

This Agreement is made pursuant to the Purchase Agreement, dated February 1, 2000 (the "Purchase Agreement"), between the Company and the Initial Purchasers. In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the Closing under the Purchase Agreement.

The parties hereby agree as follows:

1. Definitions

Capitalized terms used herein without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

a. Affiliate: "Affiliate" means, with respect to any specified Person, (i) any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such specified Person or (ii) any officer or director of such other Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power (whether or not exercised) to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

b. Common Stock: The shares of common stock, par value $0.001 per share, of the Company issuable or issued upon conversion of the Notes and any Common Stock issued with respect thereto upon any stock dividend, split or similar stock.

c. Effectiveness Date: The date that is 180 days after the date of the Closing under the Purchase Agreement.

d. Effectiveness Period: See Section 2(a) hereof.

e. Exchange Act: The Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

f. Filing Date: The date that is 90 days after the date of the Closing under the Purchase Agreement.

g. Indenture: The Indenture, dated as of February 4, 2000, between the Company and State Street Bank and Trust Company, as trustee, pursuant to which the Notes

are being issued, as amended or supplemented from time to time in accordance with the terms thereof.

h. Initial Shelf Registration: See Section 2(a) hereof.

i. Losses: See Section 5(a) hereof.

j. Notes: The 5.5% Convertible Subordinated Notes Due 2007 of the Company being issued and sold pursuant to the Purchase Agreement and the Indenture.

k. Purchase Agreement: See the second paragraph of this Agreement.

l. Prospectus: The prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, including, without limitation, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

m. Initial Purchasers: Deutsche Bank Securities Inc. and Warburg Dillon Read LLC.

n. Registrable Securities: The Notes and the Common Stock issuable upon conversion of the Notes, upon original issuance thereof and at all times subsequent thereto, until, in the case of any such Note or share of Common Stock, (i) it has been effectively registered under the Securities Act and disposed of in accordance with the Registration Statement covering it, (ii) it is saleable by the holder thereof pursuant to Rule 144(k) under the Securities Act or (iii) it is distributed to the public pursuant to Rule 144 under the Securities Act.

o. Registration Statement: Any registration statement of the Company which covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

p. Rule 144: Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

q. Rule 144A: Rule 144A under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

r. SEC: The Securities and Exchange Commission.

s. Securities Act: The Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

t. Special Counsel: Latham & Watkins, or such other special counsel to the Initial Purchasers or the holders of the Registrable Securities as shall be specified by holders of a majority of the Registrable Securities, the fees and expenses of which will be paid by the Company pursuant to Section 4 hereof.

u. Subsequent Shelf Registration: See Section 2(b) hereof.

v. TIA: The Trust Indenture Act of 1939, as amended.

w. Trustee: State Street Bank and Trust Company, as trustee under the Indenture.

x. Underwritten Offering: A registration in which the Registrable Securities are sold to an underwriter or underwriters for reoffering and sale to the public.

2. Shelf Registration

a. Shelf Registration. The Company shall prepare and file with the SEC on or prior to the Filing Date a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 covering the resale from time to time by the holders thereof of all of the Registrable Securities (the "Initial Shelf Registration"). The Initial Shelf Registration shall be on Form S-3, Form S-1 or another appropriate form permitting registration of such Registrable Securities for resale by such holders (including one or more underwritten offerings). The Company shall use all reasonable efforts to cause the Initial Shelf Registration to be declared effective under the Securities Act on or prior to the Effectiveness Date and to keep the Initial Shelf Registration continuously effective under the Securities Act until the date that is two years from the last date of issuance of any of the Notes (the "Effectiveness Period"), or such shorter period ending when (i) all Registrable Securities covered by the Initial Shelf Registration have been sold, or (ii) a Subsequent Shelf Registration covering all of the Registrable Securities has been declared effective under the Securities Act or (iii) there cease to be outstanding any Registrable Securities.

b. If the Initial Shelf Registration or any Subsequent Shelf Registration ceases to be effective for any reason at any time during the Effectiveness Period (other than because of the sale of all of the securities registered thereunder), the Company shall use all reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within 30 days of such cessation of effectiveness amend the Shelf Registration in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional "shelf" Registration Statement pursuant to Rule 415 covering all of the Registrable Securities (a "Subsequent Shelf Registration"). If a Subsequent Shelf Registration is filed, the Company shall use all reasonable efforts to cause the Subsequent Shelf Registration to be declared effective as soon as practicable after such filing and to keep such Registration Statement continuously effective until the end of the Effectiveness Period.

c. The Company shall supplement and amend the Shelf Registration or Subsequent Shelf Registration, as the case may be, if required by the rules, regulations or

instructions applicable to the registration form used by the Company for such Shelf Registration, if required by the Securities Act, or if reasonably requested by the Initial Purchasers or by the Trustee on behalf of the holders of the Registrable Securities covered by such Registration Statement or by any managing underwriter of such Registrable Securities.

3. Registration Procedures

a. In connection with the Company's registration obligations under Section 2 hereof, the Company shall effect such registrations to permit the sale of the Registrable Securities in accordance with the method or methods of disposition thereof intended by the holders of such Registrable Securities (including one or more Underwritten Offerings), and pursuant thereto the Company shall as expeditiously as possible:

i. Prepare and file with the SEC a Registration Statement or Registration Statements on any appropriate form under the Securities Act available for the sale of the Registrable Securities by the holders thereof in accordance with the intended method or methods of distribution thereof, and cause each such Registration Statement to become effective and remain effective as provided herein; provided, that before filing any such Registration Statement or Prospectus or any amendments or supplements thereto (other than documents that would be incorporated or deemed to be incorporated therein by reference and that the Company is required by applicable securities laws or stock exchange requirements to file) the Company shall furnish to the holders of the Registrable Securities covered by such Registration Statement, the Initial Purchasers and the Special Counsel, copies of all such documents proposed to be filed, which documents will be subject to the review of such holders and the Special Counsel, and the Company shall not file any such Registration Statement or amendment thereto or any Prospectus or any supplement thereto (other than such documents which, upon filing, would be incorporated or deemed to be incorporated by reference therein and that the Company is required by applicable securities laws or stock exchange requirements to file) to which the holders of a majority in aggregate principal amount of the Registrable Securities covered by such Registration Statement, the Initial Purchasers or the Special Counsel shall reasonably object on a timely basis.

ii. Prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable period specified in Section 2; cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during the applicable period in accordance with the methods of disposition intended by the holders thereof set forth in such Registration Statement as so amended or to such Prospectus as so supplemented.

iii. Notify the selling holders of Registrable Securities, the Initial Purchasers and the Special Counsel promptly, and (if requested by any such Person) confirm such notice in writing, (a) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (b) of any request by the SEC or any other federal or state governmental authority during the period of effectiveness of the

Registration Statement for amendments or supplements to a Registration Statement or related Prospectus or for additional information, (c) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose, (d) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (e) of the existence of any fact or the happening of any event or circumstance which makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or which requires the making of any changes in such Registration Statement, Prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (f) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate.

iv. Use all reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement, or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest possible moment.

v. Subject to Section 3(c), if reasonably requested by the Initial Purchasers or the holders of a majority in aggregate principal amount of the Registrable Securities being sold, (a) promptly incorporate in a Prospectus supplement or post-effective amendment such information as the Company, the Initial Purchasers or such holders agree should be included therein as required by applicable law, (b) make all required filings of such Prospectus supplement or such post-effective amendment as soon as practicable after the Company has received notification of the matters to be incorporated in such Prospectus supplement or post-effective amendment, and (c) supplement or make amendments to any Registration Statement consistent with clause (a) or (b) above; provided, that the Company shall not be required to take any actions under this Section 3(a)(v) that are not, in the opinion of outside counsel for the Company, in compliance with applicable law.

vi. Furnish to each selling holder of Registrable Securities, the Initial Purchasers and the Special Counsel, without charge, at least one conformed copy of the Registration Statement or Statements and any post-effective amendment thereto, including financial statements and schedules and, if the selling holder so requests in writing, all exhibits thereto (including those, if any, incorporated by reference).

vii. Deliver to each selling holder of Registrable Securities, the Initial Purchasers and the Special Counsel, without charge, as many copies of the Prospectus or Prospectuses relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Persons may reasonably request; and the Company hereby consents to the use of such Prospectus or each amendment or supplement

thereto by each of the selling holders of Registrable Securities in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto.

viii. Prior to any public offering of Registrable Securities, to register or qualify or cooperate with the selling holders of Registrable Securities and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any seller reasonably requests in writing; keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by the applicable Registration Statement; provided, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or take any action that would subject it to general service of process or to taxation in any such jurisdiction where it is not then so subject.

ix. Cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other governmental agencies or authorities within the United States, except as may be required solely as a consequence of the nature of such selling holder, in which case the Company will cooperate in all reasonable respects with the filing of such Registration Statement and the granting of such approvals, as may be necessary to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities.

x. Upon the occurrence of any event contemplated by Section 3(a)(iii)(e) or 3(a)(iii)(f) above during the period for which the Company is required to maintain an effective Registration Statement, the Company shall prepare a supplement or post-effective amendment to each Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document (such as Current Report on Form 8-K) so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, such Prospectus will not (a) 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 the light of the circumstances under which they were made, not misleading or (b) require amendment as provided in Section 3(a)(iii)(f) above.

xi. In connection with a disposition of Registrable Securities, (a) make available for inspection, at the offices where normally kept during reasonable business hours, by a representative of the holders of Registrable Securities being sold or by any Managing Underwriter participating in any disposition of the Registrable Securities, if any, and any attorney or accountant retained by such selling holders or Managing Underwriters, financial and other records, pertinent corporate documents and properties of the Company and its subsidiaries as they may reasonably request, and (b) cause the officers, directors, employees, accountants and auditors of the Company and its subsidiaries to supply all information reasonably requested by any such representative, managing underwriter, attorney or accountant in connection with such disposition; provided, that any records, information or documents that are designated by the Company in writing as confidential at the time of delivery of such records, information or

documents shall be kept confidential by such Persons, and such Persons shall so agree in writing, unless (i) such records, information or documents are in the public domain or otherwise publicly available, (ii) disclosure of such records, information or documents is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities or (iii) disclosure of such records, information or documents is otherwise required by law (including, without limitation, pursuant to the requirements of the Securities Act).

xii. Cause the Indenture to be qualified under the TIA not later than the effective date of the first Registration Statement relating to the Registrable Securities; and in connection therewith, cooperate with the Trustee and the holders of the Registrable Securities, to effect such changes to the Indenture as may be required for such Indenture to be so qualified in accordance with the terms of the TIA; and execute, and use all reasonable efforts to cause such Trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner. In the event that such qualification would require the appointment of a new trustee under the Indenture, the Company shall appoint a new trustee thereunder pursuant to the applicable provisions of the Indenture.

xiii. Comply with all applicable rules and regulations of the SEC and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) commencing on the first day of the first fiscal quarter of the Company, after the effective date of a Registration Statement, which statements shall cover said 12-month periods.

xiv. Enter into such agreements (including, in the event of an Underwritten Offering, an underwriting agreement in form, scope and substance as is customary in Underwritten Offerings) and take all such other actions in connection therewith (including, in the event of an underwritten offering, those reasonably requested by the managing underwriters, if any, or the holders of a majority of the Registrable Securities being sold) in order to expedite or facilitate the disposition of such Registrable Securities and in such connection, whether or not an underwriting agreement is entered into, and if the registration is an underwritten registration, (a) make such representations and warranties, subject to the Company's ability to do so, to the holders of such Registrable Securities and the underwriters with respect to the business of the Company and its subsidiaries, the Registration Statement, Prospectus and documents incorporated by reference or deemed incorporated by reference, if any, in each case, in form, substance and scope as are customarily made by issuers to underwriters in underwritten offerings and confirm the same if and when requested; (b) use all reasonable efforts to obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriters, if any, Special Counsel and the holders of a majority of the Registrable Securities being sold) addressed to each of the underwriters covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such Special Counsel and managing underwriters; (c) use all reasonable efforts to obtain comfort letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other

certified public accountants of any subsidiary of the Company or any business acquired or to be acquired by the Company for which financial statements and financial date is, or is required to be, included in the Registration Statement), addressed to each of the managing underwriters, if any, such letters to be in customary form and covering matters of the type customarily covered in comfort letters in connection with Underwritten Offerings; and (d) deliver such documents and certificates as may be reasonably requested by the holders of a majority of the Registrable Securities being sold, the Special Counsel and the managing underwriters, if any, to evidence the continued validity of the representations and warranties of the Company and its subsidiaries made pursuant to clause (a) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company. The above shall be done at each closing under such underwriting or similar agreement as and to the extent required thereunder.

xv. Unless any Registrable Securities shall be in book-entry only form, cooperate with the selling holders of Registrable Securities to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denominations and registered in such names as the holders may request.

xvi. Provide a CUSIP number for all Registrable Securities no later than the effective date of the Registration Statement and, unless any Registrable Securities shall be in book-entry only form, provide the Trustee under the Indenture and the transfer agent for the Common Stock with printed certificates for the Registrable Securities which are in a form eligible for deposit with The Depository Trust Company.

xvii. Cause the Common Stock to be listed on each securities exchange or quotation system on which the Company's Common Stock is then listed no later than the date the Registration Statement is declared effective and, in connection therewith, to the extent applicable, to make such filings under the Exchange Act and to have such filings declared effective thereunder.

b. The Company may require each selling holder of Registrable Securities as to which any registration is being effected, and such selling holder of Registrable Securities agrees, to furnish to the Company such information regarding the distribution of such Registrable Securities as is called for in Appendix I to the Confidential Offering Memorandum dated February 1, 2000. The Company may exclude from such registration the Registrable Securities of any seller who unreasonably fails to furnish such information within a reasonable time after receiving such request. Each Holder of Registrable Securities as to which any Registration Statement is being effected agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Holder not misleading. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact

relating to such Holder or its plan of distribution necessary to make the statement in such Prospectus, in light of the circumstances under which they were made, not misleading.

c. Each holder of Registrable Securities agrees by acquisition of such Registrable Securities that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(a)(iii)(b), 3(a)(iii)(c), 3(a)(iii)(d), 3(a)(iii)(e) or 3(a)(iii)(f) hereof, such holder will forthwith discontinue disposition of such Registrable Securities covered by the applicable Registration Statement or Prospectus until such holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3(a)(x) hereof, or until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus. The period of effectiveness of the Shelf Registration Statement provided for in Section 2(a) above shall be extended by the number of days from and including the date of giving such notice to and including the date when the Initial Purchaser and the Holders shall have received such amended or supplemented prospectus pursuant to this Section.

4. Registration Expenses

All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company whether or not any of the Registration Statements become effective and whether or not any of the Registrable Securities are transferred pursuant to the Registration Statement. Such fees and expenses shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with the National Association of Securities Dealers, Inc., (B) with respect to designation of the Registrable Securities as eligible for trading on the Private Offerings, Resales and Trading through Automated Linkages ("PORTAL") market or on the Nasdaq National Market, and (C) of compliance with securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of counsel for selling holders of Registerable Securities in connection with Blue Sky qualifications of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as the holders of a majority in aggregate principal amount of the Registrable Securities being sold may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing Prospectuses if the printing of Prospectuses is requested by the Special Counsel or the holders of a majority in aggregate principal amount of the Registrable Securities included in any Registration Statement), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company and the Special Counsel for the selling holders of Registrable Securities or the Initial Purchasers in connection with the Shelf Registration (provided that the Company shall not be liable for the reasonable fees and expenses of more than one separate firm for all parties participating in any transaction hereunder), (v) fees and disbursements of all independent certified public accountants, (vi) fees and expenses of any qualified independent underwriter or other independent appraiser participating in an offering pursuant to Section 3 of Schedule E to the Bylaws of the National Association of Securities Dealers, Inc., (vii) rating agency fees in connection with obtaining ratings of the Notes at the time of their original issuance,

(viii) Securities Act liability insurance if the Company so desires such insurance, and (ix) fees and expenses of all other Persons retained by the Company. In addition, the Company will, in any event, bear its own internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange on which similar securities issued by the Company are then listed and the fees and expenses of any Person, including special experts, retained by the Company.

5. Indemnification

a. Indemnification by the Company. The Company shall, without limitation as to time, indemnify and hold harmless, to the fullest extent permitted by law, each holder of Registrable Securities, the officers, directors and agents and employees of each of them, each Person who, controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such holder and the officers, directors, agents and employees of any such controlling person, from and against all losses, claims, damages, liabilities, costs (including, without limitation, the costs of preparation and attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or based upon any untrue or allegedly untrue statement of a material fact contained in any Registration Statement, Prospectus or form of Prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are based solely upon information furnished in writing to the Company by such holder pursuant to Section 3(b) hereof expressly for use in the Registration Statement; provided, that the Company shall not be liable to any holder of Registrable Securities to the extent that any such Losses arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus if either (A) (i) such holder failed to send or deliver a copy of the Prospectus with or prior to the delivery of written confirmation of the sale by such holder of a Registrable Security to the person asserting the claim from which such Losses arise and (ii) the Prospectus would have completely corrected such untrue statement or alleged untrue statement or such omission or alleged omission; or (B) (x) such untrue statement or alleged untrue statement, omission or alleged omission is completely corrected in an amendment or supplement to the Prospectus and (y) having previously been furnished by or on behalf of the Company with copies of the Prospectus as so amended or supplemented, such holder thereafter fails to deliver such Prospectus as so amended or supplemented, prior to or concurrently with the sale of a Registrable Security to the person asserting the claim from which such Losses arise. The Company shall also indemnify each selling broker, dealer manager and similar securities industry professional participating in the distribution, and each of their officers, directors, agents and employees and each Person who controls such Persons (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) to the same extent as provided above with respect to the indemnification of the holders of Registrable Securities.

b. Indemnification by Holder of Registrable Securities. In connection with any Registration Statement in which a holder of Registrable Securities is participating, such holder severally agrees to indemnify, to the fullest extent permitted by law, the Company, its directors and officers, agents and employees, each Person who controls the Company (within the

meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling persons, from and against all Losses arising out of or based upon any untrue statement of a material fact contained in any Registration Statement, Prospectus or preliminary prospectus or arising out of or based upon any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, to the extent, but only to the extent, that such untrue statement or omission is contained in information so furnished in writing by such holder to the Company pursuant to Section 3(b) hereof expressly for use in such Registration Statement or Prospectus and that such information was solely relied upon by the Company in preparation of such Registration Statement, Prospectus or preliminary prospectus. In no event shall the liability of any selling holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds (net of payment of all expenses) received by such holder upon the sale of Registrable Securities giving rise to such indemnification obligation. The Company shall be entitled to receive indemnities from selling brokers, dealer managers and similar securities industry professionals participating in the distribution to the same extent as provided above with respect to information so furnished in writing by such Persons expressly for use in any Prospectus or Registration Statement.

c. Conduct of Indemnification Proceedings. If any Person shall be entitled to indemnity hereunder (an "indemnified party"), such indemnified party shall give prompt notice to the party from which such indemnity is sought (the "indemnifying party") of any claim or of the commencement of any Proceeding with respect to which such indemnified party seeks indemnification or contribution pursuant hereto; and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. The failure to so notify the indemnifying party shall not relieve the indemnifying party from any obligation or liability except and only to the extent that such failure was prejudicial to the indemnifying party and the indemnifying party was actually damaged or suffered any loss incurred any additional expense as a result thereof. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for (a) the fees and expenses of more than one separate firm (in additional to any local counsel) for all Holders and all persons, if any, who control any Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and (b) the fees and expenses of more than one separate firm (in addition to any local counsel) for the Company, its directors, its officers who sign a Registration Statement and each person, if any, who controls the Company within the meaning of either such Section, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Company, and such directors, officers and control persons of the Company, such firm shall be

designated in writing by the Company. The indemnifying party shall not be liable for any settlement of any proceeding affected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable or any settlement of any proceeding affected without its written consent if (i) such settlement is entered into more than 30 days after receipt of such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. The indemnifying party shall not consent to entry of any judgment or enter into any settlement or otherwise seek to terminate any proceeding in which any indemnified party is or could be a party and as to which indemnification or contribution could be sought by such indemnified party under this Section 5, unless such judgment, settlement or other termination includes as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release, in form and substance satisfactory to the indemnified party, from all liability in respect of such claim or litigation for which such indemnified party would be entitled to indemnification hereunder.

d. Contribution. If the indemnification provided for in this Section 5 is unavailable to an indemnified party under Section 5(a) or 5(b) hereof in respect of any Losses or is insufficient to hold such indemnified party harmless, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall, jointly and severally, contribute to the amount paid or payable by such indemnified party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the indemnifying party or indemnifying parties, on the one hand, and such indemnified party, on the other hand, in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such indemnifying party or indemnifying parties, on the one hand, and such indemnified party, on the other hand, shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include any legal or other fees or expenses incurred by such party in connection with any Proceeding.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provision of this Section 5(d), an indemnifying party that is a selling holder of Registrable Securities shall not be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by such indemnifying party and distributed to the public were offered to the public exceeds the amount of any damages which such indemnifying party has otherwise been

required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

The indemnity, contribution and expense reimbursement obligations of the Company hereunder shall be in addition to any liability the Company may otherwise have hereunder, under the Purchase Agreement, the Securities Act or otherwise. The provisions of this Section 5 shall survive so long as Registrable Securities remain outstanding, notwithstanding any transfer of the Registrable Securities by any holder or any termination of this Agreement.

6. Information Requirements

a. The Company shall file in a timely manner the reports required to be filed by it under the Securities Act and the Exchange Act, and if at any time the Company is not required to file such reports, it will, upon the request of any holder of Registrable Securities, make publicly available other information so long as necessary to permit sales pursuant to Rule 144 and Rule 144A under the Securities Act. The Company further covenants that it will cooperate with any holder of Registrable Securities and take such further action as any holder of Registrable Securities may reasonably request (including without limitation making such representations as any such holder may reasonably request), all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act. Upon the request of any holder of Registrable Securities, the Company shall deliver to such holder a written statement as to whether it has complied with such filing requirements. Notwithstanding the foregoing, nothing in this Section 6 shall be deemed to require the Company to register any of its securities under any section of the Exchange Act.

b. The Company shall file in a timely manner the reports required to be filed by it under the Exchange Act and shall comply with all other requirements set forth in the instructions to Form S-3 in order to allow the Company to be eligible to file registration statements on Form S-3 after February 1, 2000.

7. Liquidated Damages

a. The parties hereto agree that the holders of Registrable Securities will suffer damages and that it would not be feasible to ascertain the extent of such damages with precision, if (i) the Initial Shelf Registration has not been filed on or prior to the Filing Date, (ii) the Initial Shelf Registration has not become effective on or prior to the Effectiveness Date, (iii) prior to the end of the Effectiveness Period, the SEC shall have issued a stop order suspending the effectiveness of any Shelf Registration or proceedings have been initiated under Section 8(d) or 8(e) of the Securities Act, or (iv) a notice under Section 3(a)(iii)(e) hereof is delivered and either (A) such notice is delivered during the period from the effective date of the Initial Shelf Registration until 90 days thereafter (the "Initial Resale Period"), (B) the aggregate number of days since the Initial Resale Period for which all notices delivered pursuant to Section 3(a)(iii)(e) hereof have been in effect exceeds 90 days or (C) such notice is either the second such notice in any three-month period or the third such notice in any twelve-month period

(individually referred to herein as an "Event") (the Filing Date in the case of clause (i), the Effectiveness Date in the case of clause (ii), the date on which the Registration Statement ceases to be effective or proceedings referred to therein have been commenced in the case of clause (iii), and the date on which such notice is delivered in the case of clause (iv)(A) or the date on which the 90-day limit is exceeded in the case of clause (iv)(B) or the date on which the second or third notice, respectively, is delivered in the case of clause (iv)(C), being referred to herein as an "Event Date").

Accordingly, upon the occurrence of each Event, in addition to agreeing to use all reasonable efforts to ensure that the use of the Prospectus may be resumed as quickly as practicable, commencing on the Event Date, the Company agrees to pay, as liquidated damages, and not as a penalty, to each holder of a Registrable Security, an additional amount (the "Liquidated Damages Amount") equal to one-half of one percent per annum (50 basis points) per $1,000 principal amount of Notes held by such holder and one-half of one percent per annum (50 basis points) calculated on an amount equal to the product of (x) the Conversion Price (as defined in the Indenture) times (y) the number of shares of Common Stock held by such holder; provided, that such liquidated damages will, in each case, cease to accrue on and after the date the Shelf Registration is filed, becomes effective or resumes effectiveness, or the notice under clause 3(a)(iii)(e) is no longer in effect, as the case may be.

b. The Company shall pay the liquidated damages due on the Registrable Securities by depositing with the Trustee under the Indenture, in trust, for the benefit of the holders thereof, at least one business day prior to the applicable interest payment date, sums sufficient to pay the liquidated damages then due. The liquidated damages amount due shall be payable on each interest payment date to the record holder entitled to receive the interest payment to be made on such date, provided that accrued liquidated damages amounts shall be paid on the applicable redemption date upon the redemption of any Note (to the extent accrued with respect to such Note) and, in the event of redemption of all Notes, shall also be paid on such redemption date to the holders of Common Stock (to the extent accrued with respect to such Common Stock). The Trustee shall be entitled, on behalf of the holders of Registrable Securities, to seek any available remedy for the enforcement of this Agreement, including for the payment of such liquidated damages. All of the Company's obligations set forth in this Section 7 which are outstanding with respect to any Registrable Securities at the time such security ceases to be a Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding termination of the Agreement pursuant to Section 8(o).

c. The parties hereto agree that the liquidated damages provided for in this Section 7 constitute a reasonable estimate of the damages that may be incurred by holders of Registrable Securities (other than the Initial Purchasers) by reason of the failure of the Shelf Registration to be filed, be declared effective or be available for use, as the case may be, in accordance with the provisions hereof.

8. Miscellaneous

a. Remedies. In the event of a breach by the Company of its obligations under this Agreement, each holder of Registrable Securities, in addition to being

entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

b. No Inconsistent Agreements. The Company has not, as of the date hereof, and shall not, on or after the date of this Agreement, enter into any agreement with respect to its securities which is inconsistent with the rights granted to the holders of Registrable Securities in this Agreement.

c. Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended (other than the last sentence of Section 8(g)), modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the holders of a majority of the then outstanding Common Stock constituting Registrable Securities (with holders of Notes deemed to be the holders for purposes of this Section 8(c), of the number of outstanding shares of Common Stock into which such Notes are then convertible). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other holders of Registrable Securities may be given by holders of at least a majority of the Registrable Securities being sold by such holders; provided, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence.

d. Notices. All notices and other communications provided for or permitted hereunder shall be made in writing and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by telecopier or (iii) one business day after being deposited with a reputable next-day courier, postage prepaid, to the parties as follows:

(a) if to a holder of Registrable Securities, at the most current address given by such holder to the Company in accordance with the provisions of this Section 8(d); and

(b) if to the Company, to Incyte Pharmaceuticals, Inc., 3174 Porter Drive, Palo Alto, California 94304, Attention: General Counsel.

or to such other address as any party may have furnished to the other parties in writing in accordance herewith.

e. Owner of Registrable Securities. The Company will maintain, or will cause its registrar and transfer agent to maintain, a register with respect to the Registrable Securities in which all transfers of Registrable Securities of which the Company has received notice will be recorded. The Company may deem and treat the person in whose name

Registrable Securities are registered in such register of the Company as the owner thereof for all purposes, including, without limitation, the giving of notices under this Agreement.

f. Approval of Holders. Whenever the consent or approval of holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or its affiliates (as such term is defined in Rule 405 under the Securities Act) (other than the Initial Purchasers or subsequent holders of Registrable Securities if such subsequent holders are deemed to be such affiliates solely by reason of their holdings of such Registrable Securities) shall not be counted in determining whether such consent or approval was given by the holders of such required percentage. For purposes of calculating the consent or approval of holders of a majority of the then outstanding aggregate principal amount of Registrable Securities, Registrable Securities which have been converted into shares of Common Stock shall be deemed to bear the principal amount at which such securities were converted.

g. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each holder of any Registrable Securities. The Company may not assign its rights or obligations hereunder without the prior written consent of each holder of any Registrable Securities.

h. Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

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

j. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

k. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use all reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such which may be hereafter declared invalid, void or unenforceable.

l. Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Notes sold pursuant

to the Purchase Agreement and the Common Stock issuable upon conversion of the Notes. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Notes or the Common Stock issuable upon conversion of the Notes. This Agreement supersedes all prior agreements and understandings among the parties with respect to such registration rights.

m. Attorneys' Fees. In any action or proceeding brought to enforce any provision of this Agreement, or where any provision hereof is validly asserted as a defense, the prevailing party, as determined by the court, shall be entitled to recover reasonable attorneys' fees in addition to any other available remedy.

n. Further Assurances. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things reasonably necessary, proper or advisable under applicable law, and execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and the other documents contemplated hereby and consummate and make effective the transactions contemplated hereby.

o. Termination. This Agreement and the obligations of the parties hereunder shall terminate at the end of the Effectiveness Period, except for any liabilities or obligations under Sections 4 or 5 or the proviso of Section 3(a)(xi) above, and the obligations to make payments of and provide for liquidated damages under Section 7 hereof to the extent such damages accrue prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with their terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Incyte Pharmaceuticals, Inc.

By: /s/ John M. Vuko
Title: Chief Financial Officer

Accepted as of the date first above written:

DEUTSCHE BANK SECURITIES INC.
WARBURG DILLON READ LLC

As the Initial Purchasers:

By: Deutsche Bank Securities Inc.

By: /s/ James Scopa
Title: Managing Director

EXHIBIT 10.14

LEASE

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY

LESSOR

INCYTE PHARMACEUTICALS, INC.

LESSEE

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Exhibit B Construction of Base Building and Tenant Improvement Work
Exhibit C-1 Notice of Commencement Date
Exhibit C-2 Notice of Rent Commencement Date and Expiration Date
Exhibit D Determination of Prevailing Market Rental Rate
Exhibit E Notice of Base Rent and Rentable Area
Exhibit F Outline of Stanford Research Park

LEASE

THIS LEASE is entered into as of June 19, 1997 (the "EFFECTIVE DATE"), by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY ("LANDLORD"), and INCYTE PHARMACEUTICALS, INC., a Delaware corporation ("TENANT").

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information. Each term or matter in this Article 1 shall be deemed to incorporate all of the terms set forth herein below pertaining to such matter or item and to the extent there is any conflict between the provisions of this Article 1 and any more specific provision of this Lease, such more specific provision shall control.

Building Address:	[3170] Porter Drive Palo Alto, California 94304
Address of Landlord:	Stanford Management Company 2770 Sand Hill Road Menlo Park, CA 94025-3065
Address of Tenant:	[3174] Porter Drive Palo Alto, California 94304
Key Contact for Tenant:	Dan Barbee Telephone: 415-845-4540
Alternate Contact for Tenant:	Denise Gilbert Telephone: 415-845-4515
Premises (Article 3):	(See Exhibit A)
Rentable Area of Premises (Article 3):	Approximately [85,000-95,000] sf (to be determined as provided in Section 5.1)
Term (Article 4):	
Commencement Date:	The date Landlord delivers the Premises to Tenant in accordance with Section 8.1
Rent Commencement Date:	(See Article 2)
Expiration Date:	The date 12 years after the Rent Commencement Date
Base Rent (Article 5):	Annual: $36.00 per sq. ft. Rentable Area (determined as provided in Sec. 5.1) Monthly $3.00 per sq. ft. Rentable Area
Base Rent Adjustment Dates (Article 5):	Each 12 month anniversary of the Rent Commencement Date
Tenant's Share (Article 6):	100%

Use (Article 7):	Research and development and related administrative uses (subject to the limitations in Article 7)
Parking (Article 7):	Not less than 3.3 spaces per 1,000 sf
Security Deposit (Article 31):	$275,000 Type of Deposit: Cash
Brokers (Article 33):	Cornish & Carey Commercial Real Estate Brokers

2. DEFINITIONS

As used in this Lease, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural form of the terms defined herein:

"ADDITIONAL RENT" is defined in Section 5.3.

"ADJUSTMENT DATES" is defined in Section 5.2.

"AGENTS" means with respect to either Landlord or Tenant, its respective agents, employees, officers, directors, trustees, contractors (and their subcontractors), and, in the case of Tenant, its subtenants, assignees, licensees and invitees, and any other person or entity claiming under Tenant.

"ALTERATIONS " is as defined in Section 9.1.

"APPLICABLE LAWS" means all applicable laws, statutes, codes, ordinances, orders, rules, regulations, conditions of approval, and requirements, of all federal, state, county, municipal and other governmental authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof, and all administrative or judicial orders or decrees and all permits, licenses, approvals and other entitlements issued by governmental entities, and rules of common law, relating to or affecting the Building or the use, operation or occupancy of the Premises, whether now existing or hereafter enacted, including, without limitation, all Environmental Laws.

"ASSIGNMENT" is defined in Section 18.1

"BASE RENT" means the amount stated in Article 1, to be adjusted and payable in accordance with Article 5.

"BASE BUILDING WORK" is defined in attached Exhibit B.

"BUILDING" is defined in Article 3.

"BUILDING STRUCTURE" is defined in Article 10.

"BUILDING SYSTEMS" means the heating, ventilating, air-conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building.

"BUILDING COMMON AREA" is defined in Article 3.

"COMMENCEMENT DATE" means the date Landlord delivers possession of the Premises to Tenant in accordance with Section 8.1.

"CONSTRUCTION SCHEDULE" is defined in Exhibit B.

"DELIVERY OF THE PREMISES" is defined in Section 8.1.

"ENVIRONMENTAL LAWS" means all Applicable Laws pertaining to the protection of the environment or human or animal health or safety.

"ENVIRONMENTAL ACTIVITY" is defined in Section 24.1.

"EXPIRATION DATE" means the date specified in Article 1.

"GROUND LEASE PROPERTY" is defined in Section 3.

"GROUND LESSEE" is defined in Section 3.

"HAZARDOUS MATERIAL" is defined in Section 24.1.

"INTEREST RATE" means the lesser of one and one-half percent per month or the highest lawful rate.

"LANDLORD'S TAX STATEMENT" is defined in Section 6.2.

"NOTICE OF PROPOSED TRANSFER" is defined in Section 18.2

"REAL ESTATE TAXES" is defined in Section 6.1.

"RENEWAL OPTION" is defined in Section 4.3.

"RENEWAL TERM" is defined in Section 4.3.

"RENT COMMENCEMENT DATE" means the earlier to occur of (i) the Scheduled Date for Completion of the Tenant Improvement Work, as defined in Exhibit B, as such date may be extended in accordance with the provisions of Exhibit B; or (ii) the date Tenant commences business operations in the Premises. Notwithstanding anything to the contrary contained herein, if Tenant has not commenced business operations in the Premises and Tenant has completed the Tenant Improvement Work, but Landlord has not achieved completion of the Base Building Work (other than any landscaping or other external work that does not interfere with Tenant's access, parking or use of the Premises), the Rent Commencement Date shall not be deemed to occur until the earlier of the date Tenant commences business operations in the

Premises or Landlord Completes the Base Building Work (other than any landscaping or other external work that does not interfere with Tenant's access, parking or use of the Premises).

"RENTABLE AREA" means the enclosed areas of the Building measured to the outside face of the exterior wall or glass line and second floor vertical shafts, but excluding outside balconies, arcades or covered entrances. The Rentable Area shall be determined by the architect for the Base Building Work.

"SCHEDULED DATE FOR COMPLETION OF THE TENANT IMPROVEMENT WORK" is defined in Exhibit B.

"SCHEDULED DATE FOR DELIVERY OF THE PREMISES" is defined in Exhibit B.

"STANFORD RESEARCH PARK" is the area outlined on attached Exhibit F.

"SUBLEASE" is defined in Section 18.1

"TAX YEAR" is defined in Section 6.1.

"TENANT IMPROVEMENT ALLOWANCE" is defined in Exhibit B.

"TENANT IMPROVEMENT WORK" is defined in Exhibit B.

"TENANT'S HAZARDOUS MATERIALS" is defined in Section 24.1

"TENANT'S PROPERTY" is defined in Section 9.5

"TENANT'S SHARE" is 100%.

"TENANT'S UNAVOIDABLE DELAY" is defined in Exhibit B.

"TERM" is defined in Section 4.1.

"TERMINATION DATE" means the earlier of the Expiration Date or the date this Lease is terminated pursuant to any provision hereof.

"TRANSFEREE" is defined in Section 18.2

3. PREMISES

3.1 Subject to the terms, covenants and conditions set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby hires from Landlord those premises (the "PREMISES") shown on the site plan attached hereto as Exhibit A which Premises are located within the building (the "BUILDING") shown on Exhibit A and identified in Article 1. The Premises include the entire interior of the Building and certain references to the Premises and the Building may be used interchangeably. The areas adjacent to the Building specified in Exhibit A for landscaping and parking for the exclusive use of the Premises are herein called the "BUILDING COMMON AREA". The approximate total Rentable Area of the Building is specified in Article 1. Landlord is the Ground Lessor and Lockheed Martin ("GROUND LESSEE") is the

current ground lessee under a certain ground lease dated as of March 1, 1962 (as amended, the "GROUND LEASE" which Ground Lease covers certain real property (the "GROUND LEASE PROPERTY") including the Building and the Building Common Area and the adjacent land and building occupied by the Ground Lessee. Prior to the Commencement Date, Landlord will have subleased a portion of the land from the Ground Lessee for the remainder of the term of the Ground Lease. After the expiration of the term of the Ground Lease the entire Ground Lease Property will revert to Landlord. The portion of the land subleased from the Ground Lessee will be outlined in attached Exhibit A.

3.2 Tenant shall have the right to the exclusive use of the number of parking spaces specified in Article 1, and located as designated on attached Exhibit A. Tenant shall have nonexclusive ingress and egress over the driveways of the Ground Lease Property specifically designated for access on attached Exhibit A.

3.3 Exhibit A shall not be modified except (i) if required by the City of Palo Alto Architectural Review Board (the "ARB"), in which case any required modification shall be made; or (ii) if mutually agreed by Landlord and Tenant.

4. TERM

4.1 The Premises are leased for a term (the "TERM") commencing on the Commencement Date and expiring on the Expiration Date specified in Article 1. Landlord will give Tenant not less than ten business days prior notice of the actual Commencement Date. If, for any reason whatsoever, Landlord cannot deliver possession of the Premises to Tenant on or prior to the Scheduled Date for Delivery of the Premises established in the Construction Schedule, then the validity of this Lease and the obligations of Tenant under this Lease shall not be affected and Tenant shall have no claim against Landlord arising out of Landlord's failure to deliver possession of the Premises on the date originally fixed therefor. The Term of this Lease shall end on the Expiration Date specified in Article 1, or such earlier date on which this Lease terminates pursuant to the terms hereof. If Landlord has not commenced construction of the Base Building Work on or before July 31, 1998, or (ii) if Landlord does not complete the Base Building Work to the extent necessary to permit the commencement of the Tenant Improvement Work on or before March 31, 1999, then, in either of such events, at any time prior to the time the aforesaid commencement or completion of the Base Building Work occurs, Tenant may, by written notice to Landlord, elect to terminate this Lease.

4.2 Promptly following the Commencement Date, Landlord will deliver to Tenant a notice in substantially the form attached hereto as Exhibit C-1 identifying the Commencement Date, a copy of which notice shall be executed by Tenant and promptly returned to Landlord. Promptly following the Rent Commencement Date, Landlord will deliver to Tenant a notice in substantially the form attached hereto as Exhibit C-2 identifying the Rent Commencement Date and the Expiration Date, a copy of which notice shall be executed by Tenant and promptly returned to Landlord. A copy of each such notice shall be attached hereto and be incorporated herein by this reference.

4.3 Tenant shall have two separate options (each, a "RENEWAL OPTION") to extend the term of this Lease for a period of five (5) years each (each, a "RENEWAL TERM"). No Renewal Option shall be effective if there exists a default by Tenant under any of the terms or conditions of this Lease, either at the time of exercise of the Renewal Option or the time of commencement of the applicable Renewal Term,

unless such default is cured prior to the expiration of any applicable cure period. The first Renewal Option must be exercised, if at all, by written notice from Tenant to Landlord given not less than twelve (12) months prior to the expiration of the initial term of this Lease and the second Renewal Option must be exercised, if at all, by written notice from Tenant to Landlord given not less than twelve (12) months prior to the expiration of the preceding Renewal Tenn. Each Renewal Term shall be upon the same terms and conditions as the original Term, except that the annual Base Rent applicable beginning upon the commencement of each Renewal Term shall be equal to the then Prevailing Market Rental Rate (determined as provided in attached Exhibit D). The Renewal Options are personal to Incyte Pharmaceuticals, Inc. and shall be inapplicable and null and void if Incyte Pharmaceuticals, Inc. assigns its interest under this Lease (except for an assignment permitted under Section 18.6) or subleases more than 50% of the Premises for substantially the balance of the then unexpired term of the Lease.

5. BASE RENT; ADDITIONAL RENT.

5.1 Commencing upon the Rent Commencement Date, and thereafter during the Term, Tenant shall pay to Landlord the monthly Base Rent specified in Article 1 on or before the first day of each month, in advance, at the address specified for payment of rent in Article 1, or at such other place as Landlord shall designate, without any prior demand therefor and without any deductions or setoff whatsoever. If the Rent Commencement Date occurs on a day other than the first day of a calendar month, or the Termination Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month will be prorated on the basis of a thirty-day month. The Rentable Area of the Premises shall be certified by the Base Building Architect upon Substantial Completion of the Base Building Work. Tenant may dispute the determination of the Rentable Area by written notice to Landlord given not later than five business days after receipt of notice from Landlord of the Base Building Architect's determination of the Rentable Area. In the event Tenant elects to dispute the determination, Tenant shall, at Tenant's expense, engage an independent architect, approved by Landlord in its reasonable discretion, who shall determine the Rentable Area of the Premises. Upon such determination, Landlord will deliver to Tenant a notice substantially in the form of attached Exhibit E stating the Base Rent based upon the Rentable Area and attaching the certificate executed by the Base Building Architect, or the independent architect approved by Landlord, as applicable, stating the Rentable Area.

5.2 On each twelve month anniversary of the Rent Commencement Date, including during any Renewal Term (each, an "ADJUSTMENT DATE"), the Base Rent shall be increased by 2.5% over the Base Rent for the immediately preceding twelve month period.

5.3 Tenant shall pay to Landlord all charges and other amounts required under this Lease as additional rent ("ADDITIONAL RENT") including without limitation the charges for Real Estate Taxes pursuant to Article 6 and insurance maintained by Landlord pursuant to Section 21. All such Additional Rent shall be payable to Landlord at the place where the Base Rent is payable. Landlord will have the same remedies for a default in the payment of any Additional Rent as for a default in the payment of Base Rent.

5.4 Any unpaid Base Rent or Additional Rent hereunder shall bear interest from the date due until paid at the Interest Rate. In addition, Tenant recognizes that late payment of any Base Rent or Additional Rent due hereunder will result in administrative expense to Landlord, the extent of which expense is difficult and economically impracticable to determine. Therefore, Tenant agrees that if Tenant fails to pay any Base Rent or Additional Rent within five (5) business days after the date the same is due and payable, an additional late charge of five percent (5%) of the sums so overdue shall become

immediately due and payable. Notwithstanding the foregoing, not more than one time in any twelve (12) month period, Tenant shall be entitled to five (5) business days prior written notice prior to such interest or late charge applying. Tenant agrees that the late payment charge is a reasonable estimate of the additional administrative costs and detriment that will be incurred by Landlord as a result of such failure by Tenant. In the event of nonpayment of interest or late charges on overdue Base Rent or Additional Rent, Landlord shall have, in addition to all other rights and remedies, the rights and remedies provided herein and by law for nonpayment of rent.

6. EXPENSES AND REAL ESTATE TAXES

6.1 This Lease is intended to be a net lease, and the Base Rent and Additional Rent owing hereunder is to be paid by Tenant absolutely net of all costs and expenses relating to Landlord's ownership and operation of the Building and the Building Common Area, except as expressly otherwise provided herein. The provisions of this Article 6 are intended to pass on to Tenant all such costs and expenses. For purposes of this Article 6, the following terms shall have the meanings hereinafter set forth:

(a) "TENANT'S SHARE" means the percentage figure so specified in Article 1.

(b) "TAX YEAR" means each twelve (12) consecutive month period commencing July 1 of each year during the Term, including any partial year during which the Lease may commence.

(c) "REAL ESTATE TAXES" means all taxes, assessments and charges levied upon or with respect to the Building or any personal property of Landlord used in the operation thereof, or Landlord's interest in the Building or such personal property. For purposes of this definition of Real Estate Taxes only, references to the "BUILDING" shall mean the Building and land thereunder, or, if the Building and land thereunder are not separately assessed, references in this definition to "Building" shall include the entire Ground Lease Property. (If the Building and the land thereunder are not separately assessed, the allocation of Real Estate Taxes among the buildings on the Ground Lease Property shall be determined as provided in Section 6.2.) Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services or purported benefits to the Building or the occupants thereof, service payments in lieu of taxes, and any tax, fee, or excise on the act of entering into this Lease or any other lease of space in the Building, or on the use or occupancy of the Building or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Building, that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. Real Estate Taxes shall not include franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, or, during the first five years of the Term, any increase in Real Estate Taxes resulting from a transfer of the Building or Landlord's interest therein. Real Estate Taxes shall also include reasonable legal fees, costs, and disbursements incurred in connection with proceedings to contest, determine, or reduce Real Estate Taxes.

6.2 Commencing on the Rent Commencement Date, Tenant shall pay to Landlord as Additional Rent one twelfth (1/12) of Tenant's Share of the Real Estate Taxes for each Tax Year or portion thereof during the Term, in advance, on or before the first day of each month during such Tax Year, in an amount reasonably estimated by Landlord in a writing delivered to Tenant. Landlord may revise such estimates from time to time and Tenant shall thereafter make payments on the basis of such revised estimates. With reasonable promptness after Landlord has received the tax bills for any Tax Year, Landlord will furnish Tenant with a statement ("LANDLORD'S TAX STATEMENT") setting forth the amount of Real Estate Taxes for such Tax Year and Tenant's Tax Share thereof. If Tenant's Tax Share of the actual Real Estate Taxes for such Tax Year exceeds the estimated Real Estate Taxes paid by Tenant for such Tax Year, Tenant shall pay to Landlord (whether or not this Lease has terminated) the difference between the amount paid by Tenant and Tenant's Tax Share of the actual Real Estate Taxes within fifteen (15) days after the receipt of Landlord's Tax Statement; and if the total amount of estimated Real Estate Taxes paid by Tenant for such Tax Year exceeds Tenant's Tax Share of the actual Real Estate Taxes for such Tax Year, such excess shall be credited against the next installments of Base Rent and/or Additional Rent due from Tenant hereunder, or, if after the Termination Date, such excess shall be refunded to Tenant concurrently with the furnishing of Landlord's Tax Statement. If Real Estate Taxes are not separately assessed between the buildings on the Ground Lease Property, Real Estate Taxes with respect to the land (excluding the buildings) shall be apportioned pro rata based on the respective square footage of the buildings and Real Estate Taxes with respect to the buildings, shall be apportioned between the buildings based on the respective valuations of the buildings, and Tenant's Share of Real Estate Taxes shall be based on the amounts so allocated to the Building.

6.3 If the Rent Commencement Date or Termination Date shall occur on a date other than the first or last day, respectively, of a Tax Year, Tenant's Tax Share of Real Estate Taxes for the Tax Year in which the Rent Commencement Date or Termination Date occurs shall be prorated based on a 365-day year.

7. USE OF PREMISES AND CONDUCT OF BUSINESS

7.1 Tenant shall use and occupy the Premises during the Term of this Lease solely for the uses specified in Article 1 and for no other purpose. At all times during the Term not less than 75% of the Premises shall be used for research and development and not more than 25% shall be used for related administrative purposes. Tenant's use of the Premises shall in all respects comply with all Applicable Laws. Tenant shall not use the Premises or allow the Premises to be used so as to create waste, constitute a nuisance, or disturb other occupants of the Ground Lease Property. Tenant shall not place any loads upon the floors, walls, or ceiling, which endanger the structure, or place any harmful fluids or other materials in the drainage system of the Building, or overload existing electrical or other mechanical systems. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises or outside of the Premises except in trash containers placed inside exterior enclosures designated by Landlord for that purpose or inside of the Premises where approved by Landlord. No materials, supplies, equipment, finished products or semi-finished products, raw materials or articles of any nature shall be stored upon or permitted to remain outside the Premises or on any portion of the Building Common Area unless otherwise approved by Landlord in its sole discretion. No loudspeaker or other device, system or apparatus which can be heard outside the Premises shall be used in or at the Premises without the prior written consent of Landlord.

7.2 Tenant shall have the exclusive right to use the number stated in Article 1 of parking spaces in the Building Common Area. Tenant agrees that Tenant, Tenant's employees, agents, representatives and/or invitees shall not use parking spaces in areas outside the Building Common Area. The initial location of the parking spaces in the Building Common Area will be shown on Exhibit A. Said parking spaces may be relocated by Landlord from time to time, provided that there shall at all times be not less than 3.3 parking spaces per 1,000 square feet of space of the Building. Landlord shall give Tenant written notice of any change in the location of the parking spaces; provided however, that the parking spaces shall always be located on the Ground Lease Property. Notwithstanding the foregoing, Landlord shall not make any changes to the Building Common Area that would materially interfere with Tenant's use of the Premises. Tenant agrees to assume responsibility for compliance by its employees with the parking provisions contained herein.

8. INITIAL IMPROVEMENT WORK; ACCEPTANCE; BUILDING CHANGES

8.1 Landlord shall construct the shell and core of the Building and the parking, landscaping and other improvements described as the "BASE BUILDING WORK" as specified in and in accordance with the provisions of attached Exhibit B. Landlord will use diligent efforts to cause the construction of the Base Building Work to be completed to the extent necessary for the commencement of the Tenant Improvement Work on or before the Scheduled Date for Delivery of the Premises specified in Exhibit B, subject to delays in such date beyond Landlord's reasonable control and provided that Landlord shall not be required to incur overtime costs and expenses. The Base Building Work will continue to be under progress during the construction of the Tenant Improvement Work and shall be prosecuted in such a manner so as not to cause the completion of the Tenant Improvement Work to be delayed beyond the Scheduled Date for Completion of the Tenant Improvement Work (as defined in Exhibit B) as such date may be extended as provided in Exhibit B. Landlord will, when construction progress so permits, notify Tenant in advance of the approximate date on which the Premises will be available to Tenant for the commencement of the Tenant Improvement Work, and will notify Tenant when the Premises are in fact so available, which latter notice shall constitute delivery of possession of the Premises to Tenant ("DELIVERY OF THE PREMISES") and notice of the Commencement Date of this Lease. Landlord will provide Tenant a certificate furnished by Landlord's architect certifying the date of completion of the Base Building Work. Notwithstanding the foregoing provisions of this Section 8.1 to the contrary, if the contractor for the Tenant Improvement Work is not the same contractor as the contractor for the Base Building Work, then all of the Base Building Work with respect to the interior of the Building shall be completed prior to the commencement of construction of the Tenant Improvement Work.

8.2 Tenant shall perform all of the Tenant Improvement Work as specified in, and in accordance with, the provisions of attached Exhibit B. Landlord shall provide an allowance (the "TENANT IMPROVEMENT ALLOWANCE") to be applied to the Tenant Improvement Costs in the amount of up to $30.00 per square foot of Rentable Area of the Premises. The exact amount of the Tenant Improvement Allowance shall be determined at the time the Rentable Area of the Building is determined pursuant to Section 5.1. The Tenant Improvement Allowance shall be applied to the actual Tenant Improvement Costs. Any Tenant Improvement Costs in excess of the Tenant Improvement Allowance shall be paid by Tenant. Upon completion of the design and determination of the guaranteed maximum cost of the Tenant Improvement Work, Landlord and Tenant shall establish the estimated total costs for the Tenant Improvement Work as provided in Exhibit B. If the estimated total costs of the Tenant Improvement Work exceeds the amount of the Tenant Improvement Allowance, Tenant shall pay the amount of such difference as provided in Exhibit B. Tenant shall use reasonable efforts to cause the completion of the

Tenant Improvement Work to occur on or before the Scheduled Date for Completion of the Tenant Improvement Work, as such date may be extended in accordance with the provisions of Exhibit B. It is agreed that by occupying the Premises, Tenant formally accepts the same and acknowledges that the Premises are in the condition called for hereunder, subject to latent defects and the Punchlist Items specified by Tenant to Landlord in writing in the certificate of acceptance executed by Tenant pursuant to the provisions of Exhibit B.

8.3 Without limitation of the foregoing, Tenant represents to Landlord that Tenant is aware that detectable amounts of Hazardous Materials have come to be located on, beneath and/or in the vicinity of the Premises. (See, for example Department of Toxic Substances Control, Cal EPA Remedial Action Orders No. HSA #90/91-020 dated 6/13/91 and Hillview - Porter HSA #88/89-016 dated 12/9/88, as amended, and also HSA #90/91-007 (1681 Page Mill) dated 10/25/90, HSA #90/91-004 (3165 Porter) dated 8/6/90, and HSA #86/87-012EO (3176 Porter) dated 11/12/86). Tenant has made such investigations and inquiries as it deems appropriate to ascertain the effects, if any, of such substances and contaminants on its operations and persons using the Building and the Building Common Area. Landlord makes no representation or warranty with regard to the environmental condition of the Building or the Ground Lease Property. Tenant, on behalf of itself and Tenant's Agents and their respective successors and assigns, hereby releases Landlord and Landlord's officers, directors, trustees, agents and employees from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Tenant or any of Tenant's Agents may have, claim to have, or which may hereafter accrue against the released parties or any of them, arising out of or relating to or in any way connected with Hazardous Materials presently in, on or under, or now or hereafter emanating from or migrating onto the Building or the Ground Lease Property, except that this release shall not extend to Landlord's obligations under Section 8.4.

In connection with the above release, Tenant hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor",

or by the provisions of any similar statute.

8.4 Landlord agrees to indemnify, defend (by counsel reasonably acceptable to Tenant), and hold Tenant and Tenant's officers, directors and employees, harmless from and against any investigation and remediation costs to the extent resulting from or arising out of the release, treatment, storage, use or disposal of Hazardous Materials in, on or from the Ground Lease Property that are not Tenant's Hazardous Materials including, without limitation, groundwater contamination migrating onto or under the Ground Lease Property from other properties. Landlord's indemnification obligations hereunder shall extend only to actual "out of pocket" remediation costs (including reasonable attorneys' fees, and investigation, oversight and response costs) but shall not include consequential damages or incidental damages such as lost profits or any loss of rental value of the Premises suffered or allegedly suffered by Tenant or any of Tenant's Agents.

8.5 Landlord reserves the right, at any time and from time to time, to make alterations, additions or improvements to the arcades, plazas and walkways outside the Building provided that any such alterations, additions or improvements shall not materially diminish the quality or quantity of services being provided to the Premises or adversely affect the functional utilization of the Premises.

9. ALTERATIONS BY TENANT

9.1 After completion of the Tenant Improvement Work, Tenant shall not make or permit any alterations to the Building Systems, and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (herein individually called an "ALTERATION" and collectively called "ALTERATIONS") in or to the Premises or the Building without Landlord's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord's consent shall not be required in the case of interior, non-structural Alterations the total cost of which does not exceed Seventy-Five Thousand Dollars ($75,000). All Alterations shall be done at Tenant's expense, in accordance with any design guidelines established by Landlord and plans and specifications approved by Landlord (unless Landlord approval is not required, in which case Tenant shall provide Landlord in advance with all plans and specifications and other information describing in detail the work to be performed), and subject to all other conditions which Landlord may in its reasonable discretion impose. Landlord may condition its consent to any proposed Alteration requiring Landlord's consent on Tenant's agreement to remove such Alteration and to restore the Building to its condition prior to the making of the Alteration on or before the Termination Date. Tenant shall be solely responsible for obtaining at its sole cost and expense, all permits and approvals required for any Alterations. Tenant shall pay to Landlord upon demand Landlord's reasonable out-of-pocket costs incurred in reviewing plans and specifications and otherwise in connection with Landlord's review of any Alterations requiring Landlord's approval.

9.2 The following provisions of this Section 9.2 shall apply only to Alterations requiring Landlord's approval:

(a) Prior to entering into a contract for such Alterations, Tenant shall obtain Landlord's written approval, which approval shall not be unreasonably withheld, of the identity of each of the design architect and the general contractor.

(b) Before commencing the construction of any such Alterations, Tenant shall procure or cause to be procured the insurance coverage described below in the limits hereinafter provided, and provide Landlord with certificates of such insurance in form reasonably satisfactory to Landlord. All such insurance shall comply with the following requirements of this Section 9.2(b) and Article 21.

(i) During the course of construction, to the extent not covered by property insurance maintained by Tenant pursuant to Article 21, comprehensive "all risk" builder's risk insurance, including vandalism and malicious mischief, excluding earthquake and flood, covering all improvements in place on the Premises, all materials and equipment stored at the site and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Tenant or its construction manager, contractors or subcontractors (excluding any contractors', subcontractors' and construction managers' tools and equipment, and property owned by the employees of the construction manager, any

contractor or any subcontractor), such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of Alterations.

(ii) Comprehensive liability insurance covering Tenant, Landlord and each construction manager, contractor and subcontractor engaged in any work on the Premises, which insurance may be effected by endorsement, if obtainable, on the policy required to be carried pursuant to Article 21, including insurance for completed operations, elevators, owner's, construction manager's and contractor's protective liability, products completed operations for three (3) years after the date of acceptance of the work by Tenant, broad form blanket contractual liability, broad form property damage and full form personal injury (including but not limited to bodily injury), covering the performance of all work at or from the Premises by Tenant, its construction manager, contractors and subcontractors, and in a liability amount not less than the amount at the time carried by prudent owners of comparable construction projects in the Santa Clara valley, but in any event not less than Two Million Dollars ($2,000,000) combined single limit, which policy shall contain a cross-liability clause or separation of insureds provision and an endorsement deleting the property damage exclusion as to explosion, underground, and collapse hazards, and shall include thereunder for the mutual benefit of Landlord and Tenant, bodily injury liability and property damage liability automobile insurance on any non-owned, hired or leased automotive equipment used in the construction of any work.

(iii) Workers' Compensation Insurance, or self insurance approved by the State of California, in the amounts and coverages required under workers' compensation, disability and similar employee benefit laws applicable to the Premises, and Employer's Liability Insurance with limits not less than One Million Dollars ($ 1,000,000) or such higher amounts as may be required by law.

9.3 The following provisions of this Section 9.3 shall apply to all Alterations:

(a) All construction and other work in connection with any Alterations shall be done at Tenant's sole cost and expense and in a prudent and first class manner. Tenant shall construct the Alterations in strict accordance with all Applicable Laws, and with plans and specifications that are in accordance with the provisions of this Article 9 and all other provisions of this Lease. Alterations shall be at least equal in quality to the Initial Improvements as initially constructed.

(b) Prior to the commencement of any construction, alteration, addition, improvements, repair or landscaping in excess of Ten Thousand Dollars ($10,000), Landlord shall have the right to post in a conspicuous location on the Premises as well as to record with the County of Santa Clara, a Notice of Landlord's Nonresponsibility. Tenant covenants and agrees to give Landlord at least ten (10) days prior written notice of the commencement of any such construction, alteration, addition, improvement, repair or landscaping in order that Landlord shall have sufficient time to post such notice.

(c) Tenant shall take all necessary safety precautions during any construction.

(d) Tenant shall prepare and maintain (i) on a current basis during construction, annotated plans and specifications showing clearly all changes, revisions and substitutions during construction, and (ii) upon completion of construction, as-built drawings showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other

significant features. These as-built drawings and annotated plans and specifications shall be kept at the Premises and Tenant shall update them as often as necessary to keep them current. The as-built drawings and annotated plans and specifications shall be made available for copying and inspection by Landlord at all reasonable times.

(e) Upon completion of the construction of any Alterations in excess of Ten Thousand Dollars ($10,000) during the Term, Tenant shall file for recordation, or cause to be filed for recordation, a notice of completion and shall deliver to Landlord evidence satisfactory to Landlord of payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction (except for liens that are contested in the manner provided herein).

9.4 Except as provided in Section 9.5, all appurtenances, fixtures, improvements, equipment, additions and other property attached to or installed in the Premises at the commencement of or during the Term, whether temporary or permanent in nature, shall immediately be and remain the property of Landlord and at the end of the Term, all such appurtenances, fixtures, improvements, equipment, additions and property shall, at Landlord's option, either remain on the Premises without compensation to Tenant, or be removed in accordance with Section 9.5. At the request of Tenant, Landlord will notify Tenant in writing at the time of Landlord's approval whether or not the proposed Alterations will be required to be removed. Tenant shall have no obligation to remove any (a) Tenant Improvement Work, or (b) any Alterations that Landlord has specified in writing would not be required to be removed.

9.5 All furniture, furnishings, equipment and articles of movable personal property installed in the Premises by or for the account of Tenant and not paid for by the Tenant Improvement Allowance (except for ceiling and related fixtures, HVAC equipment and floor coverings), and which can be removed without structural or other material damage to the Building (all of which are herein called "TENANT'S PROPERTY") shall be and remain the property of Tenant and may be removed by it at any time during the Term; provided, however, that any equipment or other property which was paid for by the Tenant Improvement Allowance or which is a replacement for items originally paid for by the Tenant Improvement Allowance shall not be considered Tenant's Property. Upon the Termination Date, Tenant shall have removed from the Premises all of Tenant's Property except such items as the parties have agreed are to remain and to become the property of Landlord and, upon the request of Landlord, Tenant, at its sole cost and expense, shall also remove any Alterations designated by Landlord to be removed and not previously specified by Landlord as not required to be removed. Tenant shall be entitled to remove any Alteration provided that Tenant shall restore the Premises to its condition prior to the making of such Alteration. Tenant shall repair or pay the cost of repairing any damage to the Building resulting from such removal. If Tenant fails to perform such obligations, Landlord, without limitation of any other right or remedy, may perform such obligations at Tenant's expense and Tenant shall promptly reimburse Landlord upon demand for all costs and expenses incurred by Landlord in connection therewith. Tenant's obligations under this Section 9.5 shall survive the termination of this Lease. Any items of Tenant's Property which shall remain in the Premises after the Termination Date may, at the option of Landlord, be deemed abandoned and in such case may either be retained by Landlord as its property or be disposed of, without accountability, at Tenant's expense in such manner as Landlord may see fit.

10. REPAIRS AND MAINTENANCE

10.1 Landlord, at Landlord's sole cost and expense, will repair and maintain the foundation, structural walls and structural elements of the roof (the "BUILDING STRUCTURE") in a first class condition in

accordance with the standards of the Stanford Research Park subject to ordinary wear and tear, casualty and condemnation and any acts of Tenant. Landlord shall not be liable for any failure to make any repair or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need for such repair or maintenance is received by Landlord. If Landlord's failure to make such repair or undertake such maintenance within a reasonable time after receipt of Tenant's notice of the need for such repair poses a serious risk of harm to Tenant or Tenant's Agents or material interference with the conduct of Tenant's operations in the Premises, Tenant shall so notify Landlord and if Landlord fails to promptly commence such repair or maintenance Tenant shall be entitled to undertake such repair or maintenance and to make a claim against Landlord for reimbursement for the reasonable costs of such repair or maintenance. There shall be no abatement of rent and, except to the extent caused by the gross negligence or willful misconduct of Landlord, no liability of Landlord, by reason of any injury to Tenant's business or interference with Tenant's business arising from the making of any repairs, alterations or improvements to any portion of the Building or to fixtures, appurtenances and equipment therein. In the conduct of any such repairs or maintenance, Landlord shall use prudent efforts to minimize, to the extent practicable, interference with the conduct of Tenant's operations in the Premises. At Tenant's request, Landlord will conduct such repairs or maintenance during non-business hours, provided that Tenant pays all overtime or other additional costs resulting therefrom.

10.2 During the Term, Tenant shall, at its own cost and expense and without any cost or expense to Landlord, keep and maintain the Building (other than the Building Structure) and the Building Common Area and every part thereof, and the equipment, fixtures and improvements therein, including, without limitation, the Building Systems, in a first class condition in accordance with the standards of the Stanford Research Park, subject to ordinary wear and tear, casualty and condemnation and any acts of Landlord, and in compliance with all Applicable Laws. Tenant shall promptly make all repairs, replacements and alterations necessary to maintain the Building (other than the Building Structure) and the Building Common Area in such first class condition and in compliance with all Applicable Laws and to avoid any structural damage or injury to the Premises. All repairs and replacements by Tenant shall be made and performed: (a) at Tenant's cost and expense, (b) by contractors or mechanics approved by Landlord, (c) so that same shall be at least equal in quality, value and utility to the original work or installation, and (d) in accordance with all Applicable Laws. Except as otherwise expressly provided in this Lease, Landlord shall not be obligated to make to the Premises any repairs, replacements or renewals of any kind, nature or description whatsoever and Tenant hereby expressly waives any right to terminate this Lease and any right to make repairs at Landlord's expense under Sections 1932(l), 1941 and 1942 of the California Civil Code, or any amendments thereof or any similar law, statute or ordinance now or hereafter in effect.

11. LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. If Tenant shall not, within ten (10) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right but not the obligation to cause any such lien to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith (including, without limitation, reasonable counsel fees) shall be payable to Landlord by Tenant upon demand. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Landlord shall deem proper for the

protection of Landlord, the Premises, and the Building, from mechanics' and materialmen's liens. Tenant shall give to Landlord at least five (5) business days' prior written notice of commencement of any repair or construction on the Premises.

12. UTILITIES

Tenant shall be solely responsible for and shall make and all arrangements for and shall pay for all utilities and services furnished to or used at the Premises, including, without limitation, all water, gas, electricity, telephone and other electronic communications service, sewer service, waste pick-up and any other utilities, materials or services furnished directly to the Premises.

13. COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS

13.1 Tenant, at Tenant's cost and expense, shall comply with all Applicable Laws. Without in any way limiting the generality of the foregoing obligation of Tenant, except as expressly provided in attached Exhibit B with respect to the Base Building Work, Tenant shall be solely responsible for compliance with and shall make or cause to be made all such improvements and alterations to the Premises (including, without limitation, removing such barriers and providing such alternative services) as shall be required by the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the "ADA"), and Title 24 of the California Code of Regulations as the same may be amended from time to time, or by any similar or successor law and the rules promulgated thereunder. Tenant's liability shall be primary and Tenant shall indemnify Landlord in accordance with Section 21.1 in the event of any failure or alleged failure of Tenant to comply. Any work or installations made or performed by or on behalf of Tenant or any person or entity claiming through or under Tenant pursuant to the provisions of this Article 13 shall be made in conformity with and subject to the provisions of Article 9.

13.2 Tenant shall not do anything, or permit anything to be done, in or about the Premises that would: (a) invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Building or any property located therein, or (b) result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord, or (c) subject Landlord to any liability or responsibility for injury to any person or property by reason of any business operation being conducted in the Premises. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.

14. SUBORDINATION

14.1 Without the necessity of any additional documentation, this Lease shall be subject and subordinate at all times to: (a) all reciprocal easement agreements, the Ground Lease, the sublease between Landlord and the Ground Lessee (the "SUBLEASE"), and any other ground leases or underlying leases which may now exist or hereafter be executed affecting any or all of the Building (provided that Landlord agrees not to enter into any easement agreement that would materially interfere with Tenant's access to the Premises or use of Tenant's parking area), and (b) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Building, the ground leases or underlying leases, or Landlord's interest or estate in any of said items, is specified as security. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated to this Lease any of the items

referred to in clause (a) or (b) above. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, (i) no person or entity which as a result of the foregoing succeeds to the interest of the Landlord under the Lease, (any such person or entity being herein referred to as a "SUCCESSOR") shall be liable for any default by Landlord or any other matter that occurred prior to the date such Successor succeeded to Landlord's interest in this Lease, and (ii) Tenant shall, notwithstanding any subordination, attorn to and become the tenant of the Successor. Notwithstanding anything to the contrary contained herein, if the Ground Lease terminates for any reason whatsoever, this Lease shall remain in full force and effect. The provisions of this Article 14 shall be self-operative and no further instrument shall be required. Tenant covenants and agrees, however, to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any reasonable additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases, underlying leases, reciprocal easement agreements or similar documents or instruments, or with respect to the lien of any such mortgage or deed of trust and Tenant's failure to execute and deliver any such document within ten (10) business days after such demand by Landlord shall constitute an Event of Default under this Lease. Notwithstanding the foregoing, Tenant shall not be required to effectuate such subordination unless the mortgagee or trustee named in such mortgage, deed of trust or other encumbrance or the parties to such ground or underlying lease, shall first agree in writing, for the benefit of Tenant, that so long as Tenant is not in default under any of the provisions, covenants or conditions of this Lease on the part of Tenant to be kept and performed beyond any notice and applicable cure periods, that neither this Lease nor any of Tenant's rights hereunder shall be terminated or modified or be subject to termination or modification, nor shall Tenant's possession of the Premises be disturbed or interfered with, by any Trustee's sale or by an action or proceeding to foreclose said mortgage, deed of trust or other encumbrance or termination of such ground or underlying lease. Should a lender or prospective lender providing financing for the Building, or a prospective purchaser of the Building require financial statements relating to Tenant, Tenant shall submit to such lender or prospective lender or purchaser any such financial statements, and shall keep such reports current so long as such lender or prospective lender or purchaser shall require, provided that Tenant shall not be required to produce any financial statements that Tenant does not prepare and maintain in the normal course of its business. Landlord agrees to use its best efforts to maintain the confidentiality of all information regarding Tenant's business obtained pursuant to this Article 14.

15. LANDLORD'S INABILITY TO PERFORM

If Landlord is unable to perform, or is delayed in performing, any construction, installations, decorations, repairs, alterations, additions or improvements, under this Lease, or is unable to fulfill or is delayed in fulfilling any of Landlord's other obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain utilities or materials or by any other reason beyond Landlord's reasonable control, then no such inability or delay by Landlord shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Base Rent or Additional Rent, or relieve Tenant from any of its obligations under this Lease, or impose any liability upon Landlord or its agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby. Tenant hereby waives and releases any right to terminate this Lease under Section 1932(l) of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

16. DESTRUCTION

16.1 If the Premises or the Building or any portion thereof (whether or not the Premises are affected) are damaged by fire or other casualty, Landlord shall forthwith repair the same (including the Tenant Improvement Work and any Tenant's Alterations that, pursuant to Section 9.4, Landlord has specified would not be required to be removed) provided that such repairs can be made under the laws and regulations of the federal, state and local governmental authorities having jurisdiction thereof within six (6) months after the date of such damage (or in the case of damage occurring during the last twelve (12) months of the Term, provided that such repairs can be made within sixty (60) days after the date of such damage) and are fully covered (except for any deductible) by proceeds of insurance required to be maintained by Landlord pursuant to Section 21.7 hereof, and, in the case of damage resulting from earthquake, the cost of such repairs that is not fully covered by insurance proceeds does not exceed five percent (5%) of the replacement cost of the Building. In such event, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent and Tenant's Share of Real Estate Taxes from the date of such casualty and during the period such repairs are being made by a proportionate amount based upon the extent of interference with Tenant's operations in the Premises. As soon as reasonably practicable but in any event within sixty (60) days after the date of such damage, Landlord shall notify Tenant whether or not the aforesaid requirements are met. If such requirements are not met, Landlord shall have the option, exercisable within sixty (60) days after the date of such damage either to: (a) notify Tenant of Landlord's intention to repair such damage, in which event this Lease shall continue in full force and effect (unless terminated by Tenant pursuant to Section 16.2 below); Landlord shall diligently prosecute such repairs to completion, and the Base Rent and Tenant's Share of Real Estate Taxes shall be reduced as provided herein; or (b) notify Tenant of Landlord's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given. If such notice to terminate is given by Landlord, this Lease shall terminate on the date specified in such notice.

16.2 If the Premises are damaged by fire or other casualty, or the Building is damaged by fire or other casualty to such extent that the Premises are rendered inaccessible or substantially unusable by Tenant for the conduct of its operations, Landlord has not exercised its right to terminate this Lease, and Landlord has notified Tenant that the necessary repairs thereof cannot be completed within nine (9) months (or in the case of damage occurring in the last twelve (12) months of the Term, within sixty (60) days), then Tenant shall have the option, exercisable within thirty (30) days after receipt of Landlord's notice, to terminate this Lease as of a date specified in such notice which shall not be more than sixty (60) days after such notice is given. If such notice to terminate is given by Tenant, this Lease shall terminate on the date specified in such notice.

16.3 In case of termination pursuant to Sections 16.1 or 16.2 above, the Base Rent and Tenant's Share of Real Estate Taxes shall be reduced by a proportionate amount based upon the extent to which such damage interfered with the business carried on by Tenant in the Premises, and Tenant shall pay such reduced Base Rent and Real Estate Taxes up to the date of termination. Landlord agrees to refund to Tenant any Base Rent and Additional Rent previously paid for any period of time subsequent to such date of termination or otherwise in excess of the amount due hereunder. The repairs to be made hereunder by Landlord shall not include, and Landlord shall not be required to repair, any damage by fire or other cause to the property of Tenant or the Tenant Improvement Work or any damage caused by the negligence of Tenant, its contractors, agents, licensees or employees or any repairs or replacements of any paneling,

decorations, railings, floor coverings, or any Alterations, additions, fixtures or improvements installed on the Premises by or at the expense of Tenant.

16.4 If Landlord elects or is required hereunder to repair, reconstruct or restore the Premises after any damage or destruction thereto, Tenant shall be responsible for, at its own expense and at its election, the repair and replacement of Tenant's Property and any Alterations (other than any Alterations that, pursuant to Section 9.4, Landlord has specified would not be required to be removed). Tenant hereby waives the provisions of Section 1932(2) and Section 1933(4) of the California Civil Code, or any other statute or law that may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated or a tenant is given the right to terminate a lease upon such an occurrence.

16.5 Tenant shall have no interest in or claim to any portion of the proceeds of any insurance maintained by Landlord. If Landlord is entitled and elects not to rebuild the Premises hereunder, Landlord shall relinquish to Tenant such claim as Landlord may have for any part of the proceeds of any insurance maintained by Tenant under Section 21.2(b) of this Lease. Except as otherwise provided herein, Landlord shall have no interest in or claim to any portion of the proceeds of any insurance maintained by Tenant under Section 21.2(b).

16.6 If Landlord is required or elects to make any repairs, reconstruction or restoration of any damage or destruction to the Premises under any of the provisions of this Article 16, Tenant shall not be entitled to any damages by reason of any inconvenience or loss sustained by Tenant as a result thereof. During the period commencing with the date of any such damage or destruction that Landlord is required or elects hereunder to repair, reconstruct or restore, and ending with the completion of such repairs, reconstruction or restoration the Base Rent and Tenant's Share of Real Estate Taxes shall be proportionately reduced based upon the extent to which such damage and the making of such repairs by Landlord shall interfere with the business carried on by Tenant in the Premises. The full amount of Base Rent and Tenant's Share of Real Estate Taxes shall again become payable immediately upon the completion of such work of repair, reconstruction or restoration. Except as expressly hereinabove provided, there shall be no reduction, change or abatement of any rental or other charge payable by Tenant to Landlord hereunder, or in the method of computing, accounting for or paying the same.

17. EMINENT DOMAIN

17.1 If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, this Lease shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking of the Premises, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other within thirty (30) days after the eminent domain proceeding is final, provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature as substantially to handicap, impede or impair Tenant's use of the balance of the Premises. If any material part of the Building Common Area shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, whether or not the Premises are affected, Landlord shall have the right to terminate this Lease by written notice to Tenant given within thirty (30) days after the date that the eminent domain proceeding is final. If any material part of the Building Common Area shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, such that Tenant's access to or use of the Premises is materially adversely affected, Tenant shall have the right

to terminate this Lease by written notice to Landlord given within thirty (30) days after the date that the eminent domain proceeding is final. In the event of any taking, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise; provided that Landlord shall have no claim to any portion of the award that is specifically allocable to Tenant's relocation expenses or the interruption of or damage to Tenant's business or for Tenant's Property. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the Base Rent thereafter to be paid shall be adjusted as follows:

(a) During the period between the date of such actual taking and the completion of said repairs, reconstruction or restoration, Tenant shall be entitled to a reduction of Base Rent and Tenant's Share of Real Estate Taxes by a proportionate amount based upon the extent of interference with Tenant's operations in the Premises.

(b) Upon completion of said repairs, reconstruction or restoration, and thereafter throughout the remainder of the Lease Term, the Base Rent shall be recalculated based on the remaining total number of square feet of Rentable Area of the Premises.

(c) A voluntary sale by Landlord of all or any part of the Building or the Building Common Area to any public or quasi-public body, agency or person, corporate or otherwise, having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain for the purposes of this Article 17.

17.2 Notwithstanding any other provision of this Article 17, if a taking occurs with respect to all or any portion of the Premises for a period of twelve months or less, this Lease shall remain unaffected thereby and Tenant shall continue to pay Base Rent and Additional Rent and to perform all of the terms, conditions and covenants of this Lease, provided that Tenant shall have the right to terminate this Lease if the taking continues beyond twelve months. In the event of any such temporary taking, and if this Lease is not terminated, Tenant shall be entitled to receive all of the award which represents compensation for the use or occupancy of the Premises during the Term.

17.3 Tenant hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law, statute or ordinance now or hereafter in effect.

18. ASSIGNMENT AND SUBLETTING

18.1 Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, "ASSIGNMENT", or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises (collectively, "SUBLEASE" without Landlord's prior written consent in each instance, as provided herein below, which consent, subject to the remaining provisions of this Article 18, shall not be unreasonably withheld.

18.2 If Tenant desires to enter into an Assignment of this Lease or a Sublease of the Premises or any portion thereof, it shall give written notice (herein called "NOTICE OF PROPOSED TRANSFER") to Landlord of Tenant's intention to do so, which notice shall contain (i) the name and address of the proposed assignee, subtenant or occupant ("TRANSFEREE"), (ii) the nature of the proposed Transferee's business to be carried on in the Premises, (iii) the terms and provisions of the proposed Assignment or Sublease and (iv) such financial information as Landlord may reasonably request concerning the proposed Transferee. Without limitation of any other provision hereof, it shall not be unreasonable for Landlord to withhold its consent if (x) an Event of Default has occurred, (y) the use of the Premises would not comply with the provisions of this Lease, or (z) in Landlord's reasonable judgment, the proposed Transferee does not have the financial capability to perform its obligations under the Lease.

18.3 Landlord shall use reasonable efforts to respond to Tenant's request for approval within thirty (30) days after receipt of the Notice of Proposed Transfer. If Landlord approves the proposed Assignment or Sublease, Tenant may, not later than ninety (90) days thereafter, enter into such Assignment or Sublease with the proposed Transferee upon the terms and conditions set forth in the Notice of Proposed Transfer, and fifty percent (50%) of the Excess Rent received by Tenant shall be paid to Landlord as and when received by Tenant. For purposes hereof "EXCESS RENT" means any rent or other consideration received by Tenant in excess of (i) the Base Rent and Additional Rent payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease in the case of a sublease of a portion of the Premises) and (ii) reasonable brokerage commissions and tenant improvement costs incurred in connection with such Sublease or Assignment. In addition "EXCESS RENT" shall not include any portion of Rent payable by the Transferee that is attributable to the value of Tenant Improvement Work paid for by Tenant.

18.4 In addition to Landlord's other rights hereunder, Landlord shall have the right at any time within thirty (30) days after Landlord's receipt of the Notice of Proposed Transfer with respect to a sublease for substantially the remaining term of this Lease or with respect to an Assignment, by written notice to Tenant, to elect to terminate this Lease as to the portion (or all as applicable) of the Premises that is specified in the Notice of Proposed Transfer. If Landlord elects to terminate the Lease pursuant hereto, Landlord shall be entitled to enter into a lease with respect to the Premises (or portion thereof specified in said Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

18.5 No Sublease or Assignment by Tenant nor any consent by Landlord thereto shall relieve Tenant of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment that is not in compliance with this Article 18 shall be null and void and, at the option of Landlord, shall constitute a noncurable default by Tenant under this Lease and Landlord shall be entitled to pursue any right or remedy available to Landlord under the terms of this Lease or under the laws of the State of California. The acceptance of any rent or other payments by Landlord from a proposed Transferee shall not constitute consent to such Sublease or Assignment by Landlord or a recognition of any Transferee, or a waiver by Landlord of any failure of Tenant or other Transferor to comply with this Article 18.

18.6 Notwithstanding anything in this Article 18 to the contrary, but subject to the provisions of Section 18.7 below, Landlord's prior written consent shall not be required for a transfer of corporate shares by bequest or inheritance between or among the present majority stockholders of Tenant, to their immediate family, or any trust created for the benefit of such immediate family member or members; or any assignment of this Lease to any of the following: (i) a subsidiary, affiliate, division or corporation

controlled by, controlling, or under common control with Tenant; (ii) a successor corporation related to Tenant by merger, consolidation, or non-bankruptcy reorganization, (iii) a purchaser of substantially all of Tenant's assets, or (iv) in the case of a public offering of the stock of Tenant, the purchasers of Tenant's capital stock; provided that after such assignment or transfer the operation of the business conducted in the Premises shall be in the manner required by this Lease. For purposes of the preceding sentence, the term "CONTROL" means owning directly or indirectly fifty percent (50%) or more of the beneficial interest in such entity, or having the direct or indirect power to control the management policies of such person or entity, whether through ownership, by contract or otherwise.

In addition, Landlord's consent shall not be required for the granting of a security interest in any removable equipment installed by Tenant in the Premises, provided that such security interest shall require that any foreclosure and removal of such equipment shall be undertaken promptly and any damage caused by such removal shall be repaired at no cost to Landlord.

Tenant agrees to inform Landlord in writing within thirty (30) days of any assignment or other transfer or granting of any security interest referred to in this Section 18.6.

18.7 With respect to any Assignment, any Transferee approved by Landlord shall, from and after the effective date of the Assignment, assume all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of Rent and Additional Rent, and for the performance of all of the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term. No Assignment shall be binding on Landlord unless Tenant or Transferee shall deliver to Landlord a counterpart of the Assignment and an instrument that contains a covenant of assumption by such Transferee satisfactory in substance and form to Landlord, and consistent with the requirements of this Section 18.7. Any failure or refusal of such Transferee to execute such instrument of assumption shall constitute a default under this Lease but shall not release or discharge such Transferee from its liability as set forth above.

19. DEFAULT

19.1 The occurrence of any of the following shall be an Event of Default on the part of Tenant hereunder:

(a) Failure to pay any part of the Base Rent or Additional Rent herein reserved, or any other sums of money that Tenant is required to pay hereunder at the times or in the manner herein provided, when such failure shall continue for a period of five (5) days after written notice thereof from Landlord to Tenant; any such notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord expressly so elects in such notice.

(b) Failure to perform any nonmonetary provision of this Lease when such failure shall continue for a period of thirty (30) days, or such other period as is expressly set forth herein, after written notice thereof from Landlord to Tenant; any such notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161; provided that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then an Event of Default shall not be deemed to have occurred if Tenant shall commence such cure within said thirty (30) day period and

thereafter diligently and continuously prosecute such cure to completion. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord expressly so elects in such notice.

(c) The abandonment of the Premises.

(d) Tenant shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, dissolution or liquidation under any law or statute of any government or any subdivision thereof either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises.

(e) A court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Tenant or of the whole or any substantial part of the Premises and such order, judgment or decree shall not be vacated, set aside or stayed within forty-five (45) days after the date of entry of such order, judgment, or decree, or a stay thereof shall be thereafter set aside.

(f) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order, judgment or decree shall not be vacated, set aside or stayed within forty-five (45) days from the date of entry of such order, judgment or decree, or a stay thereof shall be thereafter set aside.

19.2 Upon the occurrence of an Event of Default, Landlord shall have the following rights and remedies:

(a) The right to terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises in accordance with Article 40, and pay to Landlord all Base Rent, Additional Rent and other charges and amounts due from Tenant hereunder to the date of termination.

(b) The rights and remedies described in California Civil Code Section 1951.2, including without limitation, the right to recover the worth at the time of award of the amount by which the Base Rent, Additional Rent and other charges payable hereunder for the balance of the Term after the time of award exceed the amount of such rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subdivision (b) of said Section 1951.2, and the right to recover any amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom which, without limiting the generality of the foregoing, includes unpaid taxes and assessments, any direct costs or expenses incurred by Landlord in recovering possession of the Premises, maintaining or preserving the Premises after such default, preparing the Premises for reletting to a new tenant, any repairs or alterations to the Premises for such reletting, leasing commissions, architect's fees and any other costs necessary or appropriate either to relet the Premises or, if reasonably necessary in order to relet the Premises, to adapt them to another beneficial use by Landlord and such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

(c) The right's and remedies described in California Civil Code Section 1951.4 that allow Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Base Rent, Additional Rent and other charges payable hereunder as they become due, for so long as Landlord does not terminate Tenant's right to possession. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession.

(d) The right and power, as attorney in fact for Tenant, to enter and to sublet the Premises, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Tenant under any permitted subleases and Landlord is hereby authorized on behalf of Tenant, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as Landlord deems necessary in connection therewith. Tenant shall be liable immediately to Landlord for all direct costs and expenses Landlord reasonably incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. Landlord is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Tenant, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as Landlord in its sole discretion may deem proper. Tenant shall be liable immediately to Landlord for all reasonable costs Landlord incurs in reletting the Premises including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting. If Landlord relets the Premises or any portion thereof, such reletting shall not relieve Tenant of any obligation hereunder, except that Landlord shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Tenant hereunder to the extent that such rent or other proceeds compensate Landlord for the nonperformance of any obligation of Tenant hereunder. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. Landlord may execute any lease made pursuant hereto in its own name, and the tenant thereunder shall be under no obligation to see to the application by Landlord of any rent or other proceeds, nor shall Tenant have any right to collect any such rent or other proceeds. Landlord shall not by any reentry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless Landlord shall have given Tenant express written notice of Landlord's election to do so as set forth herein.

(e) The right to have a receiver appointed upon application by Landlord to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to Section 19.2(d).

(f) The right to enjoin, and any other remedy or right now or hereafter available to a Landlord against a defaulting Tenant under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.

19.3 Except as otherwise expressly provided in this Article 19, Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any right of redemption or relief from forfeiture

under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, if Tenant is evicted or Landlord takes possession of the Premises by reason of any Event of Default.

19.4 The various rights and remedies reserved to Landlord herein, including those not specifically described herein, shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity and the exercise of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Landlord of any or all other rights and remedies.

20. LANDLORD'S RIGHT TO CURE TENANT'S DEFAULTS

If Tenant shall fail or neglect to do or perform any act or thing herein provided by it to be done or performed and such failure shall not be cured within any grace period provided herein, then Landlord may, but shall not be required to, make any payment payable by Tenant hereunder, discharge any lien, take out, pay for and maintain any insurance required hereunder, or do or perform or cause to be done or performed any such other act or thing (entering upon the Premises for such purposes, if Landlord shall so elect), and Landlord shall not be or be held liable or in any way responsible for any loss, disturbance, inconvenience, annoyance or damage resulting to Tenant on account thereof, and Tenant shall repay to Landlord upon demand the entire reasonable cost and expense thereof, including, without limitation, compensation to the agents, consultants and contractors of Landlord and reasonable attorneys' fees and expenses. Landlord may act upon shorter notice or no notice at all if necessary in Landlord's reasonable judgment to meet an emergency situation or governmental or municipal time limitation or to protect Landlord's interest in the Premises. Landlord shall not be required to inquire into the correctness of the amount of validity or any tax or lien that may be paid by Landlord and Landlord shall be duly protected in paying the amount of any such tax or lien claimed and in such event Landlord also shall have the full authority, in Landlord's sole judgment and discretion and without prior notice to or approval by Tenant, to settle or compromise any such lien or tax. Any act or thing done by Landlord pursuant to the provisions of this Article shall not be or be construed as a waiver of any such default by Tenant, or as a waiver of any term, covenant, agreement or condition herein contained or of the performance thereof.

21. INDEMNITY; INSURANCE

21.1 (a) Tenant shall indemnify, protect, defend, with attorneys approved by Landlord in its reasonable discretion, and save and hold Landlord, and its trustees, directors, officers, agents and employees, harmless, from and against any and all losses, costs, liabilities, claims, damages and expenses, including, without limitation, reasonable attorneys' fees and costs including Landlord's in-house counsel, and reasonable investigation costs, incurred in connection with or arising from: (a) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed, or (b) the use or occupancy or manner of use or occupancy of the Premises, or (c) the condition of the Premises or any occurrence on the Premises from any cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents, or (d) any acts or omissions or negligence of Tenant or of Tenant's Agents, in, on or about the Premises or the Building. In case any claim, action or proceeding be brought, made or initiated against Landlord relating to any matter covered by Tenant's indemnification obligations under this Section 21.1 or under Section 24.3 below, Tenant, upon notice from Landlord, shall at its sole cost and expense, resist or defend such claim, action or proceeding. Notwithstanding the foregoing, Landlord may retain its own attorneys to defend or assist in defending any claim, action or proceeding involving potential liability

of Five Million Dollars ($5,000,000) or more, and Tenant shall pay the reasonable fees and disbursements of such attorneys. Tenant's obligations under this Section 21.1 shall survive the termination of the Lease.

(a) (b) Landlord shall indemnify and hold harmless Tenant from all damages, liabilities, claims, judgments, actions, attorneys' fees, consultants' fees, costs and expenses to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's Agents or the breach of Landlord's obligations under this Lease. In case any claim, action or proceeding be brought, made or initiated against Tenant relating to any matter covered by Landlord's indemnification obligations under this Section 21.1(b), Landlord, upon notice from Tenant, shall at its sole cost and expense, resist or defend such claim, action or proceeding by attorneys reasonably approved by Tenant. Notwithstanding the foregoing, Tenant may retain its own attorneys to defend or assist in defending any claim, action or proceeding involving potential liability of Five Million Dollars ($5,000,000) or more, and Landlord shall pay the reasonable fees and disbursements of such attorneys. Landlord's obligations under this Section 21.1(b) shall survive the termination of the Lease.

21.2 Tenant shall procure at its sole cost and expense and keep in effect during the Term:

(a) commercial general liability insurance applying to the use and occupancy of the Premises and the Building and any part thereof. Such insurance shall include broad form contractual liability insurance coverage insuring Tenant's obligations under this Lease. Such coverage shall have a minimum combined single limit of liability of not less than Three Million Dollars ($3,000,000.00). All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned occurring during the policy term, with at least the following endorsements to the extent such endorsements are generally available: (i) deleting any employee exclusion on personal injury coverage, (ii) including employees as additional insureds, (iii) providing broad form property damage coverage and products completed operations coverage (where applicable), and (iv) providing for coverage of owned and non-owned automobile liability, if applicable. Such insurance (other than automobile liability) shall name Landlord and any other party designated by Landlord as an additional insured, shall specifically include the liability assumed hereunder by Tenant, shall provide that it is primary insurance, shall provide for severability of interests, shall further provide that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, shall afford coverage for claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose in whole or in part during the policy period, and shall provide that Landlord will receive thirty (30) days' written notice from the insurer prior to any cancellation or material change of coverage;

(b) standard fire and extended perils insurance, including sprinkler leakages, vandalism and malicious mischief and plate glass damage covering all the items specified as "TENANT'S PROPERTY" herein and property of every description including stock-in-trade, furniture, fittings, installations, alterations, additions, partitions and fixtures or anything in the nature of a leasehold improvement made or installed by or on behalf of the Tenant in an amount of not less than one hundred percent (100%) of the full replacement cost thereof as shall from time to time be determined by Tenant in form reasonably satisfactory to Landlord; and

(c) Worker's Compensation Insurance in the amounts and coverages required under worker's compensation, disability and similar employee benefit laws applicable to the Premises and Employer's

Liability Insurance, with limits of not less than One Million Dollars ($1,000,000) or such higher amounts as may be required by law.

21.3 All policies of insurance provided for herein shall be issued by insurance companies with general policyholders' rating of not less than (VII) and a financial rating of B+ as rated in the most current available "Best's Insurance Reports," and qualified to do business in the State of California, and shall, with the exception of Workers Compensation Insurance, include as additional insureds Landlord, and such other persons or firms as Landlord specifies from time to time. Such policies shall be for the mutual and joint benefit and protection of Landlord, Tenant and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days prior to the delivery of possession of the Premises to Tenant and thereafter within thirty (30) days prior to the expiration of the term of such policy. All commercial general liability and property damage policies shall contain a provision that Landlord and any other additional insured, although named as additional insureds, shall nevertheless be entitled to recover under said policies for a covered loss occasioned by it, its servants, agents and employees, by reason of Tenant's negligence. As often as any policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All such policies of insurance shall provide that the company writing said policy will give to Landlord thirty (30) days notice in writing in advance of any cancellation or lapse or of the effective date of any reduction in the amounts of insurance. All commercial general liability, property damage and other casualty policies shall be written on an occurrence basis. Landlord's coverage shall not be contributory.

21.4 Should Tenant fail to take out and keep in force each insurance policy required under this Article 21, or should such insurance not be approved by Landlord and should the Tenant not rectify the situation within forty-eight (48) hours after written notice from Landlord to Tenant, Landlord shall have the right, without assuming any obligation in connection herewith, to effect such insurance at the sole cost of Tenant, and all outlays by the Landlord shall be immediately payable by the Tenant to the Landlord as Additional Rent without prejudice to any other rights and remedies of Landlord under this Lease.

21.5 Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance and to the extent of insurance proceeds received with respect to the loss, Landlord and Tenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance with respect to the Building or any portion thereof or the contents of any of the same, for any loss or damage maintained by such other party with respect to the Building or the Premises or any portion of any thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. Either party shall notify the other party if the policy of insurance carried by it does not permit the foregoing waiver. If any policy of insurance relating to the Premises carried by Tenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated as a result of such waiver, Tenant shall, if possible, obtain from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Landlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

21.6 No approval by Landlord of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance or any deductible amount shall be construed as a representation by Landlord of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of

insurance or deductible and Tenant assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

21.7 Landlord shall maintain in effect, a policy or policies of property insurance covering loss or damage to the Building (including the Tenant Improvement Work and any Tenant's Alterations that, pursuant to Section 9.4, Tenant will not be required to remove), including fire and extended coverage, vandalism, malicious mischief, special extended perils (all risk) and, if obtainable at commercially reasonable rates, in Landlord's discretion, earthquake in the amount of at least one hundred percent (100%) of the insurable replacement cost thereof, less such deductible amounts as Landlord may reasonably determine, and the cost thereof shall be payable as Additional Rent. Such insurance may also include coverage for loss of rent from the Building for up to twelve (12) months. Nothing herein shall require Landlord to carry any insurance with respect to risks or property required to be insured by Tenant under this Lease.

21.8 If either party shall at any time deem the limits of any of insurance required hereunder to either excessive or insufficient, the parties shall endeavor to agree upon the proper and reasonable limits for such insurance then carried and such insurance shall thereafter be carried with the limits thus agreed upon until further change pursuant to the provisions of this section. If the parties shall be unable to agree thereon, the proper and reasonable limits of such insurance then to be carried shall be determined by arbitration in accordance with the rules of the American Arbitration Association, but in no event shall such limits be less than the coverages set forth above in this Article 22. Tenant shall maintain the required insurance at the level that Landlord has requested until there is a final decision in the arbitration, at which time Tenant shall maintain the level of insurance determined by the arbitration (but not less than the coverages set forth above in this Article 22).

22. LIMITATION OF LANDLORD'S LIABILITY

Landlord shall not be responsible for or liable to Tenant and Tenant hereby releases Landlord and waives all claims against Landlord for any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever (other than Landlord's negligent act or willful misconduct) including, without limitation, acts or omissions of persons occupying adjoining premises; theft; burst, stopped or leaking water, gas, sewer or steam pipes; or gas, fire, oil or electricity in, on or about the Building or the Building Common Area.

23. ACCESS TO PREMISES

23.1 Landlord reserves (for itself, and any designated agent, representative, employee or contractor) the right to enter the Premises at all reasonable times and, except in cases of emergency, after giving Tenant reasonable notice, to inspect the Premises, to supply any service to be provided by Landlord hereunder, to show the Premises to prospective purchasers, mortgagees or, during the last year of the Term of this Lease, tenants, to post notices of nonresponsibility, and to alter, improve or repair the Premises and any portion of the Building, without abatement of Rent or Additional Rent, and may for that purpose erect, use and maintain necessary structures in and through the Premises and the Building, where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the

Premises or any other loss occasioned thereby. All locks for all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance in writing by Tenant) shall at all times be keyed to the Building master system and Landlord shall at all times have and retain a key with which to unlock all of said doors. Landlord shall have the right to use any and all means that Landlord may deem necessary or proper to open said doors in an emergency in order to obtain entry to any portion of the Premises, and any entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

23.2 Without limitation of the provisions of Section 23.1 above Landlord and its authorized agents and representative shall be entitled to enter the Premises at all reasonable times during business hours for the purpose of exhibiting the same to prospective purchasers and, during the last 12 months of the Term, Landlord shall be entitled to exhibit the Premises for hire or for rent and to display thereon in such manner as will not unreasonably interfere with Tenant's business the usual "For Rent" or "For Lease" signs, and such signs shall remain unmolested on the Premises.

24. HAZARDOUS MATERIALS

24.1 As used herein, the following terms shall have the following meanings: "HAZARDOUS MATERIAL" shall mean any chemical, substance, medical or other waste, living organism or combination thereof which is or may be hazardous to the environment or human or animal health or safety due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects. "HAZARDOUS MATERIALS" shall include, without limitation, petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all substances which now or in the future may be defined as "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "hazardous materials," "toxic substances," "infectious wastes," "biohazardous wastes," "medical wastes," "radioactive wastes" or which are otherwise listed, defined or regulated in any manner pursuant to any Environmental Laws. "ENVIRONMENTAL ACTIVITY" means any storage, holding, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Materials from, into or on the Building or the Building Common Area. "TENANT'S HAZARDOUS MATERIALS" means any Hazardous Materials resulting from the Environmental Activity by Tenant or any of Tenant's Agents; provided, however, that "TENANT'S HAZARDOUS MATERIALS" shall not include any Hazardous Materials that merely migrate from, through, into or onto the Ground Lease Property, unless such Hazardous Materials were or are introduced into the environment or exacerbated by Tenant or any of Tenant's Agents.

24.2 Tenant shall not cause or permit any Hazardous Materials to be used, stored, discharged, released or disposed of in the Premises or cause any Hazardous Materials to be used, stored, discharged, released or disposed of in, from, under or about, the Building, or any other land or improvements in the vicinity thereof excepting only, if applicable, such quantities of materials as are normally used in research and development activities, and related office and administrative activities, and then only in strict accordance with all Applicable Laws, including all Environmental Laws. Without limitation of the foregoing, Tenant shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Tenant's use

of Hazardous Materials at the Premises, including, without limitation, discharge of appropriately treated materials or wastes into or through any sanitary sewer serving the Building. Tenant shall in all respects handle, treat, deal with and manage any and all Tenant's Hazardous Materials in total conformity with all Applicable Laws and prudent industry practices regarding management of such Hazardous Materials. Without limitation of the foregoing, if any Tenant's Hazardous Materials result in contamination of the Building, or any soil or groundwater in, under or about the Building, Tenant, at its expense, shall promptly take all actions necessary to return the Building or portion thereof affected, to the condition existing prior to the appearance of the Tenant's Hazardous Material. Upon the Termination Date, Tenant shall cause all Tenant's Hazardous Materials in, on, under or about the Building to be removed in accordance with and in compliance with all Applicable Laws. Subject to the requirements of Applicable Laws, Tenant shall promptly notify Landlord before taking any remedial action in response to the presence of any Tenant's Hazardous Materials or entering into any settlement agreement, consent decree or other compromise with respect to any claims relating to Tenant's Hazardous Materials.

24.3 Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord and Landlord's Agents and their respective successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses (including reasonable attorneys' and consultants' fees and oversight and response costs) to the extent arising from (A) Environmental Activity by Tenant or Tenant's Agents, or (B) failure of Tenant or Tenant's Agents to comply with any Environmental Law with respect to Tenant's Environmental Activity; or (C) Tenant's failure to remove Tenant's Hazardous Materials as required herein.

24.4 Tenant shall not suffer any lien to be recorded against the Premises or the Ground Lease Property as a consequence of any Tenant's Hazardous Materials, including any so called state, federal or local "super fund" lien related to the "clean up" of any Tenant's Hazardous Materials in or about the Building.

24.5 In the event Hazardous Materials are discovered in or about the Premises or the Ground Lease Property, and Landlord reasonably believes that such Hazardous Materials are Tenant's Hazardous Materials, then Landlord shall have the right to appoint a consultant to conduct an investigation to determine the nature and extent of such Hazardous Materials and whether such Hazardous Materials are Tenant's Hazardous Materials, and to determine the corrective measures, if any, required to remove such Hazardous Materials. If such Hazardous Materials are determined to be Tenant's Hazardous Materials, Tenant, at its expense, shall comply with all investigation, remediation or other actions required by any applicable governmental authority and shall promptly reimburse Landlord for all costs incurred by Landlord in connection with such investigation.

24.6 Tenant shall immediately notify Landlord of any inquiry, test, investigation or enforcement proceeding by or against Tenant or the Premises or the Ground Lease Property known to Tenant concerning any Hazardous Materials. Tenant acknowledges that Landlord, as the owner of the Ground Lease Property, at its election, shall have the sole right subject to Tenant's prior approval, which approval shall not be unreasonably withheld or delayed, at Tenant's expense, to negotiate, defend, approve and appeal any action taken or order issued with regard to Tenant's Hazardous Materials by any applicable governmental authority.

24.7 Tenant shall surrender the Premises to Landlord, upon the expiration or earlier termination of the Lease, free of Tenant's Hazardous Materials. If Tenant fails to so surrender the Premises, Tenant shall indemnify and hold Landlord harmless from all losses, costs, claims, damages and liabilities resulting from Tenant's failure to surrender the Premises as required by this paragraph, including, without limitation, any claims or damages in connection with the condition of the Premises including, without limitation, damages occasioned by the inability to relet the Premises or a reduction in the fair market and/or rental value of the Building or any portion thereof, by reason of the existence of any Tenant's Hazardous Materials.

24.8 Upon or prior to the Commencement Date, Tenant shall provide to Landlord a complete list of any and all Hazardous Materials (excluding normal office and janitorial supplies) expected to be employed by Tenant or any of Tenant's Agents at the Premises. Throughout the Term, Tenant shall continue to update this list of chemicals, contaminants and Hazardous Materials.

24.9 The provisions of this Article 24 shall survive the termination of this Lease.

25. NOTICES

Notices or other communications given or required to be given under this Lease shall be effective only if rendered or given in writing, sent by certified mail with a return receipt requested, or delivered in person or by courier: (a) to Tenant at Tenant's address set forth in Article 1 hereof, or at any place where Tenant or any agent, officer or employee of Tenant may be found if sent subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; or (b) to Landlord at Landlord's address set forth in Article 1; or (c) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Article 25. Any such notice or other communication shall be deemed to have been rendered or given upon receipt, or when delivery is attempted but refused. Each of the persons listed in Article 1 as contacts for Tenant and in the address of Tenant for notices, and any other officer of Tenant is hereby appointed by Tenant as special attorney-in-fact with full power and authority to accept personal service on behalf of Tenant under Subdivision 1 of Section 1162 of the California Code of Civil Procedure, as it may be amended.

26. NO WAIVER; NO MODIFICATION

26.1 No failure by Landlord to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy consequent upon a breach thereof, no acceptance of full or partial Base Rent or Additional Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any employee or agent of Landlord shall constitute a waiver of any such breach or of such term, covenant or condition or operate as a surrender of this Lease.

26.2 Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered or modified, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The consent of Landlord given in any instance under the terms of

this Lease shall not relieve Tenant of any obligation to secure the consent of Landlord in any other or future instance under the terms of this Lease.

27. TENANT's CERTIFICATES

Tenants, at any time and from time to time within ten. (10) business days after receipt of written notice from Landlord shall execute, acknowledge and deliver to Landlord or to any party designated by Landlord, a certificate of Tenant stating: (a) that Tenant has accepted the Premises, (b) the Commencement Date, the Rent Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that same is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of the obligations of Tenant under this Lease (and, if so, specify same), (e) whether or not there are then existing any defaults by Landlord in the performance of its obligations under this Lease (and, if so, specifying same), (f) the dates, if any, to which the Base Rent and Additional Rent under this Lease have been paid, and (g) any other information that may reasonably be required by any of such persons. Failure to deliver such certificate shall constitute an Event of Default.

28. CONFIDENTIALITY

Landlord and Tenant agree that no information whatsoever shall be released or conveyed to any third party, including limitation, the press or media or other business entities, whether in the form of informal or formal discussions, press releases, direct mail or other distributed announcements with respect to any aspect of the negotiations, discussions relating to or provisions of this Lease or any related agreements between the parties, without the prior written consent of the other party. This restriction includes, without limitation, any and all contacts with print or broadcast media as well as paid advertising.

29. TAX ON TENANT'S PERSONAL PROPERTY

At least ten (10) days prior to delinquency, Tenant shall pay all taxes, levied or assessed upon Tenant's Property and shall deliver satisfactory evidence of such payment to Landlord. If the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon Tenant's Property, Tenant shall pay to Landlord, upon written demand, the taxes so levied against Landlord, or the portion thereof resulting from said increase in assessment, as determined from time to time by Landlord.

30. SECURITY DEPOSIT

Upon execution of this Lease, Tenant shall deposit with Landlord the amount specified in Article 1 as security for the faithful performance of all terms, covenants and conditions of this Lease. Tenant agrees that Landlord may, without waiving any of Landlord's other rights and remedies under this Lease upon the occurrence of any of the events of default described in Article 19 hereof, apply the security deposit in whole or in part to remedy any failure by Tenant to repair or maintain the Premises or to perform any other terms, covenants or conditions, contained herein. Should Landlord so apply any portion of the security deposit, Tenant shall forthwith replenish the security deposit to the original amount. Landlord shall not be required to keep the security deposit separate from its general funds, and Tenant shall not be entitled to interest on any such deposit.

31. PUBLIC TRANSIT INFORMATION

Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Tenant's sole cost and expense.

32. DEFAULT BY LANDLORD

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event earlier than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have heretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

33. BROKERS

Tenant warrants that it has had dealings with only the real estate brokers or agents listed in Article 1 in connection with the negotiation of this Lease and that it knows of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Landlord shall be responsible for the payment of any applicable fees or commissions to the agent or broker listed in Article 1 pursuant to a separate agreement. Each of Landlord and Tenant shall indemnify, defend and hold the other party harmless from and against all liabilities arising from any other claims of brokerage commissions or finder's fees based on such party's dealings or contacts.

34. SIGNS

Without Landlord's written consent, which may be given or withheld in Landlord's sole discretion, Tenant shall not place or permit to be placed on the front of the Premises any sign, picture, advertisement, name, notice, marquee or awning. Tenant shall be entitled to install an external sign identifying Tenant and the Premises provided that the location of such sign shall be subject to Landlord's reasonable approval and the design of such sign shall be subject to Landlord's approval, in Landlord's sole discretion.

35. FINANCIAL STATEMENTS

Tenant shall provide Landlord upon ten (10) business days prior written notice given prior to the execution of this Lease and any subsequent time in connection with a proposed financing or transfer of Landlord's interest, with true and correct copies of Tenant's most current audited financial statements. Landlord shall be entitled to rely upon the information provided by Tenant and Tenant hereby represents and warrants to Landlord that, as of the date hereof: (i) all documents provided by Tenant to Landlord are true and correct copies of the originals; (ii) Tenant has not withheld any information from Landlord that is material to Tenant's credit worthiness, financial condition or ability to perform its obligations hereunder; (iii) all information supplied by Tenant to Landlord is true, correct and accurate; and (iv) no part of the

information supplied by Tenant to Landlord contains any misleading or fraudulent statements. A default under this Article shall be a non-curable default by Tenant and Landlord shall be entitled to pursue any right or remedy available to Landlord under the terms of this Lease or available to Landlord under the laws of the State of California. Such information shall be disclosed by Landlord only to such prospective lender or transferee and their counsel and representatives, and subject to reasonable confidentiality requirements.

36. QUIET ENJOYMENT

Landlord covenants that Tenant, upon paying the Base Rent and Additional Rent due hereunder and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms and provisions of this Lease.

37. SALE OR ASSIGNMENT BY LANDLORD

37.1 It is agreed that Landlord may at any time sell, assign or transfer by lease or otherwise its interest as Landlord in and to this Lease, or any part thereof, and may at any time sell, assign or transfer its interest in and to the whole or any portion of the Premises or the Building. In the event of any transfer of Landlord's interest in the Premises or the Building, the transferor shall be automatically relieved of any and all of Landlord's obligations and liabilities accruing from and after the date of such transfer provided that the transferee assumes all of Landlord's obligations under this Lease.

37.2 Tenant hereby agrees to attorn to Landlord's assignee, transferee, or purchaser from and after the date of notice to Tenant of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Lease were made in the first instance by and between Tenant and other assignee, transferee or purchaser. In the event of the exercise of the power of sale under, or the foreclosure of, any deed of trust, mortgage or other encumbrances placed by Landlord against all or any portion of the Premises, Tenant shall, upon demand, attorn to the purchaser upon the effective date of any such sale or foreclosure of any such deed of trust, mortgagee or other encumbrance, and shall recognize the purchaser or judgment creditor as the Landlord under the Lease, provided the purchaser or judgment creditor recognizes Tenant's rights under this Lease.

38. LEASE MODIFICATIONS

If Landlord in good faith determines that tax consequences to it of this transaction are materially different than those now contemplated, or if Landlord wishes to enter a financing transaction with respect to the Building and a potential lender requires amendments to this Lease, Landlord may request reasonable amendments to this Lease and Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications will not increase Tenant's monetary obligations pursuant to this Lease, adversely affect its beneficial use of the Premises, or otherwise materially increase Tenant's non-monetary obligations hereunder, or materially adversely affect Tenant's interests hereunder.

39. AUTHORITY

If Tenant is a corporation or a partnership, Tenant and each of the persons executing this Lease on behalf of Tenant does hereby represent and warrant as follows: Tenant is an entity as identified in Article 1, duly formed and validly existing and in good standing under the laws of the state of organization

specified in Article 1 and qualified to do business in the State of California. Tenant has the power, legal capacity and authority to enter into and perform its obligations under this Lease and no approval or consent of any person is required in connection with the execution and performance hereof. The execution and performance of Tenant's obligations under this Lease will not result in or constitute any default or event that would be, or with notice or the lapse of time would be, a default, breach or violation of the organizational instruments governing Tenant or any agreement or any order or decree of any court or other governmental authority to which Tenant is a party or to which it is subject. Tenant has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid and binding obligation of Tenant. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

40. SURRENDER

Upon the Termination Date, Tenant shall surrender the Premises to Landlord in good order and repair, reasonable wear and tear excepted, free and clear of all letting and occupancies and free of Hazardous Materials as required pursuant to Section 24.7 above. Upon any termination of this Lease, all improvements, except for Tenant's Property and except for any Alterations which Tenant removes in accordance with the terms of this Lease, shall automatically and without further act by Landlord or Tenant, become the property of Landlord, free and clear of any claim or interest therein by Tenant, and without payment therefor by Landlord.

41. USE OF NAME

Tenant acknowledges and agrees that the names "THE LELAND STANFORD JUNIOR UNIVERSITY", "STANFORD" and "STANFORD UNIVERSITY," and all variations thereof, are proprietary to Landlord. Tenant shall not use any such name or any variation thereof or identify Landlord in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or use any trademark, service mark, trade name or symbol of Landlord or that is associated with it, without Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion. Notwithstanding the foregoing, Tenant may use the term "Stanford Research Park" only to identify the location of the Premises.

42. MISCELLANEOUS

42.1 The term "PREMISES" includes the space leased hereby and any improvements now or hereafter installed therein or attached thereto. The words "LANDLORD" and "TENANT" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations under this Lease imposed on Tenant shall be joint and several. The captions preceding the articles of this Lease have been inserted solely as a matter of convenience and such captions in no way define or limit the scope or intent of any provision of this Lease.

42.2 The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their respective personal representatives and successors and assigns; provided, however, that upon the sale, assignment or transfer by Landlord named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including, without limitation, any transfer by Landlord of its interest in this Lease to a master tenant and any surrender of the underlying ground lease, execution of a subsequent ground lease, or

transfer by operation of law, Landlord (or subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

42.3 If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the full extent permitted by law.

42.4 This Lease shall be construed and enforced in accordance with the laws of the State of California. Any action that in any way involves the rights, duties and obligations of the parties under this Lease may (and if against Landlord, shall) be brought in the Superior Court of Santa Clara County or the United States District Court of the Northern District of California, and the parties hereto hereby submit to the personal jurisdiction of said courts.

42.5 This instrument, including the exhibits hereto, which are incorporated herein and made a part of this Lease, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Tenant hereby acknowledges that neither Landlord nor Landlord's agents have made any representations or warranties with respect to the Premises, the Building, the Ground Lease Property, or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

42.6 In the event that either Landlord or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees including Landlord's or Tenant's in house counsel. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder Tenant shall pay to Landlord its costs and expenses incurred in such suit, including reasonable attorneys' fee including Landlord's in house counsel. Should Tenant be named as a defendant in any suit brought against Landlord in connection with or arising out of any foreclosure or mechanics lien not related to any Tenant Improvement Work or Alterations, Landlord shall pay to Tenant its costs and expenses incurred in such suit, including reasonable attorneys' fee including Tenant's in house counsel.

42.7 Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of the Rent or Additional Rent under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

42.8 Any holding over after the expiration of the Term with the consent of Landlord shall be construed to automatically extend the Term of this Lease on a month to month basis at a Base Rent equal to the greater of one hundred twenty-five percent (125%) of the prevailing rate at which Landlord is then offering space in buildings determined by Landlord to be most closely comparable to the Building or one hundred fifty percent (150%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by Landlord for the monthly Additional Rent payable under this Lease,

and shall otherwise be on the terms and conditions herein specified so far as applicable. Any holding over without Landlord's consent shall constitute a default by Tenant and entitle Landlord to exercise any or all of its remedies as provided in Article 19 hereof, notwithstanding that Landlord may elect to accept one or more payments of Rent and Additional Rent from Tenant.

42.9 At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord, within ten (10) days after written demand from Landlord to Tenant, any quitclaim deed or other document required by any reputable title company, licensed to operate in the State of California, to remove the cloud or encumbrance created by this Lease from the real property of which Tenant's Premises are a part.

42.10 Neither Landlord or Tenant shall record this Lease or a short form memorandum hereof without the consent of the other.

42.11 Clauses, plats and riders, if any, signed by Landlord and Tenant and endorsed on or affixed to this Lease are a part hereof.

42.12 The review, approval, inspection or examination by Landlord of any item to be reviewed, approved, inspected or examined by Landlord under the terms of this Lease or the exhibits attached hereto shall not constitute the assumption of any responsibility by Landlord for either the accuracy or sufficiency of any such item or the quality of suitability of such item for its intended use. Any such review, approval, inspection or examination by Landlord is for the sole purpose of protecting Landlord's interests in the and under this Lease, and no third parties, including, without limitation, Tenant or any person or entity claiming through or under Tenant, or the contractors, agents, servants, employees, visitors or licensees of Tenant or any such person or entity, shall have any rights hereunder with respect to such review, approval, inspection or examination by Landlord.

42.13 In the event of any default by Landlord hereunder, Tenant shall look only to Landlord's interest in the Sublease and the Building for the satisfaction of Tenant's remedies; and no other property or assets of Landlord or any partner, member, officer or director thereof, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease.

42.14 This Lease shall not confer or be deemed to confer upon any person or entity other than the parties hereto, any right or interest, including without limitation, any third party status or any right to enforce any provision of this Lease.

42.15 Except as provided in Articles 4 and 32 hereof, time is of the essence in respect of all provisions of this Lease in which a definite time for performance is specified.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

LANDLORD:

THE BOARD OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY

By Stanford Management Company

By /s/ Curtis F. Feeny

Name Curtis F. Feeny

Title Executive Vice President, Real Estate

TENANT:

INCYTE PHARMACEUTICALS, INC.
a California corporation

By /s/ Denise M. Gilbert

Name Denise M. Gilbert

Title Executive Vice President & CFO

By

Name

Title

EXHIBIT A

LOCATION OF BUILDING AND PARKING

[TO COME]

EXHIBIT B

INITIAL IMPROVEMENTS

The purpose of this Exhibit B is to delineate the responsibilities of Landlord and Tenant with respect to the design and construction of the Base Building Work and the Tenant Improvement Work.

1. Definitions. Terms defined in the Lease, including without limitation, the exhibits thereto, and not otherwise defined in this Exhibit B shall have the meanings assigned in the Lease. As used herein, the following terms shall have the following meanings:

"BASE BUILDING ARCHITECT" means the architect for the Base Building designated by Landlord.

"BASE BUILDING CONTRACTOR" means the general contractor for the Base Building designated by Landlord.

"BASE BUILDING PLANS" is as defined in Section 2.1.

"BASE BUILDING WORK" means the shell structure and all grading, landscaping; hardscaping; power and utilities to the Building; interior, above-ceiling fire sprinklers; and all stairs required by the applicable Building Codes. Base Building Work shall not include, without limitation, core (roof- mounted HVAC units, primary HVAC distribution, common lobbies, bathrooms, elevators or other stairs) or any Tenant Improvement Work.

"BUILDING" means the approximately [85,000-95,000] square foot building referred to in the Lease, together with the landscaping, parking and other site improvements on the Building Common Area.

"CONSTRUCTION SCHEDULE" means the schedule for the design and construction of the Base Building Work and the Tenant Improvement Work , as amended from time to time in accordance with this Exhibit B. The initial Construction Schedule will be established on or about the time that the preliminary approval of the City of Palo Alto Architectural Review Board approval is obtained and will be attached hereto as Attachment 1. The Construction Schedule shall be subject to the reasonable review and approval of Tenant.

"DESIGN PROBLEM" means an objection specified by Landlord to any proposed elements of the Tenant Improvement Work.

"FINAL COMPLETION OF THE BASE BUILDING" means, after Substantial Completion of the Base Building Work, the completion of all Punch List Items.

"FINAL PERMIT APPROVAL" means the issuance or certification by the City of Palo Alto of the final permit for the Building allowing the legal occupancy of the Building.

"FINAL PLANS" is as defined in Section 3.3(b).

"LANDLORD'S UNAVOIDABLE DELAY" means any delay in the construction of the Base Building Work to the extent caused by circumstances beyond Landlord's reasonable control, including, without limitation, Acts of God, strikes, lock-outs, inability to obtain necessary equipment or materials, the construction of the Tenant Improvement Work after the Commencement Date, delays by the Base Building Contractor or any subcontractor not resulting from any act or omission of Landlord, and any delay in the issuance of any necessary governmental permit or approval where such delay is not the result of Landlord's actions and exceeds the amount of time for such permit or approval included in Landlord's Construction Schedule.

"LEASE" means the Lease in and to which this Exhibit B is attached and incorporated.

"PROJECTED DELIVERY DATE" means the date specified in the Construction Schedule for Substantial Completion of the Base Building Work, subject to extension for Unavoidable Delay.

"PUNCH LIST ITEMS" means any incomplete or defective items in the construction of the Base Building Work that do not materially interfere with the ability of the Tenant Improvement Contractor to commence and conduct, without unreasonable interference, construction of the Tenant Improvement Work. For purposes hereof, "MATERIAL INTERFERENCE" shall only be deemed to occur where the Tenant Improvement Contractor cannot commence and conduct, without unreasonable interference, the Tenant Improvement Work using normal construction practices and after having made reasonable adjustments in the scheduling and location of the Tenant Improvement Work to accommodate the completion of the Base Building Work.

"SCHEDULED DATE FOR COMPLETION OF THE TENANT IMPROVEMENT WORK" means the date that is the specified number of days after the Commencement Date stated in the Construction Schedule for completion of the Tenant Improvement Work, which number of days may be extended by the number of days of delay directly resulting from a Tenant's Excusable Delay or Tenant's Unavoidable Delay provided that for Tenant's Excusable Delay, such extension shall not in any event exceed 45 days in the aggregate.

"SCHEDULED DATE FOR DELIVERY OF THE PREMISES" means the date established in the Construction Schedule for completion of the Base Building Work to the extent necessary to permit the commencement of the Tenant Improvement Work. The Scheduled Date for Delivery of the Premises shall be extended for each day that such completion is delayed due to any Landlord's Unavoidable Delay.

"SPACE PLAN DELIVERY DATE" means the date specified in the Construction Schedule.

"TENANT IMPROVEMENT ALLOWANCE" means $30.00 per square foot of Rentable Area of the Building (determined as provided in Section 5.1 of the Lease) which shall be applied to the Tenant Improvement Costs.

"TENANT IMPROVEMENT CONTRACT" means the guaranteed maximum cost contract with the Tenant Improvement Contractor for the construction of the Tenant Improvement Work.

"TENANT IMPROVEMENT CONTRACTOR" means the general contractor for the construction of the Tenant Improvement Work selected by Tenant and approved by Landlord in Landlord's reasonable discretion.

"TENANT IMPROVEMENT COSTS" means the actual costs of the Tenant Improvement Work, including the fees and expenses payable to the Tenant's Architect and consultants, design and development costs, fees for the Tenant Improvement Permits and construction costs.

"TENANT IMPROVEMENT PERMITS" means all permits, licenses and other approvals necessary to construct the Tenant Improvement Work in compliance with all Applicable Laws.

"TENANT IMPROVEMENT PLANS" is as defined in Section 3.3(b).

"TENANT IMPROVEMENT WORK" means all work required to finish the Premises to a condition acceptable for the conduct of Tenant's business and not specifically included in the Base Building Work.

"TENANT'S ARCHITECT" means the licensed architect engaged by Tenant, and approved by Landlord in its reasonable discretion, to develop the space plan and working drawings for, and to oversee the construction of, the Tenant Improvement Work.

"TENANT'S ARCHITECT AGREEMENT" means the agreement between Tenant and Tenant's Architect for the design and oversight of the Tenant Improvement Work.

"TENANT'S EXCUSABLE DELAY" means any delay in the construction of the Tenant Improvement Work to the extent caused by circumstances beyond Tenant's reasonable control, including, without limitation, Acts of God (excluding earthquake, fire, or other major casualty), strikes, lock-outs, inability to obtain necessary equipment or materials, delays by the Tenant Improvement Contractor or any subcontractor not resulting from any act or omission of Tenant, any delay in the issuance of any necessary governmental permit or approval where such delay is not the result of Tenant's actions and exceeds the amount of time for such permit or approval included in Tenant's Construction Schedule.

"TENANT'S UNAVOIDABLE DELAY" means any delay in the construction of the Tenant Improvement Work to the extent caused by the construction of the Base Building Work after the Date of Delivery of the Premises, the failure of Landlord to respond within ten (10) business days to a request for approval of any change in Tenant's Plans and Specifications after their initial approval by Landlord, or the failure to obtain the permit required for the legal occupancy of the Building as a result of any matter relating to the Base Building Work (and not relating to the Tenant Improvement Work), or earthquake, fire or other major casualty.

2. Design and Construction of Base Building.

2.1 At or around the time Landlord delivers the initial Construction Schedule to Tenant, Landlord will deliver to Tenant for Tenant's review and approval, the preliminary plans and specifications for the Base Building Work. Tenant's approval shall not be unreasonably withheld or delayed and upon the parties mutual approval, the plans and specifications will be listed and attached hereto as Attachment 2 (as the same may be modified in accordance with this Exhibit B, the "BASE BUILDING PLANS"). Landlord shall obtain all permits and approvals for the Base Building Work and shall cause the Base Building Work to be constructed in a first class manner and in compliance with all Applicable Laws as of the date permits for the construction of the Base Building Work were obtained and Landlord shall, at Landlord's sole cost and expenses, correct any failure of the Base Building Work to comply with such Applicable Laws.

Landlord shall diligently prosecute the construction of the Base Building Work and use diligent efforts to achieve Substantial Completion of the Base Building Work by the Projected Delivery Date, subject to Unavoidable Delays.

2.2 Landlord shall notify Tenant in writing upon receipt by Landlord of notice from the Base Building Contractor that the Base Building Contractor believes that Substantial Completion of the Base Building Work has occurred (or will occur on a specified date). Representatives of Landlord and Tenant shall accompany the Base Building Architect and the Base Building Contractor on a walk-through and inspection of the Premises (the "SUBSTANTIAL COMPLETION INSPECTION" to determine if Substantial Completion of the Base Building Work has occurred and to identify any Punch List Items. Upon completion of the Substantial Completion Inspection, provided that the Base Building Architect has issued a certificate certifying that Substantial Completion of the Base Building Work has occurred and identifying the Punch List Items, including any Punch List Items identified by Landlord or Tenant, Tenant shall sign an acceptance form in the form of Attachment 3 hereto acknowledging that Tenant has inspected the Base Building Work and accepts the Premises for all purposes under the Lease, subject only to completion of the Punch List Items identified in the Base Building Architect's certificate. Substantial Completion of the Base Building work shall be deemed to occur as of the date of the issuance of the Base Building Architect's Certificate of Substantial Completion.

2.3 Landlord shall diligently monitor the Base Building Contractor's completion of the Punch List Items and use commercially reasonable efforts to ensure that such Punch List Items will be completed promptly. Completion of the Punch List Items shall be undertaken so as to minimize any material interference with Tenant's construction of the Tenant Improvement Work. Landlord shall notify Tenant upon receipt by Landlord of notice from the Base Building Contractor that Final Completion of the Base Building Work has occurred. Representatives of Landlord and Tenant shall accompany the Base Building Architect and the Base Building Contractor on a walk through and inspection of the Premises to determine if Final Completion of the Base Building Work has occurred. If there are any remaining Punch List Items, Landlord shall cause the completion of such items and the parties shall conduct an additional walk through and inspection. Upon Final Completion the parties shall execute a written acknowledgment that Final Completion of the Base Building Work has occurred.

2.5 During the course of construction of the Base Building Work, Landlord shall carry the following insurance, which insurance may be self-insurance:

(i) comprehensive "all risk" builder's risk insurance, including vandalism and malicious mischief, excluding earthquake and flood, covering all improvements in place on the Premises, all materials and equipment stored at the site and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Landlord or its construction manager, contractors or subcontractors (excluding any contractors', subcontractors' and construction managers' tools and equipment, and property owned by the employees of the construction manager, any contractor or any subcontractor), such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the Base Building Work.

(ii) comprehensive liability insurance which insurance may be effected by endorsement, if obtainable, including insurance for completed operations, elevators, owner's, construction manager's and contractor's protective liability, products completed operations for three (3) years after the date of acceptance of the Base Building Work, broad form blanket contractual liability, broad form property damage and full form personal injury (including but not limited to bodily injury), covering the performance of all work at or from the Premises by Landlord, its construction manager, contractors and subcontractors, and in a liability amount not less than the amount at the time carried by prudent owners of comparable construction projects in the Santa Clara Valley, but in any event not less than Two Million Dollars ($2,000,000) combined single limit, which policy shall contain a cross-liability clause or separation of insureds provision and an endorsement deleting the property damage exclusion as to explosion, underground, and collapse hazards, and shall include thereunder for the mutual benefit of Landlord and Tenant bodily injury liability and property damage liability automobile insurance on any non-owned, hired or leased automotive equipment used in the construction of any work.

3. Design and Construction of the Tenant Improvement Work.

3.1 Subject to the provisions of the Lease, Tenant shall be responsible for the design and construction of the Tenant Improvement Work and shall use diligent efforts to cause the construction of the Tenant Improvement Work in a first class manner and in compliance with all Applicable Laws.

3.2 Without limitation of any other provision of the Lease or this Exhibit B, all of the provisions of Article 9 (Alterations by Tenant) and Article 11 (Liens) shall apply to the Tenant Improvement Work. Prior to Tenant's commencement of any Tenant Improvement Work, representatives of Landlord and Tenant shall accompany the Base Building Architect and the Base Building Contractor on a walk through and inspection to identify items of the construction of the Base Building Work (other than improvements outside of the Buildings) that are completed and that are not completed. The parties shall execute a written acknowledgment of the status of such items prior to Tenant's commencing construction of the Tenant Improvement Work.

3.3 (a) Tenant shall use diligent efforts to submit to Landlord, for Landlord's approval, on or before the Space Plan Delivery Date, a basic space plan (the "SPACE PLAN") prepared by the Tenant's Architect for the layout of the Tenant Improvement Work consistent with the design of the Base Building Work. Within ten (10) business days after Landlord receives the Space Plan, Landlord shall either approve the Space Plan or disapprove the Space Plan and, in the event of disapproval, furnish a written statement of the Design Problems to Tenant. Landlord's approval shall not be unreasonably withheld, provided that it shall not be unreasonable for Landlord to withhold its approval if, in Landlord's judgment, the Space Plan is not of a generic nature compatible with use of the Premises by standard research and development tenants. In the event of such disapproval, Tenant shall, as expeditiously as practicable, make the changes necessary in order to correct the Design Problems and shall return the Space Plan to Landlord. Landlord shall approve or disapprove such changes within ten (10) business days after Landlord receives the revised Space Plan. This procedure shall be repeated until the Space Plan is finally approved by Landlord and written approval has been received by Tenant.

(b) After the Space Plan is finally approved by Landlord, Tenant shall submit to Landlord complete plans and specifications for the Tenant Improvement Work, based upon the approved Space Plan,

including, without limitation, mechanical and electrical drawings (collectively the "TENANT IMPROVEMENT PLANS"). The Tenant Improvement Plans shall be in a form sufficient to secure necessary Tenant Improvement Permits. Tenant shall use diligent efforts to obtain, on a timely basis in accordance with the Construction Schedule, all Tenant Improvement Permits. Landlord shall, within ten (10) business days after receipt of the Tenant Improvement Plans, approve the same or designate by notice to Tenant the specific changes reasonably required to be made to the Tenant Improvement Plans in order to correct any Design Problem. Landlord shall not unreasonably withhold its consent, provided the Tenant Improvement Plans are in substantial conformity with the Space Plan. Within ten (10) business days thereafter, Tenant shall make the changes necessary in order to correct any such Design Problem and shall return the Tenant Improvement Plans to Landlord. Landlord shall approve or disapprove the revised Tenant Improvement Plans within ten (10) business days after receipt by Landlord. Landlord shall not unreasonably withhold its consent, provided the Tenant Improvement Plans are in substantial conformity with the Space Plan. This procedure shall be repeated until the Tenant Improvement Plans are finally approved by Landlord and Tenant has received Landlord's written approval thereof. The final Tenant Improvement Plans approved by Landlord, including any changes, additions or alterations thereto approved by Landlord and Tenant as provided in Section 3.4, are herein referred to as the "FINAL PLANS".

3.4 If Tenant shall request any change, addition or alteration in the Final Plans, the Tenant's Architect shall prepare plans and specifications with respect to such change, addition or alteration, which plans and specifications shall be submitted to Landlord for Landlord's review and approval. The procedure set forth in Section 3.3(a) shall apply to any such change, addition or alteration.

4. Construction of the Tenant Improvement Work.

4.1 Tenant shall construct the Tenant Improvement Work in accordance with all Applicable Laws and with the Final Plans approved by Landlord and the requirements of Articles 8 and 9 of the Lease.

4.2 Tenant shall commence construction of the Tenant Improvement Work upon the Commencement Date and thereafter diligently prosecute the Tenant Improvement Work to completion using diligent efforts to cause Substantial Completion to occur by the Scheduled Date for Completion of the Tenant Improvement Work. Landlord's written approval shall be obtained prior to undertaking any work that deviates from the Final Plans approved by Landlord.

4.3 Prior to commencement of construction of the Tenant Improvement Work, Tenant shall obtain and deliver to Landlord all policies of insurance required to be maintained by Tenant under the Lease.

5. Payment of Tenant Improvement Costs.

5.1 Landlord shall provide to Tenant a Tenant Improvement Allowance in the amount of $30.00 per square foot of Rentable Area. The Tenant Improvement Allowance shall be disbursed as provided below.

5.2 As a condition to the first disbursement of the Tenant Improvement Allowance, Tenant shall have satisfied all of the following conditions:

(a) Tenant shall have delivered to Landlord duly executed originals of each of the Tenant's Architect Agreement and the Tenant Improvement Contract.

(b) Landlord shall have approved, in Landlord's reasonable discretion, the budget for the portion of the Tenant Improvement Work to be funded by the Tenant Improvement Allowance.

(c) The Final Plans shall have been completed and approved.

(d) Tenant shall have obtained and be in compliance with all Tenant Improvement Permits.

5.3 Disbursements of the Tenant Improvement Allowance will be made to a demand deposit account in the name of Tenant within twenty (20) days after receipt by Landlord of the Draw Certifications required under Section 5.4 below, but not more frequently than monthly, provided that (i) no default exists under the Lease beyond any applicable cure period; (ii) no default exists under either of the Tenant Improvement Contract or the Tenant's Architect Agreement beyond any applicable cure period; (iii) no lien has been filed with respect to the Tenant Improvement Work that has not been released or bonded over; (iv) Tenant is in compliance with the Tenant Improvement Permits, and (v) all insurance required under Articles 9 and 21 of the Lease is in full force and effect.

5.4 As a condition to each funding, Tenant shall deliver to Landlord all of the following:

(a) Tenant's Construction Draw Certificate in the form of Attachment 4 hereto;

(b) The Tenant Improvement Contractor's Certificate in the form of Attachment 5 hereto;

(c) Conditional and unconditional lien releases, as applicable, in the form required under California Civil Code Section 3262.

5.5 The first disbursement may include all Tenant Improvement Costs incurred prior to commencement of construction, including, without limitation, fees for Tenant's Architect and Tenant Improvement Permit fees.

5.6 Upon completion of the Tenant Improvement Work, Tenant shall provide Landlord with certifications from the Tenant's Improvement Contractor and the Tenant's Architect that the Tenant Improvement Work has been substantially completed in accordance with the Final Plans and with copies of final lien releases from all contractors and subcontractors.

ATTACHMENT 1 TO EXHIBIT B

CONSTRUCTION SCHEDULE
[TO COME]

ATTACHMENT 2 TO EXHIBIT B

LIST OF BASE BUILDING PLANS
[TO COME]

ATTACHMENT 3 TO EXHIBIT B

ACCEPTANCE FORM

This Acceptance form is executed with reference to that certain Lease dated as of _____, 1997 by and between by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY ("LANDLORD"), and INCYTE PHARMACEUTICALS, INC. , a California corporation ("TENANT"). Terms defined in the Lease and the exhibits thereto shall have the same meaning when used herein.

Tenant hereby certifies to Landlord that Tenant has inspected the Premises as of _____ (the "DATE OF INSPECTION") and that the Base Building Work is Substantially Complete except only for Punch List Items listed in Base Building Architect's Certificate of Substantial Completion, a copy of which is attached hereto. Tenant further acknowledges that Tenant hereby accepts the Premises in its existing condition, subject only to the completion of any Punch List Items and any latent defects in the Base Building Work.

The person executing this Acceptance Form on behalf of Tenant represents and warrants to Landlord that such person is duly authorized to execute this Acceptance Form and that this Acceptance Form has been duly authorized, executed and delivered on behalf of Tenant.

THIS ACCEPTANCE FORM is executed by Tenant as of the Date of Inspection.

INCYTE PHARMACEUTICALS, INC.,

By:

Print Name:

Title:

Date:

ATTACHMENT 4 TO EXHIBIT B

TENANT'S CONSTRUCTION DRAW CERTIFICATION

General Contractor: _____

Design Architect: _____

1.	Original Contract Amount	$
2.	Additions to Contract	$
3.	Deductions from Contract	$
4.	Adjusted Amount of Contract	$
5.	Total Completed or Stored to Date	$
6.	Total Retainage	$
7.	Total Earned Less Retainage	$
8.	Previous Payments	$
9.	Current Payment Due	$

TENANT CERTIFICATION

To induce Landlord to disburse proceeds of the Tenant Improvement Work pursuant to the Lease, Tenant hereby certifies to Landlord as follows:

A. The amount shown on Line 9 above as Current Payment due is the actual amount presently payable to the General Contractor.

B. No Event of Default presently exists under the Lease.

C. Tenant has no knowledge of and has received no notices of liens or claims of lien either filed or threatened against the premises, except:

D. All amounts shown on Line 8 above and in the column entitled "Previous Payments" in the Disbursement Request Summary for this Draw Request have been paid by Tenant.

E. The Tenant approves all work and materials for which payment is due (as shown on Line 9 above) and confirms that to Tenant's knowledge and belief such work and materials conform with the Tenant Improvement Plans, as defined in the Lease, as they may be modified by written change orders in compliance with the requirements of the Lease.

F. The amounts shown above indicate that sufficient funds remain available under the construction contract to complete all work required under such contract and the following approved change orders:

- ---

G. The following list identifies those change order requests or proposals which have been submitted by the Tenant Improvement Contractor but are pending approval:

- ---
- ---

I. All permits, approvals and authorizations required by all governmental authorities for the work covered by this draw request, the work which was the subject of previous draw requests, and the work that is currently ongoing have been obtained.

J. Approximately _____% of the Tenant Improvement Work has been completed as of this date.

WITNESS:

BY:

TITLE:

PAYMENT REQUEST

(Attached to and forming a part of Tenant's Construction Draw Certification)

DISBURSEMENT NO._____

DATE:

Item Number	Description	Original Estimate	Revised Estimate Date	Disbursed to Date	This Request	Total Disbursement
Total						
Reserve for Contingencies						
Total Funds Available						

ATTACHMENT 5 TO EXHIBIT B

CONTRACTOR'S CONSTRUCTION DRAW CERTIFICATION

Project Name: _____ Date: _____

Location: _____ Draw No: _____

Landlord: The Board of Trustees of the Leland Stanford Junior University
Tenant:
General Contractor:
Design Architect:

- ---

1.	Original Contract Amount	$_____
2.	Additions to Contract	$_____
3.	Deductions from Contract	$_____
4.	Adjusted Amount of Contract	$_____
5.	Total Completed or Stored to Date	$_____
6.	Total Retainage	$_____
7.	Total Earned Less Retainage	$_____
8.	Previous Payments	$_____
9.	Current Payment Due	$_____

- ---

GENERAL CONTRACTOR CERTIFICATION

To induce Landlord to make a disbursement of the Initial Improvements Allowance pursuant to its Lease with Tenant, the undersigned (General Contractor) certifies to Landlord as follows:

a. The information contained in all documents and supporting papers prepared or signed by General Contractor and submitted to Landlord are true and correct.

b. The amount shown on Line 9 of the Draw Request Certification is the amount presently due and payable under the contract with Tenant.

c. The amount shown on Line 8 of the Draw Request Certification has been received by the General Contractor and applied to the amount due under the contract with Tenant.

d. There has been no significant change in construction costs and the balance due under the contract with Tenant is sufficient to complete the work required under the contract.

e. All work performed to date conforms with the contract with Tenant and the Plans and Specifications prepared and coordinated by the Design Architect.

f. There have been no change orders to the contract, proposed or approved, except

- ----------

g. All subcontracted items and material/equipment items are shown in the Application for Payment breakdown accompanying this Draw Request.

BY:

TITLE:

EXHIBIT C-1

NOTICE OF COMMENCEMENT DATE

(Letterhead of Stanford Management Company)

(Date)

Incyte Pharmaceuticals, Inc.

- ----------
- ----------
Attention: ----------

Re: Acknowledgment of Commencement Date,
Lease between The Board of Trustees of the Leland Stanford
Junior University (Landlord), and Incyte Pharmaceuticals, Inc.
(Tenant), for premises located at 3_____ Porter Drive,
Palo Alto, California

Gentlemen/Ladies:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 4.1 of the Lease) is _____.

Please acknowledge your acceptance of this letter by signing and returning two copies of this letter.

Very truly yours,

Stanford Management Company

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

Its: ----------

ACCEPTED AND AGREED:

Incyte Pharmaceuticals, Inc.

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

Its: ----------

Dated: ----------

EXHIBIT C-2

NOTICE OF RENT COMMENCEMENT DATE AND EXPIRATION DATE

(Date)

Incyte Pharmaceuticals, Inc.

- ----------
- ----------
Attention:

Re: Acknowledgment of Rent Commencement Date and Expiration Date, Lease between The Board of Trustees of the Leland Stanford Junior University (Landlord), and Incyte Pharmaceuticals, Inc. (Tenant), for premises located at 3_____ Porter Drive, Palo Alto, California

Gentlemen/Ladies:

This letter will confirm that for all purposes of the Lease, the Rent Commencement Date (as defined in Section 4.1 of the Lease) is _____ and the Expiration Date (as defined in Section 4.1 of the Lease) is _____.

Please acknowledge your acceptance of this letter by signing and returning two copies of this letter.

Very truly yours,

Stanford Management Company

By:

Its:

ACCEPTED AND AGREED:

Incyte Pharmaceuticals, inc.

By:

Its:

Dated:

EXHIBIT D

DETERMINATION OF PREVAILING MARKET RENTAL RATE

As used herein, the term "Prevailing Market Rental Rate" shall mean the base monthly rental (net of all expenses) for space of comparable size and location to the Premises and in buildings similar in age and quality to the Building in the Stanford Research Park, taking into account any additional rental and all other payments or escalations then being charged and allowances being given in the Stanford Research Park for such comparable space over a comparable term and excluding the value of any Alterations made by Tenant and the excess costs of the Tenant Improvement Work paid by Tenant. If Tenant timely exercises its Renewal Option, the Prevailing Market Rental Rate shall be determined by Landlord and Landlord shall give Tenant written notice of such determination not later than eleven (11) months prior to the expiration of the initial term or the preceding Renewal Term, as applicable. If Tenant disputes Landlord's determination of the Prevailing Market Rental Rate, Tenant shall so notify Landlord within ten (10) days following Landlord's notice to Tenant of Landlord's determination and, in such case, the Prevailing Market Rental Rate shall be determined as follows:

(a) Within thirty (30) days following Landlord's notice to Tenant of the Prevailing Market Rental Rate, Landlord and Tenant shall meet no less than two (2) times, at a mutually agreeable time and place, to attempt to agree upon the Prevailing Market Rental Rate.

(b) If within this thirty (30) day period Landlord and Tenant cannot reach agreement as to the Prevailing Market Rental Rate, they shall each select one appraiser to determine the Prevailing Market Rental Rate. Each such appraiser shall arrive at a determination of the Prevailing Market Rental Rate and submit his or her conclusions to Landlord and Tenant within thirty (30) days after the expiration of the thirty (30) day consultation period described in (a) above.

(c) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Prevailing Market Rental Rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten (10) percent of the higher of the two, the average of the two shall be the Prevailing Market Rental Rate. If the two appraisals differ by more than ten (10) percent of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the Prevailing Market Rental Rate and submit such determination to Landlord and Tenant. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the Prevailing Market Rental Rate.

(d) Tenant shall have the right, exercisable by written notice to Landlord given not later than five (5) days after receipt of the determination of the Prevailing Market Rental Rate, to rescind Tenant's exercise of the Renewal Option, in which case the Renewal Option shall be null and void and Tenant shall have no further option to extend the term of the Lease. If Tenant fails to exercise such right to rescind within such five (5) day period, the Renewal Option shall be irrevocable.

(e) All appraisers specified pursuant hereto shall be members of the American Institute of Real Estate Appraisers with not less than five (5) years experience appraising office, research and development and industrial properties in the Santa Clara Valley. Each party shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the determination; provided that if Tenant exercises its right to rescind the Renewal Option, Tenant shall pay one hundred percent (100%) of the appraisal costs.

EXHIBIT E

NOTICE OF BASE RENT AND RENTABLE AREA

(Date)

Incyte Pharmaceuticals, Inc.

- ----------
- ----------
Attention:

Re: Acknowledgment of Base Rent and Rentable Area,
Lease between The Board of Trustees of the Leland Stanford
Junior University (Landlord), and Incyte Pharmaceuticals, Inc.
(Tenant), for premises located at 3170 Porter Drive,
Palo Alto, California

Gentlemen/Ladies:

This letter will confirm that for all purposes of the Lease:

The Rentable Area of the Building is _____ square feet.

The Annual Base Rent is $ _____ ($36.00 x RSF of the Building).

The Monthly Base Rent is $_____ ($3.00 x RSF of the Building).

As of the date hereof the Rentable Area of the other building on the Ground Lease Property is _____ square feet.

Attached hereto is the certificate of the Architect confirming the above square footages.

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Please acknowledge your acceptance of this letter by signing and returning two copies of this letter.

Very truly yours,

Stanford Management Company

By:

Its:

ACCEPTED AND AGREED:

Incyte Pharmaceuticals, Inc.

By:

Its:

Dated:

EXHIBIT F

OUTLINE OF STANFORD RESEARCH PARK AREA

EXHIBIT 10.20

STOCK PURCHASE AGREEMENT

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304

The undersigned (the "Investor"), hereby confirms its agreement with you as follows:

1. This Stock Purchase Agreement (the "Agreement") is made as of the date set forth below between Incyte Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and the Investor.

2. The Company has authorized the sale and issuance of up to two million five hundred thousand (2,500,000) shares (the "Shares") of common stock of the Company, par value $0.001 per share (the "Common Stock"), subject to adjustment by the Company's Board of Directors, to certain investors in a private placement (the "Offering").

3. The Company and the Investor agree that the Investor will purchase from the Company and the Company will issue and sell to the Investor _____ shares, for a purchase price of $_____ per share, or an aggregate purchase price of $_____, pursuant to the Terms and Conditions for Purchase of Shares attached hereto as Annex I and incorporated herein by this reference as if fully set forth herein. Unless otherwise requested by the Investor, certificates representing the Shares purchased by the Investor will be registered in the Investor's name and address as set forth below.

4. The Investor represents that, except as set forth below, (a) it has had no position, office or other material relationship within the past three years with the Company or its affiliates, (b) neither it, nor any group of which it is a member or to which it is related, beneficially owns (including the right to acquire or vote) any securities of the Company and (c) it has no direct or indirect affiliation or association with any NASD member. Exceptions:

- ---

(If no exceptions, write "none." If left blank, response will be deemed to be "none.")

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

AGREED AND ACCEPTED:
INCYTE PHARMACEUTICALS, INC.

By: /s/ JOHN M. VUKO
Title: Chief Financial Officer

INVESTOR SIGNATURE PAGE

JANUS ASPEN SERIES,
a Delaware business trust

By: Thomas A. Early
Title: Vice President
Address: 100 Fillmore Street
Denver, CO 80206
Date: February 22, 2000
Purchase: 305,355 shares for $64,429,905

JANUS INVESTMENT FUND,
a Massachusetts business trust

By: Thomas A. Early
Title: Vice President
Address: 100 Fillmore Street
Denver, CO 80206
Date: February 22, 2000
Purchase: 1,694,645 shares for $357,570,095

ANNEX I

TERMS AND CONDITIONS FOR PURCHASE OF SHARES

1. AUTHORIZATION AND SALE OF THE SHARES. Subject to the terms and conditions of this Agreement, the Company has authorized the sale of the Shares.

2. AGREEMENT TO SELL AND PURCHASE THE SHARES; SUBSCRIPTION DATE.

2.1 At the Closing (as defined in Section 3), the Company will sell to the Investor, and the Investor will purchase from the Company, upon the terms and conditions hereinafter set forth, the number of Shares set forth on the signature page to which these Terms and Conditions for Purchase of Shares are attached as Annex I (the "Signature Page") at the purchase price set forth on such Signature Page.

2.2 The Company may enter into this same form of Stock Purchase Agreement with certain other investors (the "Other Investors") and may complete sales of Shares to them. (The Investor and the Other Investors are hereinafter sometimes collectively referred to as the "Investors," and this Agreement and the Stock Purchase Agreements executed by the Other Investors are hereinafter sometimes collectively referred to as the "Agreements.") The Company will accept executed Agreements from Investors for the purchase of Shares commencing upon the date on which the Company provides the Investors with the proposed purchase price per Share and concluding upon the date (the "Subscription Date") on which the Company has (i) executed Agreements with Investors for the purchase of at least $150,000,000 of Shares and (ii) notified Deutsche Bank Securities Inc. (in its capacity as Placement Agent for the Shares, the "Placement Agent") in writing that it is no longer accepting Agreements from Investors for the purchase of Shares.

2.3 Investor acknowledges that the Company intends to pay the Placement Agent a fee in respect of the sale of Shares to the Investor. Each of the parties hereto represents that, on the basis of any actions and agreements by it, there are no other brokers or finders entitled to compensation in connection with the sale of the Shares to the Investor.

3. DELIVERY OF THE SHARES AT CLOSING. The completion of the purchase and sale of the Shares (the "Closing") shall occur at a place and time (the "Closing Date") to be specified by the Company and the Placement Agent, and of which the Investors will be notified in advance by the Placement Agent. At the Closing, the Company shall deliver to the Investor one or more stock certificates representing the number of Shares set forth on the signature page hereto, each such certificate to be registered in the name of the Investor or, if so indicated on the Stock Certificate Questionnaire attached hereto as Exhibit A, in the name of a nominee designated by the Investor.

The Company's obligation to issue the Shares to the Investor shall be subject to the following conditions, any one or more of which may be waived by the Company: (a) receipt by the Company in same-day funds in the full amount of the purchase price for the Shares being purchased hereunder as set forth on the Signature Page hereto; (b) completion of purchases and sales under the Agreements with the Other Investors; (c) receipt by the Company of a completed version of Exhibit A, Exhibit B, and Exhibit C attached hereto; and (d) the accuracy of the

representations and warranties made by the Investors and the fulfillment of those undertakings of the Investors to be fulfilled prior to the Closing.

The Investor's obligation to purchase the Shares shall be subject to the following conditions, any one or more of which may be waived by the Investor: (a) Investors shall have executed Agreements for the purchase of at least $150,000,000 of Shares; and (b) the representations and warranties of the Company set forth herein shall be true and correct in all material respects and (c) the fulfillment of those undertakings of the Company to be fulfilled prior to the Closing. The Investor's obligations are expressly not conditioned on the purchase by any or all of the other Investors of the Shares that they have agreed to purchase from the Company.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. Except as otherwise described in the Company's periodic reports on Forms 10-Q and 10-K and in the Company's current reports on Form 8-K as filed by the Company with the Securities and Exchange Commission in 1999 and 2000 (the "SEC Documents"), and in the Company's press releases since September 30, 1999 (collectively, including the documents incorporated by reference therein, the "Company Information"), which qualify the following representations and warranties in their entirety, the Company hereby represents and warrants to, and covenants with, the Investor, as follows:

4.1 ORGANIZATION. The Company is duly incorporated and validly existing in good standing under the laws of the jurisdiction of its organization. The Company has full power and authority to own, operate and occupy its properties and to conduct its business as presently conducted and is registered or qualified to do business and in good standing in each jurisdiction in which it owns or leases property or transacts business and where the failure to be so qualified would have a material adverse effect upon the business, financial condition, properties or operations of the Company and its subsidiaries, taken as a whole ("Material Adverse Effect"), and no proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing, or seeking to revoke, limit or curtail, such power and authority or qualification.

4.2 DUE AUTHORIZATION. The Company has all requisite power and authority to execute, deliver and perform its obligations under the Agreements, and the Agreements have been duly authorized and validly executed and delivered by the Company and constitute legal, valid and binding agreements of the Company enforceable against the Company in accordance with their terms, except as rights to indemnity and contribution may be limited by state or federal securities laws or the public policy underlying such laws, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3 NON-CONTRAVENTION. The execution and delivery of the Agreements, the issuance and sale of the Shares to be sold by the Company under the Agreements, the fulfillment of the terms of the Agreements and the consummation of the transactions contemplated thereby will not (A) conflict with or constitute a violation of, or default (with the passage of time or otherwise) under, (i) any material bond, debenture, note or other evidence of indebtedness, or

any material lease, contract, indenture, mortgage, deed of trust, loan agreement, joint venture or other agreement or instrument to which the Company is a party or by which it or its property is bound, where such conflict, violation or default is likely to result in a Material Adverse Effect, (ii) the charter, by-laws or other organizational documents of the Company, or (iii) any law, administrative regulation, ordinance or order of any court or governmental agency, arbitration panel or authority binding upon the Company or its property, where such conflict, violation or default is likely to result in a Material Adverse Effect, or (B) result in the creation or imposition of any lien, encumbrance, claim, security interest or restriction whatsoever upon any of the material properties or assets of the Company or an acceleration of indebtedness pursuant to any obligation, agreement or condition contained in any material bond, debenture, note or any other evidence of indebtedness or any material indenture, mortgage, deed of trust or any other agreement or instrument to which the Company is a party or by which it is bound or to which any of the property or assets of the Company is subject. No consent, approval, authorization or other order of, or registration, qualification or filing with, any regulatory body, administrative agency, or other governmental body in the United States is required for the execution and delivery of the Agreements and the valid issuance and sale of the Shares to be sold pursuant to the Agreements, other than such as have been made or obtained, and except for (a) any securities filings required to be made under federal or state securities laws and (b) the filing of the Registration Statement as contemplated by Section 7 of this Agreement.

4.4 CAPITALIZATION. The capitalization of the Company is described in the Company's SEC Documents. The Company has not issued any capital stock since September 30, 1999 other than pursuant to employee benefit plans disclosed in the Company's SEC Documents. The Shares to be sold pursuant to the Agreements have been duly authorized, and when issued and paid for in accordance with the terms of the Agreements, will be duly and validly issued, fully paid and nonassessable. The outstanding shares of capital stock of the Company have been duly and validly issued and are fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and were not issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. Except as set forth in or contemplated by the Company's SEC Documents, there are no outstanding rights (including, without limitation, preemptive rights), warrants or options to acquire, or instruments convertible into or exchangeable for, any unissued shares of capital stock or other equity interest in the Company, or any contract, commitment, agreement, understanding or arrangement of any kind to which the Company is a party and relating to the issuance or sale of any capital stock of the Company, any such convertible or exchangeable securities or any such rights, warrants or options. Without limiting the foregoing, no preemptive right, co-sale right, registration right, right of first refusal or other similar right exists with respect to the issuance and sale of the Shares. Except as disclosed in the Company's SEC Documents, there are no stockholders agreements, voting agreements or other similar agreements with respect to the Common Stock to which the Company is a party.

4.5 LEGAL PROCEEDINGS. There is no material legal or governmental proceeding pending to which the Company is a party or of which the business or property of the Company is subject that is not disclosed in the Company's SEC Documents.

4.6 NO VIOLATIONS. The Company is not in violation of its charter, bylaws or other organizational document, or in violation of any law, administrative regulation, ordinance or

order of any court or governmental agency, arbitration panel or authority applicable to the Company, which violation, individually or in the aggregate, would be reasonably likely to have a Material Adverse Effect, or is in default (and there exists no condition which, with the passage of time or otherwise, would constitute a default) in the performance of any material bond, debenture, note or any other evidence of indebtedness in any indenture, mortgage, deed of trust or any other material agreement or instrument to which the Company is a party or by which the Company is bound or by which the property of the Company is bound, which would be reasonably likely to have a Material Adverse Effect.

4.7 GOVERNMENTAL PERMITS, ETC. With the exception of the matters which are dealt with separately in Sections 4.1, 4.12, and 4.13, the Company has all necessary franchises, licenses, certificates and other authorizations from any foreign, federal, state or local government or governmental agency, department or body that are currently necessary for the operation of the business of the Company as currently conducted except where the failure to currently possess could not reasonably be expected to have a Material Adverse Effect.

4.8 INTELLECTUAL PROPERTY. Except as disclosed in the SEC Documents, (i) the Company owns or possesses adequate rights to use all patents, patent rights, inventions, trade secrets, know-how, trademarks, service marks, trade names, copyrights or other information (collectively, "Intellectual Property") which are necessary to conduct its businesses as now or as proposed to be conducted by it as described in the SEC Documents, except where the failure to currently own or possess would not have a Material Adverse Effect, (ii) the Company has not received any notice of, and has no knowledge of, any infringement of or conflict with asserted rights of others with respect to any Intellectual Property which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could reasonably be expected to have a Material Adverse Effect, and (iii) to the Company's knowledge, none of the patent rights owned or licensed by the Company are unenforceable or invalid.

4.9 FINANCIAL STATEMENTS. The financial statements of the Company and the related notes contained in the Company's SEC Documents present fairly, in accordance with generally accepted accounting principles, the financial position of the Company as of the dates indicated, and the results of its operations and cash flows for the periods therein specified, subject, in the case of unaudited financial statements for interim periods, to normal year-end audit adjustments. Such financial statements (including the related notes) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods therein specified, except as disclosed in the Company's SEC Documents and except that unaudited financial statements may not contain all footnotes required by generally accepted accounting principles.

4.10 NO MATERIAL ADVERSE CHANGE. Except as disclosed in the Company's press releases or other Proprietary Information provided to the Investor in contemplation of this Offering, since September 30, 1999, there has not been (i) any Material Adverse Effect affecting the Company, (ii) any obligation, direct or contingent, that is material to the Company considered as one enterprise, incurred by the Company, except obligations incurred in the ordinary course of business, (iii) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company, or (iv) any loss or damage (whether or not insured) to the

physical property of the Company which has been sustained which has a Material Adverse Effect.

4.11 NASDAQ COMPLIANCE. The Company's Common Stock is registered pursuant to Section 12(g) of the Exchange Act and is listed on the Nasdaq National Market (the "Nasdaq Stock Market"), and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq Stock Market.

4.12 REPORTING STATUS. The Company has filed in a timely manner all documents that the Company was required to file under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), during the 12 months preceding the date of this Agreement. The following documents complied in all material respects with the SEC's requirements as of their respective filing dates, and the information contained therein as of the respective dates thereof did not 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 the light of the circumstances under where they were made, not misleading:

(a) The Company's Annual Report on Form 10-K for the year ended December 31, 1998 (the "10-K");

(b) The Company's Quarterly Reports on Form 10-Q for each of the quarters ended March 31, 1999, June 30, 1999 and September 30, 1999; and

(c) All other documents, if any, filed by the Company with the Securities and Exchange Commission since December 31, 1998 pursuant to the reporting requirements of the Exchange Act.

4.13 LISTING. The Company shall comply with all requirements of the National Association of Securities Dealers, Inc. with respect to the issuance of the Shares and the listing thereof on the Nasdaq Stock Market.

4.14 FOREIGN CORRUPT PRACTICES. Neither the Company nor, to the knowledge of the Company, any agent or other person acting on behalf of the Company, have (i) directly or indirectly, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or made by any person acting on its behalf and of which the Company is aware in violation of law or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

4.15 NO MANIPULATION OF STOCK. The Company has not taken and will not, in violation of applicable law, take, any action outside the ordinary course of business designed to or that might reasonably be expected to cause or result in unlawful manipulation of the price of the Common Stock to facilitate the sale or resale of the Shares.

4.16 TRANSFER TAXES. On the Closing Date, all stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Shares to be sold to the Investor hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with.

4.17 LEGAL OPINION. The Company shall cause to be delivered to the Investors and the Placement Agent by counsel to the Company a legal opinion in the form attached hereto as Exhibit E.

4.18 SECURITIES LAW COMPLIANCE. Other than the SEC Documents (the "Offering Materials"), the Company has not distributed and will not distribute prior to the Closing Date any offering material in connection with the offering and sale of the Shares. The Company has not in the past nor will it hereafter take any action independent of the Placement Agent to sell, offer for sale or solicit offers to buy any securities of the Company which would bring the offer, issuance or sale of the Shares, as contemplated by this Agreement, within the provisions of Section 5 of the Securities Act of 1933, as amended (the "Securities Act"), unless such offer, issuance or sale was or shall be within the exemptions of Section 4 of the Securities Act.

4.19 ACCOUNTANTS. Ernst & Young LLP, who the Company expects will express their opinion with respect to the financial statements to be incorporated by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 1999 into the Registration Statement (as defined below) and the Prospectus which forms a part thereof, are independent accountants as required by the Securities Act and the rules and regulations promulgated thereunder (the "Rules and Regulations").

4.20 CONTRACTS. The contracts described in the SEC Documents or incorporated by reference therein that are material to the Company are in full force and effect on the date hereof, and neither the Company nor, to the Company's knowledge, any other party to such contracts is in breach of or default under any of such contracts which breach or default would have a Material Adverse Effect.

4.21 TAXES. The Company has filed all necessary federal, state and foreign income and franchise tax returns due prior to the date hereof and has paid or accrued all taxes shown as due thereon, and the Company has no knowledge of a tax deficiency which has been or might be asserted or threatened against it which could reasonably be expected to have a Material Adverse Effect.

4.22 INVESTMENT COMPANY. The Company is not an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.23 INSURANCE. The Company maintains and will continue to maintain insurance of the types and in the amounts that the Company reasonably believes is adequate for its business, all of which insurance is in full force and effect.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE INVESTOR.

5.1 The Investor represents and warrants to, and covenants with, the Company that: (i) the Investor is an "accredited investor" as defined in Regulation D under the Securities Act and the Investor is also knowledgeable, sophisticated and experienced in making, and is qualified to make decisions with respect to, investments in shares presenting an investment decision like that involved in the purchase of the Shares, including investments in securities issued by the Company and investments in comparable companies, and has requested, received, reviewed and considered all information it deemed relevant in making an informed decision to purchase the Shares; (ii) the Investor is acquiring the number of Shares set forth on the Signature Page hereto in the ordinary course of its business and for its own account for investment only and with no present intention of distributing any of such Shares or any arrangement or understanding with any other persons regarding the distribution of such Shares; (iii) the Investor will not, directly or indirectly, offer, sell, pledge, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of) any of the Shares except in compliance with the Securities Act, applicable state securities laws and the respective rules and regulations promulgated thereunder; (iv) the Investor has answered all questions on the Signature Page hereto, the Registration Statement Questionnaire attached hereto as Exhibit B, and the Investor Questionnaire attached hereto as Exhibit C, and the answers thereto are true and correct as of the date hereof and will be true and correct as of the Closing Date; (v) the Investor will notify the Company immediately of any change in any of such information until such time as the Investor has sold all of its Shares or until the Company is no longer required to keep the Registration Statement effective; and (vi) the Investor has, in connection with its decision to purchase the number of Shares set forth on the signature page hereto, relied only upon the Company Information provided to the Investor by the Company in contemplation of this offering and the representations and warranties of the Company contained herein. Investor understands that its acquisition of the Shares has not been registered under the Securities Act, or registered or qualified under any state securities law in reliance on specific exemptions therefrom, which exemptions may depend upon, among other things, the bona fide nature of the Investor's investment intent as expressed herein.

5.2 The Investor acknowledges, represents and agrees that no action has been or will be taken in any jurisdiction outside the United States by the Company or the Placement Agent that would permit an offering of the Shares, or possession or distribution of offering materials in connection with the issue of the Shares, in any jurisdiction outside the United States where action for that purpose is required. Each Investor outside the United States will comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Shares or has in its possession or distributes any offering material, in all cases at its own expense. The Placement Agent is not authorized to make any representation or use any information in connection with the issue, placement, purchase and sale of the Shares.

5.3 The Investor hereby covenants with the Company not to make any sale of the Shares without complying with the provisions of this Agreement, including Section 7.2 hereof, and without effectively causing the prospectus delivery requirement under the Securities Act to be satisfied, and the Investor acknowledges that the certificates evidencing the Shares will be imprinted with a legend that prohibits their transfer except in accordance therewith. The Investor acknowledges that there may occasionally be times when the Company, based on the

advice of its counsel, determines that it must suspend the use of the Prospectus forming a part of the Registration Statement until such time as an amendment to the Registration Statement has been filed by the Company and declared effective by the SEC or until the Company has amended or supplemented such Prospectus.

5.4 The Investor further represents and warrants to, and covenants with, the Company that (i) the Investor has full right, power, authority and capacity to enter into this Agreement and to consummate the transactions contemplated hereby and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and (ii) this Agreement constitutes a valid and binding obligation of the Investor enforceable against the Investor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' and contracting parties' rights generally and except as enforceability may be subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and except as the indemnification agreements of the Investors herein may be legally unenforceable.

5.5 Investor will not, prior to the effectiveness of the Registration Statement, sell, offer to sell, solicit offers to buy, dispose of, loan, pledge or grant any right with respect to (collectively, a "Disposition"), the Common Stock of the Company, nor will Investor engage in any hedging or other transaction which is designed to or could reasonably be expected to lead to or result in a Disposition of Common Stock of the Company by the Investor or any other person or entity. Such prohibited hedging or other transactions would include, without limitation, effecting any short sale or having in effect any short position (whether or not such sale or position is against the box and regardless of when such position was entered into) or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to the Common Stock of the Company or with respect to any security (other than a broad-based market basket or index) that includes, relates to or derives any significant part of its value from the Common Stock of the Company.

5.6 The Investor understands that nothing in this Agreement or any other materials presented to the Investor in connection with the purchase and sale of the Shares constitutes legal, tax or investment advice. The Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of Shares.

6. SURVIVAL OF REPRESENTATIONS, WARRANTIES AND AGREEMENTS. Notwithstanding any investigation made by any party to this Agreement or by the Placement Agent, all covenants, agreements, representations and warranties made by the Company and the Investor herein shall survive the execution of this Agreement, the delivery to the Investor of the Shares being purchased and the payment therefor.

7. REGISTRATION OF THE SHARES; COMPLIANCE WITH THE SECURITIES ACT.

7.1 REGISTRATION PROCEDURES AND EXPENSES. The Company shall:

(a) subject to receipt of necessary information from the Investors, prepare and file with the SEC, as soon as practicable, but in no event later than thirty (30) days after the Closing Date, a registration statement on Form S-3 (the "Registration Statement") to enable the resale of the Shares by the Investors from time to time through the automated quotation system of the Nasdaq Stock Market or in privately negotiated transactions. If the Registration Statement is not declared effective by August 2, 2000 (the "Final Effectiveness Date") and does not remain effective for 30 continuous days from the first date of effectiveness, the Purchaser shall be entitled to a stock dividend in the amount of 2%; provided that the amount of such stock dividend shall increase by 1.5% at each of the first two three-month anniversaries of the Final Effectiveness Date if the Registration Statement has not been declared effective and remained effective for 30 continuous days from the date of first effectiveness as of such three month anniversaries; provided further that any such stock dividend shall not exceed in the aggregate 5%.

(b) use its reasonable efforts, subject to receipt of necessary information from the Investors, to cause the Registration Statement to become effective as soon as practicable, but in no event later than ninety (90) days after the Registration Statement is filed by the Company;

(c) use its reasonable efforts to prepare and file with the SEC such amendments and supplements to the Registration Statement and the Prospectus used in connection therewith as may be necessary to keep the Registration Statement current and effective for a period not exceeding, with respect to each Investor's Shares purchased hereunder, the earlier of (i) the second anniversary of the Closing Date, (ii) the date on which the Investor may sell all Shares then held by the Investor without restriction by the volume limitations of Rule 144(e) of the Securities Act or (iii) such time as all Shares purchased by such Investor in this Offering have been sold pursuant to a registration statement;

(d) furnish to the Investor with respect to the Shares registered under the Registration Statement such number of copies of the Registration Statement, Prospectuses and Preliminary Prospectuses in conformity with the requirements of the Securities Act and such other documents as the Investor may reasonably request, in order to facilitate the public sale or other disposition of all or any of the Shares by the Investor, provided, however, that the obligation of the Company to deliver copies of Prospectuses or Preliminary Prospectuses to the Investor shall be subject to the receipt by the Company of reasonable assurances from the Investor that the Investor will comply with the applicable provisions of the Securities Act and of such other securities or blue sky laws as may be applicable in connection with any use of such Prospectuses or Preliminary Prospectuses;

(e) file documents required of the Company for normal blue sky clearance in states specified in writing by the Investor, provided, however, that the Company shall not be required to qualify to do business or consent to service of process in any jurisdiction in which it is not now so qualified or has not so consented;

(f) bear all expenses in connection with the procedures in paragraph (a) through (e) of this Section 7.1 and the registration of the Shares pursuant to the Registration Statement; and

(g) advise the Investor, promptly after it shall receive notice or obtain knowledge of the issuance of any stop order by the SEC delaying or suspending the effectiveness of the Registration Statement or of the initiation of any proceeding for that purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal at the earliest possible moment if such stop order should be issued

(h) with a view to making available to the Investor the benefits of Rule 144 (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Investor to sell Shares to the public without registration, the Company covenants and agrees to: (i) make and keep public information available, as those terms are understood and defined in Rule 144, until the date on which the Company is not required to keep the Registration Statement current and effective with respect to the Investor's Shares, as specified in paragraph (c) above; (ii) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and under the Exchange Act; and (iii) furnish to the Investor upon request, as long as the Investor owns any Shares, (A) a written statement by the Company that it has complied with the reporting requirements of the Securities Act and the Exchange Act, (B) a copy of the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail the Investor of any rule or regulation of the SEC that permits the selling of any such Shares without registration.

It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 7.1 that the Investor shall furnish to the Company such information regarding itself, the Shares to be sold by Investor, and the intended method of disposition of such securities as shall be required to effect the registration of the Shares.

The Company understands that the Investor disclaims being an underwriter, but the Investor being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has hereunder, provided, however, that if the Company receives notification from the SEC that the Investor is deemed an underwriter, then the period by which the Company is obligated to submit an acceleration request to the SEC shall be extended to the earlier of (i) the 90th day after such SEC notification, or (ii) 120 days after the initial filing of the Registration Statement with the SEC.

7.2 TRANSFER OF SHARES AFTER REGISTRATION; SUSPENSION.

(a) The Investor agrees that it will not effect any Disposition of the Shares or its right to purchase the Shares that would constitute a sale within the meaning of the Securities Act except as contemplated in the Registration Statement referred to in Section 7.1 and as described below, and that it will promptly notify the Company of any changes in the information set forth in the Registration Statement regarding the Investor or its plan of distribution.

(b) Except in the event that paragraph (c) below applies, the Company shall: (i) if deemed necessary by the Company, prepare and file from time to time with the SEC a post-effective amendment to the Registration Statement or a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that such Registration Statement will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and so that, as thereafter delivered to purchasers of the Shares being sold thereunder, such Prospectus will not 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 the light of the circumstances under which they were made, not misleading; (ii) provide the Investor copies of any documents filed pursuant to Section 7.2(b)(i); and (iii) inform each Investor that the Company has complied with its obligations in Section 7.2(b)(i) (or that, if the Company has filed a post-effective amendment to the Registration Statement which has not yet been declared effective, the Company will notify the Investor to that effect, will use its reasonable efforts to secure the effectiveness of such post-effective amendment as promptly as possible and will promptly notify the Investor pursuant to Section 7.2(b)(i) hereof when the amendment has become effective).

(c) Subject to paragraph (d) below, in the event: (i) of any request by the SEC or any other federal or state governmental authority during the period of effectiveness of the Registration Statement for amendments or supplements to a Registration Statement or related Prospectus or for additional information; (ii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose; (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Shares for sale in any jurisdiction or the initiation of any proceeding for such purpose; or (iv) of any event or circumstance which necessitates the making of any changes in the Registration Statement or Prospectus, or any document incorporated or deemed to be incorporated therein by reference, so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or any omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or any omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; then the Company shall deliver a certificate in writing to the Investor (the "Suspension Notice") to the effect of the foregoing and, upon receipt of such Suspension Notice, the Investor will refrain from selling any Shares pursuant to the Registration Statement (a "Suspension") until the Investor's receipt of copies of a supplemented or amended Prospectus prepared and filed by the Company, or until it is advised in writing by the Company that the current Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in any such Prospectus. In the event of any Suspension, the Company will use its reasonable efforts to cause the use of the Prospectus so suspended to be resumed as soon as reasonably practicable within 20 business days after delivery of a Suspension Notice to the Investors. In addition to and without limiting any other remedies (including, without limitation, at law or at equity) available to the Investor, the Investor shall be entitled to specific performance in the event that the Company fails to comply with the provisions of this Section 7.2(c).

(d) Notwithstanding the foregoing paragraphs of this Section 7.2, the Investor shall not be prohibited from selling Shares under the Registration Statement as a result of Suspensions on more than three occasions of not more than 30 days each in any twelve month period, unless, in the good faith judgment of the Company's Board of Directors, upon advice of counsel, the sale of Shares under the Registration Statement in reliance on this paragraph 7.2(d) would be reasonably likely to cause a violation of the Securities Act or the Exchange Act and result in potential liability to the Company.

(e) Provided that a Suspension is not then in effect the Investor may sell Shares under the Registration Statement, provided that it arranges for delivery of a current Prospectus to the transferee of such Shares. Upon receipt of a request therefor, the Company has agreed to provide a reasonable number of current Prospectuses to the Investor and to supply a reasonable number of copies to any other parties requiring such Prospectuses.

(f) In the event of a sale of Shares by the Investor, the Investor must also deliver to the Company's transfer agent, with a copy to the Company, a Certificate of Subsequent Sale substantially in the form attached hereto as Exhibit C, so that the shares may be properly transferred.

7.3 INDEMNIFICATION. For the purpose of this Section 7.3:

(a) the term "Selling Stockholder" shall include the Investor and any affiliate of such Investor;

(b) the term "Registration Statement" shall include any final Prospectus, exhibit, supplement or amendment included in or relating to the Registration Statement referred to in Section 7.1; and

(c) the term "untrue statement" shall include any untrue statement or alleged untrue statement, or any omission or alleged omission to state in the Registration Statement a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) The Company agrees to indemnify and hold harmless each Selling Stockholder from and against any losses, claims, damages or liabilities to which such Selling Stockholder may become subject (under the Securities Act or otherwise) insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon (i) any untrue statement of a material fact contained in the Registration Statement, or (ii) any failure by the Company to fulfill any undertaking included in the Registration Statement, and the Company will reimburse such Selling Stockholder for any reasonable legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim, provided, however, that the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of, or is based upon, an untrue statement made in such Registration Statement in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Selling Stockholder specifically for use in preparation of the Registration Statement or the failure of such Selling Stockholder to comply with its covenants and agreements contained in Sections 5.1,

5.2, 5.3 or 7.2 hereof or any statement or omission in any Prospectus that is corrected in any subsequent Prospectus that was delivered to the Investor prior to the pertinent sale or sales by the Investor.

(ii) The Investor agrees to indemnify and hold harmless the Company (and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, each officer of the Company who signs the Registration Statement and each director of the Company) from and against any losses, claims, damages or liabilities to which the Company (or any such officer, director or controlling person) may become subject (under the Securities Act or otherwise), insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon, (i) any failure to comply with the covenants and agreements contained in Section 5.1, 5.2, 5.3 or 7.2 hereof, or (ii) any untrue statement of a material fact contained in the Registration Statement if such untrue statement was made in reliance upon and in conformity with written information furnished by or on behalf of the Investor specifically for use in preparation of the Registration Statement, and the Investor will reimburse the Company (or such officer, director or controlling person), as the case may be, for any legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim.

(iii) Promptly after receipt by any indemnified person of a notice of a claim or the beginning of any action in respect of which indemnity is to be sought against an indemnifying person pursuant to this Section 7.3, such indemnified person shall notify the indemnifying person in writing of such claim or of the commencement of such action, but the omission to so notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party under this Section 7.3 (except to the extent that such omission materially and adversely affects the indemnifying party's ability to defend such action) or from any liability otherwise than under this Section 7.3. Subject to the provisions hereinafter stated, in case any such action shall be brought against an indemnified person, the indemnifying person shall be entitled to participate therein, and, to the extent that it shall elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, shall be entitled to assume the defense thereof, with counsel reasonably satisfactory to such indemnified person. After notice from the indemnifying person to such indemnified person of its election to assume the defense thereof, such indemnifying person shall not be liable to such indemnified person for any legal expenses subsequently incurred by such indemnified person in connection with the defense thereof, provided, however, that if there exists or shall exist a conflict of interest that would make it inappropriate, in the reasonable opinion of counsel to the indemnified person, for the same counsel to represent both the indemnified person and such indemnifying person or any affiliate or associate thereof, the indemnified person shall be entitled to retain its own counsel at the expense of such indemnifying person; provided, however, that no indemnifying person shall be responsible for the fees and expenses of more than one separate counsel (together with appropriate local counsel) for all indemnified parties. In no event shall any indemnifying person be liable in respect of any amounts paid in settlement of any action unless the indemnifying person shall have approved the terms of such settlement; provided that such consent shall not be unreasonably withheld. No indemnifying person shall, without the prior written consent of the indemnified person, effect any settlement of any pending or threatened proceeding in respect of which any indemnified person is or could have been a party and indemnification could have been sought hereunder by such indemnified person, unless

such settlement includes an unconditional release of such indemnified person from all liability on claims that are the subject matter of such proceeding.

(iv) If the indemnification provided for in this Section 7.3 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Company on the one hand and the Investors on the other in connection with the statements or omissions or other matters which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, in the case of an untrue statement, whether the untrue statement relates to information supplied by the Company on the one hand or an Investor on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement. The Company and the Investors agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation (even if the Investors were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), no Investor shall be required to contribute any amount in excess of the amount by which the gross amount received by the Investor from the sale of the Shares to which such loss relates exceeds the amount of any damages which such Investor has otherwise been required to pay by reason of such untrue statement. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Investors' obligations in this subsection to contribute are several in proportion to their sales of Shares to which such loss relates and not joint.

(v) The parties to this Agreement hereby acknowledge that they are sophisticated business persons who were represented by counsel during the negotiations regarding the provisions hereof including, without limitation, the provisions of this Section 7.3, and are fully informed regarding said provisions. They further acknowledge that the provisions of this Section 7.3 fairly allocate the risks in light of the ability of the parties to investigate the Company and its business in order to assure that adequate disclosure is made in the Registration Statement as required by the Act and the Exchange Act. The parties are advised that federal or state public policy as interpreted by the courts in certain jurisdictions may be contrary to certain of the provisions of this Section 7.3, and the parties hereto hereby expressly waive and relinquish any right or ability to assert such public policy as a defense to a claim under this Section 7.3 and further agree not to attempt to assert any such defense.

7.4 TERMINATION OF CONDITIONS AND OBLIGATIONS. The conditions precedent imposed by Section 5 or this Section 7 upon the transferability of the Shares shall cease and

terminate as to any particular number of the Shares when such Shares shall have been effectively registered under the Securities Act and sold or otherwise disposed of in accordance with the intended method of disposition set forth in the Registration Statement covering such Shares or at such time as an opinion of counsel satisfactory to the Company shall have been rendered to the effect that such conditions are not necessary in order to comply with the Securities Act.

7.5 INFORMATION AVAILABLE. So long as the Registration Statement is effective covering the resale of Shares owned by the Investor, the Company will furnish to the Investor:

(a) as soon as practicable after it is available, one copy of (i) its Annual Report to Stockholders (which Annual Report shall contain financial statements audited in accordance with generally accepted accounting principles by a national firm of certified public accountants) and (ii) if not included in substance in the Annual Report to Stockholders, its Annual Report on Form 10-K (the foregoing, in each case, excluding exhibits);

(b) upon the reasonable request of the Investor, all exhibits excluded by the parenthetical to subparagraph (a)(ii) of this Section 7.5 as filed with the SEC and all other information that is made available to stockholders;

(c) upon the reasonable request of the Investor, an adequate number of copies of the Prospectuses to supply to any other party requiring such Prospectuses; and the Company, upon the reasonable request of the Investor, will meet with the Investor or a representative thereof at the Company's headquarters to discuss all information relevant for disclosure in the Registration Statement covering the Shares and will otherwise cooperate with any Investor conducting an investigation for the purpose of reducing or eliminating such Investor's exposure to liability under the Securities Act, including the reasonable production of information at the Company's headquarters; provided, that the Company shall not be required to disclose any confidential information to or meet at its headquarters with any Investor until and unless the Investor shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Company with the Company with respect thereto; and

7.6 DISCLOSURE. The Company will not issue any public statement, press release or any other public disclosure listing Investor as one of the purchasers of the Shares without Investor's prior written consent, except (i) the Registration Statement, (ii) the filing of this Agreement, with the name of the Investor listed on the signature page hereof, as an exhibit to the Company's periodic reports under the Exchange Act and (iii) as such public statement, press release or other public disclosure may be required by applicable law, in which case the Company shall allow Investor at least one business day to comment on such public statement, press release or other public disclosure in advance of such issuance.

7.7 PIGGYBACK REGISTRATION.

(a) The Company shall use its reasonable efforts to notify the Investor in writing at least twenty (20) days before filing any registration statement under the Act for purposes of effecting an underwritten public offering by the Company solely of Common Stock (excluding registration statements relating to any employee benefit plan or a corporate merger, acquisition or reorganization, or any Form S-3 similar shelf registration statements relating to the

non-underwritten offer and sale of securities for the account of persons or entities other than the Company) and will afford the Investor an opportunity to include in such registration statement all or any part of the Shares then held by the Investor. If the Investor desires to include in any such registration statement all or any part of the Shares held by the Investor, the Investor shall, within ten (10) days after receipt of the above-described notice from the Company, so notify the Company in writing, and in such notice shall inform the Company of the number of Shares the Investor wishes to include in such registration statement. If the Investor decides not to include all of its Shares in any such registration statement filed by the Company, the Investor shall nevertheless continue to have the right to include any Shares in any subsequent registration statement or registration statements as may be filed by the Company as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth in this Section 7.7. The Investor's rights to include any Shares in any offering under this Section are subject in all events to the ability of the managing underwriter for such offering to exclude some or all of the Shares requested to by registered on the basis of a good faith determination that inclusion of such securities might adversely affect the success of the offering or otherwise adversely affect the Company. Any such exclusion shall be pro rata among all holders of Common Stock having contractual registration rights who have requested to sell Common Stock in such registration according to the total amount of shares entitled to be included therein owned by each such holder or in such other proportions as may be mutually agreed to by such holders, but in no event shall any shares being sold by a stockholder exercising a demand registration right be excluded from such offering.

(b) If a registration statement under which the Company gives notice under this Section is for an underwritten offering, then the Company shall so advise the Investor. In such event, the right of any of the Investor's Shares to be included in a registration pursuant to this Section shall be conditioned upon the Investor's participation in such underwriting and the inclusion of the Investor's Shares in the underwriting to the extent provided herein. If the Investor desires to distribute its Shares through such underwriting, it shall enter into an underwriting agreement in customary form with the managing underwriter or underwriters selected for such underwriting and shall furnish such information and documents as the Company or the managing underwriter or underwriters may reasonably request. Notwithstanding any other provision of this Agreement, if the managing underwriter(s) determine(s) in good faith that marketing factors require a limitation of the number of shares to be underwritten, then the managing underwriter(s) may exclude Shares from the registration and the underwriting in the manner described in Section 7.7(a) above. If the Investor disapproves of the term of any such underwriting, the Investor may elect to withdraw therefrom by written notice to the Company and the managing underwriter(s), delivered at least ten (10) business days prior to the effective date of the registration statement. Any Shares excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration and such withdrawn registration shall count against the number of registrations to which the Investor is entitled pursuant to Section 7.7(d).

(c) The Investor shall be responsible for its pro rata share of registration fees and underwriters' and brokers' discounts and commissions relating to any Shares included in such registration and for the fees and expenses of counsel to the Investor. Other registration expenses (such as legal and accounting fees of counsel to the Company, printing fees, road show expenses, and the like) shall be borne by the Company.

(d) The piggyback registration rights granted to the Holders under this Section 7.7: (i) shall apply to the first three registrations filed by the Company after the Closing, (ii) shall in no event be available to the Investor after such time as the Registration Statement is declared effective, except that such rights shall be available during a Suspension, and (iii) shall terminate at such time as the Company is no longer obligated to keep the Registration Statement current and effective with respect to Investor's Shares, as specified in Section 7.1(c).

8. NOTICES. All notices, requests, consents and other communications hereunder shall be in writing, shall be mailed (A) if within domestic United States by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) if delivered from outside the United States, by International Federal Express or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail domestic, three business days after so mailed, (ii) if delivered by nationally recognized overnight carrier, one (1) business day after so mailed, (iii) if delivered by International Federal Express, two (2) business days after so mailed, (iv) if delivered by facsimile, upon electric confirmation of receipt and shall be delivered as addressed as follows:

(a) if to the Company, to:

Incyte Pharmaceuticals, Inc.
3174 Porter Drive
Palo Alto, California 94304
Attn: General Counsel
Phone: (650) 855-0555
Telecopy: (650) 845-4166

(b) with a copy to:

Pillsbury Madison & Sutro LLP
50 Fremont Street
San Francisco, California 94105
Attn: Stanton D. Wong, Esq.
Phone: (415) 983-1000
Telecopy: (415) 983-1200

(c) if to the Investor, at its address on the Signature Page hereto, or at such other address or addresses as may have been furnished to the Company in writing.

9. WAIVER OF CONFLICTS. Each party to this Agreement acknowledges that Pillsbury Madison & Sutro LLP ("PM&S"), counsel for the Company, has in the past performed and may continue to perform legal services for certain of the Investors in matters unrelated to the transactions described in this Agreement, including the representation of such Investors in equity financings and other matters. Accordingly, each party to this Agreement hereby (1) acknowledges that it has had an opportunity to ask for information relevant to this disclosure; (2) acknowledges that PM&S represented the Company in the transaction contemplated by this Agreement and has not represented any individual Investor or any individual stockholder or employee of the Company in connection with such transaction; and (3) gives its informed

consent to PM&S's representation of certain of the Investors in such unrelated matters and to PM&S's representation of the Company in connection with this Agreement and the transactions contemplated hereby.

10. CHANGES. This Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and the Investor.

11. HEADINGS. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

12. SEVERABILITY. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

13. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without giving effect to the principles of conflicts of law.

14. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument, and shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other parties.

15. CONFIDENTIAL DISCLOSURE AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, any confidential disclosure agreement previously executed by the Company and the Investor in connection with the transactions contemplated by this Agreement shall remain in full force and effect in accordance with its terms following the execution of this Agreement and the consummation of the transactions contemplated hereby.

EXHIBIT 21.1

SUBSIDIARIES OF INCYTE PHARMACEUTICALS, INC.

Name	Jurisdiction of Organization
Incyte Europe Holdings Limited	England and Wales
Incyte Europe Limited	England and Wales
Synteni, Inc.	Delaware

EXHIBIT 23.1

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 33-76236 and No. 33-93668) pertaining to the 1993 Directors' Stock Option Plan of Incyte Pharmaceuticals, Inc., (Form S-8 No. 33-76344, 33-93666, 333-13449 and 333-31413) pertaining to the 1991 Stock Plan of Incyte Pharmaceuticals, Inc., (Form S-8 No. 333-31409) pertaining to the 1997 Employee Stock Purchase Plan of Incyte Pharmaceuticals, Inc. and (Form S-8 No. 333-46639) pertaining to Options Assumed By Incyte Pharmaceuticals, Inc. Originally Granted Under The Synteni, Inc. 1996 Equity Incentive Plan of our report dated January 24, 2000, with respect to the consolidated financial statements and schedule of Incyte Pharmaceuticals, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 1999.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 16, 2000

EXHIBIT 23.2

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 33-76236 and 33-93668 pertaining to the 1993 Directors' Stock Option Plan of Incyte Pharmaceuticals, Inc.; Nos. 33-76344, 33-93666, 333-13449, 333-31413 and 333-63069 pertaining to the 1991 Stock Plan of Incyte Pharmaceuticals, Inc.; No. 333-31409 pertaining to the Incyte Pharmaceuticals, Inc. 1997 Employee Stock Purchase Plan; and No. 333-46639 pertaining to the Options Assumed by Incyte Pharmaceuticals, Inc. Originally Granted Under the Synteni, Inc. 1996 Equity Incentive Plan) of Incyte Pharmaceuticals, Inc. of our report dated January 17, 2000 relating to the financial statements of diaDexus, LLC, which appears in this Form 10-K.

\s\ PricewaterhouseCoopers LLP

San Jose, California
March 20, 2000

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This schedule contains summary financial information extracted from Item 1 of Form 10-K for the period ended December 31, 1999 and is qualified in its entirety by reference to such 10-K.

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DEC-31-1999
JAN-01-1999
DEC-31-1999
32,220
34,717
26,842
234
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(800)
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(26,768)
(0.95)
(0.95)