As filed with the Securities and Exchange Commission on January 16, 2004

Registration No. 333-109965

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 3

to

Form S-1

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

Dynavax Technologies Corporation

(Exact Name of Registrant as Specified in its Charter)

Delaware	**2836**	**94-3378733**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

717 Potter Street, Suite 100

Berkeley, CA 94710-2722
(510) 848-5100
(Address, Including Zip Code, and Telephone Number,
Including Area Code, of Registrant's Principal Executive Offices)

Dino Dina, M.D.

President and Chief Executive Officer
Dynavax Technologies Corporation
717 Potter Street, Suite 100
Berkeley, CA 94710-2722
(510) 848-5100
(Name, Address, Including Zip Code, and Telephone Number,
Including Area Code, of Agent for Service)

Copies to:

John W. Campbell, Esq.	**Alan C. Mendelson, Esq.**
Morrison & Foerster LLP	**Patrick A. Pohlen, Esq.**
425 Market Street	**Latham & Watkins LLP**
San Francisco, California 94105	**135 Commonwealth Drive**
	Menlo Park, California 94025

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. o

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o _____

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box. o

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

The information in this prospectus is not complete and may be changed. We may not sell these securities until the Securities and Exchange Commission declares our registration statement effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, Dated January 16, 2004

Prospectus

6,000,000 shares

DYNAVAX

DYNAVAX TECHNOLOGIES

Common Stock

This is the initial public offering of Dynavax Technologies Corporation. No public market currently exists for our common stock.

We currently anticipate the initial public offering price of our common stock to be between $12.00 and $14.00 per share. We applied to have our common stock listed on the Nasdaq National Market under the symbol "DVAX."

Investing in our common stock involves a high degree of risk. See "Risk Factors" beginning on page 6 of this prospectus.

Public Offering Price	$	$
Underwriting Discount	$	$
Proceeds, Before Expenses, to Dynavax	$	$

We have granted the underwriters a 30-day option to purchase up to 900,000 additional shares to cover any over-allotments.

Delivery of shares will be made on or about , 2004.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Bear, Stearns & Co. Inc. **Deutsche Bank Securities**

Piper Jaffray

The date of this prospectus is , 2004

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No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

PROSPECTUS SUMMARY

This summary highlights what we believe is the most important information about Dynavax and the transaction. This summary does not contain all the information that you should consider before buying shares in this offering. Before you decide to invest in our common stock, we urge you to read the entire prospectus carefully, including the risk factors and consolidated financial statements and related notes included in this prospectus.

Our Business

We discover, develop and intend to commercialize innovative products to treat and prevent allergies, infectious diseases and chronic inflammatory diseases. Our clinical development programs are based primarily on proprietary short sequences of synthetic deoxyribonucleic acid, or DNA, which redirect the immune system's response to infectious pathogens and enhance its ability to fight disease and control chronic inflammation. Because these DNA sequences stimulate an immune system response, we call them immunostimulatory sequences, or ISS. Based on results from Phase II trials, we plan to initiate Phase III trials for two ISS-based product candidates in 2004. We have a third product candidate in early Phase II trials and a number of earlier stage clinical and preclinical programs. We retain full commercial rights for all of our product candidates.

Lead Product Candidates

Our lead product candidates, which are based on a single proprietary ISS, address large market segments and we believe they provide significant advantages over current therapies. Our lead product candidates include:

- *AIC for Ragweed Allergy.* We have developed a novel injectable product candidate to treat ragweed allergy that we call AIC. Ragweed allergy is the most common seasonal allergy in North America. Unlike existing products, which treat chronic ragweed allergy symptoms, AIC targets the underlying cause of ragweed-induced seasonal allergic rhinitis. We are currently planning a two-year, multi-site Phase IIb study to evaluate the efficacy of AIC, which we anticipate will provide data to support approval in the U.S., and plan to begin enrolling patients in the first quarter of 2004. AIC has completed ten Phase I and Phase II trials to date involving more than 175 treated patients and appears to be well tolerated. In Phase II trials AIC has provided evidence of clinical improvement in allergy symptoms, which suggests that AIC may be effective in treating ragweed allergy.

- *Hepatitis B Prophylaxis.* We are nearing completion of two Phase II trials and are currently planning to initiate Phase III trials outside of the U.S. in 2004 for our hepatitis B vaccine. In Phase I and Phase II trials our hepatitis B vaccine induced more rapid immunity with fewer immunizations compared to currently available vaccines. We believe that our hepatitis B vaccine has the potential to increase efficacy achieved in the field, decreasing the spread of hepatitis B. We intend to commercialize our hepatitis B vaccine only outside the U.S.

- *Asthma.* Our inhaled therapeutic product candidate for asthma is in a pilot Phase II trial. Results from our Phase I trial demonstrated that our product candidate was well tolerated and may have the potential to suppress both clinical symptoms and the underlying inflammatory response associated with asthma. Our asthma product candidate may confer long-term relief following a single course of administration, providing advantages over current treatments, which require chronic use.

The clinical trials process is lengthy and expensive and outcomes are uncertain. Even if earlier trials yield encouraging results, subsequent trials can fail for a variety of reasons, including lack of efficacy or safety issues. In addition, the FDA has requested companies to repeat clinical trials, conduct additional studies or suspend clinical development altogether based upon its independent review of clinical trials data. We do not believe any of our product candidates will be commercially available, if approved, until 2007, at the earliest.

Other Product Candidates

Beyond these lead product candidates, we have an ISS-based cancer therapeutic in Phase I trials and preclinical programs targeting additional allergies, therapies to treat viral diseases and improved, or next generation, vaccines using our ISS technology. We have also developed a number of new types of proprietary ISS molecules and formulations that make use of the different ways in which the innate immune system responds to ISS. In addition, we are developing drugs based on a novel class of small molecules called thiazolopyrimidines, or TZPs, for the treatment of certain chronic inflammatory diseases.

Benefits of ISS

We believe ISS have the following benefits:

- ISS work by changing or reprogramming the immune system responses that cause disease, rather than just treating the symptoms of disease;
- ISS influence immune system responses in targeted and highly specific ways by redirecting the response of only certain immune system cells involved in specific diseases. As a result, ISS do not alter the ability of the immune system to mount an appropriate response to other infecting pathogens or cause a generalized activation of the immune system, which might otherwise give rise to an autoimmune response; and
- ISS, in conjunction with allergens or antigens, establish populations of special cells called memory cells. These memory cells allow the immune system to respond appropriately to future encounters with these specific pathogens or allergens, leading to long-lasting therapeutic effects.

Strategy

Our goal is to become a leading biopharmaceutical company focused on discovering, developing and commercializing therapeutics for the treatment of allergies, infectious diseases and chronic inflammatory diseases. The key elements of our business strategy include:

- completing the development and commercialization of our lead product candidates;
- continuing to advance and build our product portfolio focused on allergies, infectious diseases and chronic inflammatory diseases;
- continuing the development of our proprietary ISS technologies to further expand the versatility and potency of our second generation product candidates;
- maintaining ownership of lead product candidates, generally through demonstration of clinical efficacy;
- selectively establishing corporate collaborations with global pharmaceutical and biotechnology companies to assist in the further joint development and commercialization of our products; and
- potentially building a small direct sales organization targeting narrow specialty or therapeutic areas, where feasible.

Other Information

We were incorporated in California in August 1996 under the name Double Helix Corporation, and we changed our name to Dynavax Technologies Corporation in September 1996. We reincorporated in Delaware in 2001. Our principal offices are located at 717 Potter Street, Suite 100, Berkeley, California 94710-2722. Our telephone number is (510) 848-5100. Our Internet address is www.dynavax.com. Information contained on our website does not constitute a part of this prospectus.

Dynavax Technologies is a registered trademark of Dynavax Technologies Corporation. Each of the other trademarks, trade names or service marks appearing in this prospectus belongs to its respective holder.

The Offering

Common stock offered by us	6,000,000 shares
Common stock to be outstanding after this offering	23,673,756 shares
Use of proceeds	For continued development of clinical and preclinical stage programs and for general corporate purposes. See “Use of Proceeds” for more information.
Proposed Nasdaq National Market symbol	DVAX

The number of shares of common stock to be outstanding immediately after the offering is based upon 17,673,756 shares of common stock outstanding as of September 30, 2003. This number assumes the exchange of 15,200,000 ordinary shares of our subsidiary, Dynavax Asia Pte. Ltd., issued in October 2003, into 2,111,111 shares of our common stock upon the completion of this offering, and the automatic conversion of all shares of preferred stock outstanding as of September 30, 2003 into 13,712,128 shares of common stock upon the completion of this offering (which includes 100,102 anti-dilution shares of common stock that are issuable to existing preferred stockholders as a result of the issuance of ordinary shares of Dynavax Asia Pte. Ltd.).

This number excludes:

- 911,695 shares of common stock issuable upon the exercise of options outstanding as of September 30, 2003 at a weighted average exercise price of $2.13 per share;
- 3,500,000 shares of common stock reserved for issuance under our 2004 stock incentive plan and our 2004 non-employee director option program, which will become effective upon the closing of this offering;
- 250,000 shares of common stock available for issuance under our 2004 employee stock purchase plan, which will become effective upon the closing of this offering; and
- 84,411 shares of common stock issuable upon the exercise of a warrant at the exercise price of $6.18 per share.

Unless otherwise noted, all information in this prospectus assumes that:

- we have completed a one-for-three reverse stock split of our common stock prior to the closing of this offering;
- the underwriters will not exercise their option to purchase additional shares of common stock to cover over-allotments, if any;
- all outstanding shares of our preferred stock will have converted automatically into shares of common stock upon the closing of this offering; and
- we have adopted an amended and restated certificate of incorporation.

Summary Consolidated Financial Data

You should read the following summary financial data in conjunction with our consolidated financial statements and the related notes, "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus.

	Year Ended December 31,					Nine Months Ended September 30,	
	1998	1999	2000	2001	2002	2002	2003
			(in thousands, except per share amounts)			(unaudited)	
Consolidated Statements of Operations Data:							
Collaboration and other revenue	$ —	$ 450	$ 2,054	$ 2,359	$ 1,427	$ 1,356	$ 119
Operating expenses:							
Research and development*	5,978	6,049	8,267	17,363	15,965	12,050	10,050
General and administrative*	1,116	1,396	3,451	4,527	4,121	3,094	3,210
Total operating expenses	7,094	7,445	11,718	21,890	20,086	15,144	13,260
Loss from operations	(7,094)	(6,995)	(9,664)	(19,531)	(18,659)	(13,788)	(13,141)
Interest income, net	316	436	1,149	1,119	621	463	329
Net loss	(6,778)	(6,559)	(8,515)	(18,412)	(18,038)	(13,325)	(12,812)
Deemed dividend related to beneficial conversion feature of mandatorily redeemable convertible preferred stock	—	—	(18,209)	—	—	—	—
Net loss attributable to common stockholders	$(6,778)	$(6,559)	$(26,724)	$(18,412)	$(18,038)	$(13,325)	$(12,812)
Net loss per share attributable to common stockholders, basic and diluted	$(11.39)	$ (7.72)	$ (20.86)	$ (11.96)	$ (10.60)	$ (7.94)	$ (7.21)
Shares used in computing net loss per share attributable to common stockholders, basic and diluted	595	850	1,281	1,539	1,701	1,678	1,778
Pro forma net loss per share attributable to common stockholders, basic and diluted(1)					$ (1.28)		$ (0.83)
Shares used in computing pro forma net loss per share attributable to common stockholders, basic and diluted(1)					14,063		15,390

* Includes non-cash charges for stock-based compensation expense as follows (in thousands):

	Year Ended December 31,					Nine Months Ended September 30,	
	1998	1999	2000	2001	2002	2002	2003
						(unaudited)	
Research and development	$ —	$ 94	$ 492	$1,007	$ 953	$ 734	$ 790
General and administrative	—	52	699	1,049	868	744	360
	$ —	$146	$1,191	$2,056	$1,821	$1,478	$1,150

(1) See Note 3 to our Notes to Consolidated Financial Statements for a description of pro forma net loss per share attributable to common stockholders.

The summary unaudited consolidated balance sheet data as of September 30, 2003 is presented below:

- on an actual basis;
- on a pro forma basis to reflect the sale of 15,200,000 shares of ordinary stock of our subsidiary, Dynavax Asia Pte. Ltd., issued in October 2003 for gross proceeds of $15.2 million.
- on a pro forma as adjusted basis to reflect: (1) the sale of shares of common stock offered by this prospectus at an assumed initial public offering price of $13.00 per share, after deducting underwriting discounts and commissions, estimated offering expenses payable by us and a one-time cash payment to the University of California of approximately $217,000; (2) the automatic conversion of all shares of preferred stock outstanding as of September 30, 2003 into 13,712,128 shares of common stock upon the completion of this offering (which includes 100,102 anti-dilution shares of common stock that are issuable to existing preferred stockholders as a result of the issuance of ordinary shares of Dynavax Asia Pte. Ltd.); and (3) the exchange of 15,200,000 shares of ordinary stock of Dynavax Asia Pte. Ltd. into 2,111,111 shares of our common stock upon the completion of this offering.

	September 30, 2003		
	Actual	Pro Forma	Pro Forma As Adjusted
		(unaudited) (in thousands)	
Consolidated Balance Sheet Data:			
Cash, cash equivalents and marketable securities	$ 17,558	$ 32,758	$103,540
Working capital	14,617	29,817	100,599
Total assets	19,141	34,341	105,123
Minority interest	—	15,200	—
Convertible preferred stock	83,635	83,635	—
Total stockholders' equity (net capital deficiency)	(68,042)	(68,042)	101,575

RISK FACTORS

You should carefully consider the following information about the principal risks of our business, together with the other information contained in this prospectus, before you decide to buy our common stock. If any of the following risks actually occurs, you may lose all or part of the money you paid to buy our common stock.

Risks Related to Our Early Stage of Development and Need for Financing

We have incurred substantial losses since inception and do not have any commercial products that generate revenue.

We have experienced significant operating losses in each year since our inception in August 1996. Before 2003, almost all of our revenue resulted from payments made under collaboration agreements that have since lapsed or been mutually terminated. Currently, all of our revenue results from payments received under various government grant programs. These grants are subject to annual review based on the achievement of milestones and other factors and will terminate in 2006 at the latest. Our accumulated deficit was approximately $74.8 million as of September 30, 2003, and we anticipate that we will incur substantial additional operating losses for the foreseeable future. These losses have been, and will continue to be, principally the result of the various costs associated with our research and development activities. We expect our losses to increase primarily as a consequence of our continuing product development efforts.

We do not have any products that generate revenue. We expect to begin Phase IIb and Phase III trials for AIC, an immunotherapy for ragweed allergy and Phase III trials for our hepatitis B vaccine in 2004. Our product candidates may never be commercialized, and we may never generate product-related revenue. Our ability to generate revenue depends upon:

- demonstrating in clinical trials that our product candidates are safe and effective, in particular, in the planned Phase III trials for AIC and our hepatitis B vaccine;
- obtaining regulatory approvals for our product candidates in the U.S. and international markets;
- entering into collaborative relationships on commercially reasonable terms for the development, manufacturing, sales and marketing of our product candidates, and then successfully managing these relationships; and
- commercial acceptance of our products, in particular AIC and our hepatitis B vaccine.

If we are unable to generate revenues or achieve profitability, we may be required to significantly reduce or discontinue our operations or raise additional capital under adverse circumstances.

If we are unable to secure additional funding, we will have to reduce or discontinue operations.

We believe our existing capital resources, together with the estimated net proceeds of this offering, will be sufficient to meet our anticipated cash requirements for the next 24 months. We do not believe that we will have product revenue until 2007, at the earliest. Because of the significant time and resources it will take to develop our product candidates, potentially commercialize them and generate revenue, we will require substantial additional capital resources, in addition to the proceeds of this offering, in order to continue our operations, and any such funding may not cover our costs of operations.

We may be unable to obtain additional capital from financing sources or from agreements with collaborators on acceptable terms, or at all. If at any time sufficient capital is not available, we may be required to delay, reduce the scope of, eliminate or divest one or more of our research, preclinical or clinical programs or discontinue our operations.

Risks Related to Our Business and Industry

All of our product candidates are unproven, and our success depends on our product candidates being approved through uncertain and time-consuming regulatory processes. Failure to prove our products safe and effective in clinical trials and obtain regulatory approvals could require us to discontinue operations.

None of our product candidates has been proven safe and effective in clinical trials or approved for sale in the U.S. or any foreign market. Any product candidate we develop is subject to extensive regulation by Federal, state and local governmental authorities in the U.S., including the Food and Drug Administration, or FDA, and by foreign regulatory agencies. Our success is primarily dependent on our ability to obtain regulatory approval for AIC, our ragweed allergy product candidate, and our hepatitis B vaccine product candidate. We intend to commercialize our hepatitis B vaccine only outside the U.S., which will require us to seek approval from foreign regulatory agencies. Approval processes in the U.S. and in other countries are uncertain, take many years and require the expenditure of substantial resources. Product development failure can occur at any stage of clinical trials and as a result of many factors, many of which are not under our control.

Currently, only three of our product candidates have advanced to Phase II clinical trials: AIC, our hepatitis B vaccine and our inhaled therapeutic for treatment of asthma. We have only limited clinical data for these product candidates, some of which may not be supportive of ultimate regulatory approval. In particular, in one of our Phase II trials for AIC, which was conducted in Canada in 2001 and 2002, there was no impact on clinical symptom scores or medication use in the first year of the two-year trial. We will need to demonstrate in Phase III clinical trials that each product candidate is safe and effective before we can obtain necessary approvals from the FDA and foreign regulatory agencies. We are currently planning to initiate a two-year, multi-site Phase IIb trial in the first quarter of 2004 in the U.S. for AIC. We expect to begin planning later in 2004 a confirmatory Phase III trial for AIC, which will focus on the 2005 ragweed season. We also expect to initiate Phase III trials in 2004 for our hepatitis B vaccine outside the U.S. The FDA or foreign regulatory agencies may require us to conduct additional clinical trials prior to approval in their jurisdictions.

Many new drug candidates, including many drug candidates that have completed Phase III clinical trials, have shown promising results in early clinical trials and subsequently failed to establish sufficient safety and efficacy to obtain regulatory approval. Despite the time and money expended, regulatory approvals are never guaranteed. Failure to complete clinical trials and prove that our products are safe and effective would have a material adverse effect on our ability to eventually generate revenue and could require us to reduce the scope of or discontinue our operations.

Our clinical trials may be suspended, delayed or terminated at any time. Even short delays in the commencement and progress of our trials may lead to substantial delays in the regulatory approval process for our product candidates, which will impair our ability to generate revenue.

We may suspend or terminate clinical trials at any time for various reasons, including regulatory actions by the FDA or foreign regulatory agencies, actions by institutional review boards, failure to comply with good clinical practice requirements and concerns regarding health risks to test subjects. In addition, our ability to conduct clinical trials for some of our product candidates, notably AIC and our asthma product candidate, is limited due to the seasonal nature of ragweed allergy and allergic asthma. Even a small delay in a trial for any of these product candidates could require us to delay commencement of the trial until the next appropriate season, which could result in a delay of an entire year. Consequently, we may experience additional delays in obtaining regulatory approval for these product candidates.

Suspension, termination or unanticipated delays of our clinical trials for AIC or our hepatitis B vaccine may:

- adversely affect our ability to commercialize or market any product candidates we may develop;

- impose significant additional costs on us;
- potentially diminish any competitive advantages that we may attain;
- adversely affect our ability to enter into collaborations, receive milestone payments or royalties from potential collaborators; and
- limit our ability to obtain additional financing on acceptable terms, if at all.

If we receive regulatory approval for our product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review, which may be costly and subject us to various enforcement actions.

Any regulatory approvals that we receive for our product candidates are likely to contain requirements for post-marketing follow-up studies, which may be costly. Product approvals, once granted, may be withdrawn if problems occur after commercialization. Thus, even if we receive FDA and other regulatory approvals, our product candidates may later exhibit qualities that limit or prevent their widespread use or that force us to withdraw those products from the market.

In addition, we or our contract manufacturers will be required to adhere to Federal regulations setting forth current good manufacturing practice. The regulations require that our product candidates be manufactured and our records maintained in a prescribed manner with respect to manufacturing, testing and quality control activities. Furthermore, we or our contract manufacturers must pass a pre-approval inspection of manufacturing facilities by the FDA and foreign regulatory agencies before obtaining marketing approval and will be subject to periodic inspection by the FDA and corresponding foreign regulatory agencies under reciprocal agreements with the FDA. Further, to the extent that we contract with third parties for the manufacture of our products, our ability to control third-party compliance with FDA requirements will be limited to contractual remedies and rights of inspection. Failure to comply with regulatory requirements could prevent or delay marketing approval or require the expenditure of money or other resources to correct. Failure to comply with applicable requirements may also result in warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to renew marketing applications and criminal prosecution, any of which could be harmful to our ability to generate revenue and our stock price.

Our product candidates in clinical trials rely on a single lead ISS compound, 1018 ISS, and most of our earlier stage programs rely on ISS-based technology. Serious adverse safety data relating to either 1018 ISS or other ISS-based technology may require us to reduce the scope of or discontinue our operations.

Our product candidates in clinical trials are based on 1018 ISS, and substantially all of our research and development programs use ISS-based technology. If any of our product candidates in clinical trials produce serious adverse safety data, we may be required to delay or discontinue all of our clinical trials. In addition, as all of our clinical product candidates contain 1018 ISS, potential collaborators may also be reluctant to establish collaborations for our products in distinct therapeutic areas due to the common safety risk across therapeutic areas. If adverse safety data are found to apply to our ISS-based technology as a whole, we may be required to discontinue our operations.

A key part of our business strategy is to establish collaborative relationships to commercialize and fund development of our product candidates. We may be unsuccessful in establishing and managing collaborative relationships, which may significantly limit our ability to develop and commercialize our products successfully, if at all.

We will have to establish collaborative relationships to obtain domestic and international sales, marketing and distribution capabilities for our product candidates. We also intend to enter into collaborative relationships to provide funding to support our research and development programs. Currently we have established only one collaborative relationship, which is for our hepatitis B vaccine and hepatitis B therapeutic

product candidates. The process of establishing collaborative relationships is difficult, time-consuming and involves significant uncertainty. Moreover, even if we do establish collaborative relationships, our collaborators may seek to renegotiate or terminate their relationships with us due to unsatisfactory clinical results, a change in business strategy, a change of control or other reasons. If any collaborator fails to fulfill its responsibilities in a timely manner, or at all, our research, clinical development or commercialization efforts related to that collaboration could be delayed or terminated, or it may be necessary for us to assume responsibility for activities that would otherwise have been the responsibility of our collaborator. If we are unable to establish and maintain collaborative relationships on acceptable terms, we may have to delay or discontinue further development of one or more of our product candidates, undertake development and commercialization activities at our own expense or find alternative sources of funding.

We rely on third parties to supply component materials necessary for our clinical product candidates and manufacture product candidates for our clinical trials. Loss of these suppliers or manufacturers, or failure to replace them may delay our clinical trials and research and development efforts and may result in additional costs, which would preclude us from producing our product candidates on commercially reasonable terms.

We rely on contract relationships with third parties to obtain the component materials that are necessary for our clinical product candidates and to manufacture our product candidates for clinical trials. Termination or interruption of these relationships may occur due to circumstances that are outside our control, resulting in higher costs or delays in our product development efforts.

In particular, we have relied on a single supplier to produce our ISS for clinical trials. ISS is a critical component of both of our AIC and hepatitis B vaccine product candidates. To date, we have manufactured only small quantities of ISS ourselves for research purposes. If we were unable to maintain or replace our existing source for ISS, we would have to establish an in-house ISS manufacturing capability, incurring increased capital and operating costs and potential delays in commercializing our product candidates. We or other third parties may not be able to produce ISS at a cost, quantity and quality that is available from our current third-party supplier.

In addition, we do not currently have a contract manufacturer for AIC or enough AIC to supply ongoing clinical and, potentially, commercial needs. We believe that our existing supplies of AIC are only sufficient for us to conduct our currently planned Phase IIb clinical trial. We intend to qualify and enter into manufacturing agreements with one or more new commercial-scale contract manufacturers to produce additional supplies of AIC as required for completion of clinical trials and commercialization. If we are unable to complete such agreements, we would have to establish an internal commercial scale manufacturing capability for AIC, incurring increased capital and operating costs, delays in the commercial development of AIC and higher manufacturing costs than we have experienced to date.

We intend to contract with one or more third parties to conduct our planned Phase IIb and Phase III clinical trials for AIC and Phase III trials for our hepatitis B vaccine. If these third parties do not carry out their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize AIC or our hepatitis B vaccine.

We are unable to independently conduct our planned clinical trials for AIC or our hepatitis B vaccine, and we intend to contract with third party contract research organizations to manage and conduct these trials. If these third parties do not carry out their contractual duties or obligations or meet expected deadlines, if the third parties need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to failure to adhere to our clinical protocols or for other reasons, our planned clinical trials may be extended, delayed or terminated. Any extension, delay or termination of our trials would delay our ability to commercialize AIC or our hepatitis B vaccine and generate revenue.

If any products we develop are not accepted by the market or if regulatory agencies limit our labeling indications or marketing claims, we may be unable to generate significant revenue, if any.

We do not anticipate that any of our product candidates will be commercially available until 2007, if at all. Furthermore, even if we obtain regulatory approval for our product candidates and are able to successfully commercialize them, our product candidates may not gain market acceptance among physicians, patients, health care payors and the medical community. The FDA or other regulatory agencies could limit the labeling indication for which our product candidates may be marketed or could otherwise constrain our marketing claims, reducing our or our collaborators' ability to market the benefits of our products to particular patient populations. If we are unable to successfully market any approved product candidates, or are limited in our marketing efforts by regulatory limits on labeling indications or marketing claims, our ability to generate revenues could be significantly impaired.

In particular, treatment with AIC, if approved, will require a series of injections, and we expect that some of the patients that currently take oral or inhalable pharmaceutical products to treat their allergies would not consider our product. We believe that market acceptance of AIC will also depend on our ability to offer competitive pricing, increased efficacy and improved ease of use as compared to existing or potential new allergy treatments.

We expect that Asia will be the primary target market for our hepatitis B vaccine, if approved. While we may seek partners for purposes of commercializing this product candidate in Asian and other non-U.S. markets in addition to or as a replacement for our current collaborative partner, which has an exclusive option to commercialize our hepatitis B vaccine and therapeutic product candidates, marketing challenges vary by market and could limit or delay acceptance in any particular country. We believe that market acceptance of our hepatitis B vaccine will depend on our ability to offer increased efficacy and improved ease of use as compared to existing or potential new hepatitis B vaccine products.

We face uncertainty related to coverage, pricing and reimbursement due to health care reform and heightened scrutiny from third party payors, which may make it difficult or impossible to sell our product candidates on commercially reasonable terms.

In both domestic and foreign markets, our ability to generate revenues from the sales of any approved product candidates in excess of the costs of producing the product candidates will depend in part on the availability of reimbursement from third party payors. Existing laws affecting the pricing and coverage of pharmaceuticals and other medical products by government programs and other third party payors may change before any of our product candidates are approved for marketing. In addition, third party payors are increasingly challenging the price and cost-effectiveness of medical products and services. Significant uncertainty therefore exists as to coverage and reimbursement levels for newly approved health care products, including pharmaceuticals. Because we intend to offer products, if approved, that involve new technologies and new approaches to treating disease, the willingness of third party payors to reimburse for our products is particularly uncertain. We will have to charge a price for our products that is sufficiently high to enable us to recover the considerable capital resources we have spent and will continue to spend on product development. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize a return on our investment in product development. If it becomes apparent, due to changes in coverage or pricing of pharmaceuticals in our market or a lack of reimbursement, that it will be difficult, if not impossible, for us to generate revenue in excess of costs, we will need to alter our business strategy significantly. This could result in significant unanticipated costs, harm our future prospects and reduce our stock price.

Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors despite these disadvantages we may be unable to generate revenue and our business will be harmed.

We compete with many companies and institutions, including pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing alternative therapies to treat or prevent allergy, infectious diseases, asthma and cancer, as well as those focusing more generally on the

immune system. Competitors may develop more effective, more affordable or more convenient products or may achieve earlier patent protection or commercialization of their products. These competitive products may render our product candidates obsolete or limit our ability to generate revenues from our product candidates. Many of the companies developing competing technologies and products have significantly greater financial resources and expertise in research and development, manufacturing, preclinical and clinical testing, obtaining regulatory approvals and marketing than we do.

AIC, if approved, will compete directly with conventional allergy shots and indirectly with antihistamines, steroid hormones called corticosteroids and anti-leukotrine agents, which block symptoms caused by inflammatory molecules, including those produced by GlaxoSmithKline Plc, Merck & Co., Inc. and AstraZeneca Plc. Since our AIC ragweed allergy treatment would require a series of injections, we expect that some of the patients that currently take oral or inhalable pharmaceutical products to treat their allergies would not consider our product.

Our hepatitis B vaccine, if approved, will compete with existing three-shot vaccines produced by GlaxoSmithKline Plc and Merck & Co., Inc., among others, as well as potentially with a two-shot vaccine in clinical development by GlaxoSmithKline Plc.

Existing and potential competitors may also compete with us for qualified scientific and management personnel, as well as for technology that would be advantageous to our business. If we are unable to compete with existing and potential competitors we may not be able to obtain financing, sell our product candidates or generate revenues.

We intend to develop, seek regulatory approval for and market our product candidates outside the U.S., requiring a significant commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of our hepatitis B vaccine and therapeutic product candidates.

We currently intend to conduct certain operations relating to our hepatitis B vaccine and therapeutic product candidates through Dynavax Asia Pte. Ltd., or Dynavax Asia, our subsidiary based in Singapore. We intend to commercialize our hepatitis B vaccine only outside the U.S. due to the presence of third-party patents in the U.S. covering hepatitis B surface antigen, a key component of our hepatitis B vaccine, that extend until as late as 2019. Developing, seeking regulatory approval for and marketing our product candidates outside the U.S. could impose substantial burdens on our resources and divert management's attention from domestic operations. We may also conduct operations in other foreign jurisdictions.

International operations are subject to risk, including:

- the difficulty of managing geographically distant operations, including recruiting and retaining qualified employees, locating adequate facilities and establishing useful business support relationships in the local community;
- compliance with varying international regulatory requirements;
- securing international distribution, marketing and sales capabilities;
- adequate protection of our intellectual property rights;
- difficulties and costs associated with complying with a wide variety of complex international laws and treaties;
- legal uncertainties and potential timing delays associated with tariffs, export licenses and other trade barriers;
- adverse tax consequences;
- the fluctuation of conversion rates between foreign currencies and the U.S. dollar; and
- geopolitical risks.

If we are unable to successfully manage our international operations, we may incur significant unanticipated costs and delays in regulatory approval or commercialization of our hepatitis B vaccine and therapeutic product candidates, as well as other product candidates that we may choose to commercialize internationally, which would impair our ability to generate revenue.

We use hazardous materials in our business. Any claims or liabilities relating to improper handling, storage or disposal of these materials could be time consuming and costly to resolve.

Our research and product development involve the controlled storage, use and disposal 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. We are currently in compliance with all government permits that are required for the storage, use and disposal of these materials. However, we cannot eliminate the risk of accidental contamination or injury to persons or property from these materials. In the event of an accident related to hazardous materials, we could be held liable for damages, cleanup costs or penalized with fines, and this liability could exceed the limits of our insurance policies and exhaust our internal resources. We may have to incur significant costs to comply with future environmental laws and regulations.

We face product liability exposure which, if not covered by insurance, could result in significant financial liability.

While we have not experienced any product liability claims to date, the use of any of our product candidates in clinical trials and the sale of any approved products will subject us to potential product liability claims and may raise questions about a product's safety and efficacy. As a result, we could experience a delay in our ability to commercialize one or more of our product candidates or reduced sales of any approved product candidates. In addition, a product liability claim may exceed the limits of our insurance policies and exhaust our internal resources. We have obtained limited product liability insurance coverage in the amount of $1 million for clinical trials with umbrella coverage of an additional $3 million. This coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost or at all. We also may not be able to obtain commercially reasonable product liability insurance for any product approved for marketing in the future. A product liability claim, product recalls or other claims, as well as any claims for uninsured liabilities or in excess of insured liabilities, would divert our management's attention from our business and could result in significant financial liability.

Risks Related to Our Intellectual Property and Intellectual Property Litigation

If the combination of patents, trade secrets and contractual provisions that we rely on to protect our intellectual property is inadequate, the value of our product candidates will decrease.

Our success depends on our ability to:

- obtain and protect commercially valuable patents or the rights to patents both domestically and abroad;
- operate without infringing upon the proprietary rights of others; and
- prevent others from successfully challenging or infringing our proprietary rights.

We will be able to protect our proprietary rights from unauthorized use only to the extent that these rights are covered by valid and enforceable patents or are effectively maintained as trade secrets. We try to protect our proprietary rights by filing and prosecuting U.S. and foreign patent applications. Legal standards relating to the validity and scope of patent claims in the biopharmaceutical field can be highly uncertain, are still evolving and involve complex legal and factual questions for which important legal principles remain unresolved. The biopharmaceutical patent environment outside the U.S. is even more uncertain. We may be particularly affected by this for products with significant markets outside the U.S. For example, we expect to market our hepatitis B vaccine, if approved, in foreign countries with high incidences of hepatitis B,

particularly in Asia. The risks and uncertainties that we face with respect to our patents and other proprietary rights include the following:

- we might not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- we might not have been the first to file patent applications for these inventions;
- the pending patent applications we have filed or to which we have exclusive rights may not result in issued patents or may take longer than we expect to result in issued patents;
- the claims of any patents that are issued may not provide meaningful protection;
- our issued patents may not provide a basis for commercially viable products or may not be valid or enforceable;
- we might not be able to develop additional proprietary technologies that are patentable;
- the patents licensed or issued to us or our collaborators may not provide a competitive advantage;
- patents issued to other companies, universities or research institutions may harm our ability to do business;
- other companies, universities or research institutions may independently develop similar or alternative technologies or duplicate our technologies and commercialize discoveries that we attempt to patent; and
- other companies, universities or research institutions may design around technologies we have licensed, patented or developed.

We also rely on trade secret protection and confidentiality agreements to protect our interests in proprietary know-how that is not patentable and for processes for which patents are difficult to enforce. We cannot be certain that we will be able to protect our trade secrets adequately. Any leak of confidential data into the public domain or to third parties could allow our competitors to learn our trade secrets. If we are unable to adequately obtain or enforce proprietary rights we may be unable to commercialize our products, enter into collaborations, generate revenue or maintain any advantage we may have with respect to existing or potential competitors.

If third parties successfully assert that we have infringed their patents and proprietary rights or challenge the validity of our patents and proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming, and delay or prevent development of our product candidates.

We may be exposed to future litigation by third parties based on claims that our product candidates, proprietary technologies or the licenses on which we rely, infringe their intellectual property rights, or we may be required to enter into litigation to enforce patents issued or licensed to us or to determine the scope or validity of another party s proprietary rights. If we become involved in any litigation, interference or other administrative proceedings related to our intellectual property or the intellectual property of others, we will incur substantial expenses and it will divert the efforts of our technical and management personnel. Others may succeed in challenging the validity of our issued and pending claims. If we are unsuccessful in defending or prosecuting any such claim we could be required to pay substantial damages and we may be unable to commercialize our product candidates or use these proprietary technologies unless we obtain a license from the third party. A license may require us to pay substantial royalties, require us to grant a cross-license to our technology or may not be available to us on acceptable terms. In addition, we may be required to redesign our technology so it does not infringe a third party s patents, which may not be possible or could require substantial funds and time. Any of these outcomes may require us to change our business strategy and could reduce the value of our business.

In particular, one of our potential competitors, Coley Pharmaceutical Group, or Coley, has issued U.S. patent claims, as well as patent claims pending with the U.S. Patent and Trademark Office, that, if held to be valid, could require us to obtain a license in order to commercialize one or more of our formulations of ISS in the U.S., including AIC. On December 17, 2003, the United States Patent and Trademark Office declared an interference to resolve first-to-invent disputes between a patent application filed by the Regents of the University of California, which is exclusively licensed to us, and an issued U.S. patent owned by Coley relating to immunostimulatory DNA sequences. The declaration of interference names the Regents of the University of California as senior party, indicating that a patent application filed by the Regents of the University of California and licensed to us was filed prior to a patent application owned by Coley that led to an issued U.S. patent. The interference provides the first forum to challenge the validity and priority of certain of Coley's patents. If successful, the interference action would establish our founders as the inventors of the inventions in dispute. If we do not prevail in the interference proceeding, we may not be able to obtain patent protection on the subject matter of the interference, which would have a material adverse impact on our business. In addition, if Coley prevails in the interference, it may seek to enforce its rights under issued claims, including, for example, by suing us for patent infringement. Consequently, we may need to obtain a license to issued and/or pending claims held by Coley by paying cash, granting royalties on sales of our products or offering rights to our own proprietary technologies. Such a license may not be available to us on acceptable terms, if at all.

We rely on our licenses from the Regents of the University of California. Impairment of these licenses or our inability to maintain them would severely harm our business.

Our success depends upon our license arrangements with the Regents of the University of California. These licenses are critical to our research and product development efforts. Our dependence on these licenses subjects us to numerous risks, such as disputes regarding the invention and corresponding ownership rights in inventions and know-how resulting from the joint creation or use of intellectual property by us and the Regents of the University of California, or scientific collaborators. Additionally, our agreements with the Regents of the University of California generally contain diligence or milestone-based termination provisions. Our failure to meet any obligations pursuant to these provisions could allow the Regents of the University of California to terminate any of these licensing agreements or convert them to non-exclusive licenses. In addition, our license agreements with the Regents of the University of California may be terminated or may expire by their terms, and we may not be able to maintain the exclusivity of these licenses. If we cannot maintain licenses that are advantageous or necessary to the development or the commercialization of our product candidates, we may be required to expend significant time and resources to develop or license similar technology.

Risks Related to Our Common Stock and this Offering

We expect that our stock price will be volatile, and your investment may suffer a decline in value.

There is currently no public market for our common stock. The initial public offering price of our stock will be determined through negotiations between us and representatives of the underwriters, and may not reflect the price that will prevail in the open market. You may not be able to resell your shares at or above the initial public offering price. The market prices for securities of biopharmaceutical companies have in the past been, and are likely to continue in the future to be, very volatile. The market price of our common stock may be subject to substantial volatility depending upon many factors, many of which are beyond our control, including:

- progress or results of any of our clinical trials, in particular any announcements regarding the progress or results of our planned Phase III trials for AIC and our hepatitis B vaccine;
- progress of regulatory approval of our product candidates, in particular AIC and our hepatitis B vaccine, and compliance with ongoing regulatory requirements;

- our ability to establish collaborations for the development and commercialization of our product candidates;
- market acceptance of our product candidates;
- our ability to raise additional capital to fund our operations;
- technological innovations, new commercial products or drug discovery efforts and preclinical and clinical activities by us or our competitors;
- changes in our intellectual property portfolio or developments or disputes concerning the proprietary rights of our products or product candidates;
- our ability to obtain component materials and successfully enter into manufacturing relationships for our product candidates or establish manufacturing capacity on our own;
- maintenance of our existing licensing agreements with the Regents of the University of California;
- changes in government regulations;
- issuance of new or changed securities analysts reports or recommendations;
- general economic conditions and other external factors;
- actual or anticipated fluctuations in our quarterly financial and operating results; and
- degree of trading liquidity in our common stock.

One or more of these factors could cause a decline in the price of our common stock in the public market. In addition, securities class action litigation has often been brought against a company following a decline in the market price of its securities. We may in the future be the target of similar litigation. Securities litigation could result in substantial costs, divert management's attention and resources and disrupt our business operations.

If the ownership of our common stock continues to be highly concentrated, it may prevent you and other stockholders from influencing significant corporate decisions and may result in conflicts of interest that could cause our stock price to decline.

Our executive officers, directors and their affiliates beneficially own or control approximately 29.5% of our outstanding common stock as of September 30, 2003 (after giving effect to the conversion of all outstanding shares of our preferred stock and assuming the exchange of 15,200,000 shares of ordinary stock of our subsidiary, Dynavax Asia Pte. Ltd., issued in October 2003, into 2,111,111 shares of our common stock upon the completion of this offering, but assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options or warrants), and will beneficially own 22.0% of our outstanding common stock after this offering (21.2% if the underwriters exercise in full their over-allotment option). Accordingly, these executive officers, directors and their affiliates, acting as a group, will have substantial influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transactions. These stockholders may also delay or prevent a change of control of us, even if such a change of control would benefit our other stockholders. The significant concentration of stock ownership may adversely affect the trading price of our common stock due to investors perception that conflicts of interest may exist or arise. See Management and Principal Stockholders for details on our capital stock ownership.

Anti-takeover provisions of our certificate of incorporation, bylaws and Delaware law may prevent or frustrate a change in control, even if an acquisition would be beneficial to our stockholders, which could affect our stock price adversely and prevent attempts by our stockholders to replace or remove our current management.

Provisions of our certificate of incorporation and bylaws may delay or prevent a change in control, discourage bids at a premium over the market price of our common stock and adversely affect the market

price of our common stock and the voting or other rights of the holders of our common stock. These provisions include:

- authorizing our Board of Directors to issue additional preferred stock with voting rights to be determined by the Board of Directors;
- limiting the persons who can call special meetings of stockholders;
- prohibiting stockholder actions by written consent;
- creating a classified board of directors pursuant to which our directors are elected for staggered three-year terms;
- providing that a supermajority vote of our stockholders is required for amendment to certain provisions of our certificate of incorporation and bylaws; and
- establishing advance notice requirements for nominations for election to our Board of Directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

In addition, we are subject to the provisions of the Delaware corporation law that, in general, prohibit any business combination with a beneficial owner of 15% or more of our common stock for five years unless the holder's acquisition of our stock was approved in advance by our board of directors.

If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares.

The assumed initial public offering price is substantially higher than the book value per share of our common stock. Investors purchasing common stock in this offering will pay a price per share that substantially exceeds the book value of our assets after subtracting our liabilities. Further, investors purchasing common stock in this offering will contribute approximately 43% of the total amount invested by stockholders since our inception to September 30, 2003, but will only own approximately 25% of the shares of common stock outstanding.

This dilution is due to our investors who purchased shares prior to this offering having paid substantially less per share when they purchased their shares than the price offered to the public in this offering and the exercise of stock options granted to our employees. As a result of this dilution, investors purchasing stock in this offering may receive significantly less than the purchase price paid in this offering in the event of a liquidation. For more information, please refer to the section of this prospectus entitled Dilution.

Future sales of our common or preferred stock may lower the market price of our common stock.

After this offering, we will have outstanding 23,673,756 shares of common stock, based upon 17,673,756 shares of common stock outstanding as of September 30, 2003, which assumes the exchange of 15,200,000 shares of ordinary stock of our subsidiary, Dynavax Asia Pte Ltd., issued in October 2003 into 2,111,111 shares of our common stock upon the completion of this offering and the conversion of all convertible preferred stock into common, but assumes no exercise of the underwriters' over-allotment option and no exercise of outstanding options or warrants. This includes the 6,000,000 shares we are selling in this offering, which may be resold in the public market immediately. The remaining 74.7%, or 17,673,756 shares, of our total outstanding shares will become available for resale in the public market as shown in the chart below. As restrictions on resale end, the market price could drop significantly if the holders of these restricted shares sell them or are perceived by the market as intending to sell them.

Number of shares/% of total outstanding	Date of availability for resale into public market
15,562,645 / 65.7%	180 days after the date of this prospectus due to an agreement these shareholders have with the underwriters. However, the underwriters can waive this restriction and allow these shareholders to sell their shares at any time.
2,111,111 / 8.9%	Between 180 and 365 days after the date of this prospectus due to the requirements of the federal securities laws.

For a more detailed description, please see "Shares Eligible for Future Sale," on page 69.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND INDUSTRY DATA

This prospectus contains forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond our control. These forward-looking statements include statements about our:

- business strategy;
- uncertainty regarding our future operating results;
- anticipated sources of funds, including the proceeds from this offering, to fund our operations for the 24 months following the date of this prospectus; and
- plans, objectives, expectations and intentions contained in this prospectus that are not historical facts.

All statements, other than statements of historical facts included in this prospectus, regarding our strategy, future operations, financial position, estimated revenues or losses, projected costs, prospects, plans and objectives of management are forward-looking statements. When used in this prospectus, the words “will,” “may,” “believe,” “anticipate,” “intend,” “estimate,” “expect,” “project” and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. All forward-looking statements speak only as of the date of this prospectus. You should not place undue reliance on these forward-looking statements. Although we believe that our plans, intentions and expectations reflected in or suggested by the forward-looking statements we make in this prospectus are reasonable, we may be unable to achieve these plans, intentions or expectations. We disclose important factors that could cause our actual results to differ materially from our expectations under “Risk Factors” and elsewhere in this prospectus. These cautionary statements qualify all forward-looking statements attributable to us or persons acting on our behalf.

Information regarding market and industry statistics contained in the “Prospectus Summary” and “Business” sections of this prospectus is included based on information available to us that we believe is accurate. It is generally based on academic and other publications that are not produced for purposes of securities offerings or economic analysis.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

USE OF PROCEEDS

We estimate that we will receive net proceeds of approximately $70,998,000 from the sale of the shares of common stock in this offering, based on an assumed initial public offering price of $13.00 per share and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' over-allotment option is exercised in full, our net proceeds will be approximately $81,879,000. We currently intend to use the net proceeds of this offering for the continued development of our clinical and preclinical stage programs and general corporate purposes.

Upon completion of this offering, we will make a one time cash payment to the University of California of approximately $217,000, based on an assumed initial public offering price of $13.00 per share. As of the date of this prospectus, we have not allocated any other proceeds for specific purposes. We may also use a portion of the net proceeds of this offering to enter into strategic collaborations with third parties. From time to time, in the ordinary course of business, we expect to evaluate potential strategic collaborations. At this time, however, we do not have any present understandings, commitments or agreements with respect to any material strategic collaborations.

The amounts and timing of our actual use of proceeds will depend upon numerous factors, including the status of our product development and commercialization efforts, technological advances, the amount of proceeds actually raised in this offering and the amount of cash provided by any potential collaborations. As a result, we cannot specify with certainty the amounts that we may allocate to the particular uses of the net proceeds of this offering. Our management will have significant flexibility and discretion in applying the net proceeds of this offering. Pending any use, we will invest the net proceeds of this offering generally in short-term, investment grade, interest bearing securities but cannot predict that these investments will yield a favorable return.

DIVIDEND POLICY

We have never declared or paid any cash dividends on shares of our common stock. We currently intend to retain any future earnings for future growth and do not anticipate paying any cash dividends in the foreseeable future.

CAPITALIZATION

The following table sets forth our unaudited cash, cash equivalents and marketable securities and our capitalization as of September 30, 2003:

- on an actual basis;
- on a pro forma basis to give effect to the filing of an amended and restated certificate of incorporation in October 2003 and the sale of 15,200,000 ordinary shares of our subsidiary Dynavax Asia Pte. Ltd. issued in a private financing in October 2003 for gross proceeds of $15.2 million which will be reflected as a minority interest liability until conversion into our preferred or common stock; and
- on a pro forma basis as adjusted to give effect to (1) the filing of an amended and restated certificate of incorporation to provide for authorized capital stock of 100,000,000 shares of common stock and 5,000,000 shares of preferred stock, (2) the sale by us of 6,000,000 shares of common stock at an assumed initial public offering price of $13.00 per share in this offering and the receipt of the estimated net proceeds therefrom, after deducting underwriting discounts and commissions, estimated offering expenses payable by us and a one-time cash payment to the University of California of approximately $217,000, (3) the conversion of all preferred stock into common stock upon the completion of this offering, and (4) the exchange of 15,200,000 ordinary shares of Dynavax Asia Pte. Ltd. for 2,111,111 shares of our common stock upon the completion of this offering.

You should read the information in this table together with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and accompanying notes appearing elsewhere in this prospectus.

	September 30, 2003		
	Actual	Pro Forma	Pro Forma As Adjusted
		(in thousands, except share and per share amounts)	
Cash, cash equivalents and marketable securities	$ 17,558	$ 32,758	$103,540
Convertible preferred stock: $0.001 par value; 40,731,644 shares authorized, 39,513,864 shares issued and outstanding actual; 61,767,098 shares authorized, 39,513,864 shares issued and outstanding pro forma; no shares issued and outstanding pro forma as adjusted	$ 83,635	$ 83,635	$ —
Stockholders' equity (net capital deficiency):			
Preferred stock: $0.001 par value; no shares authorized, issued or outstanding actual; no shares authorized, issued or outstanding pro forma; 5,000,000 shares authorized, no shares issued and outstanding pro forma as adjusted	—	—	—
Common stock: $0.001 par value; 17,666,667 shares authorized, 1,850,516 shares issued and outstanding actual; 28,333,333 shares authorized, 1,850,516 shares issued and outstanding pro forma; 100,000,000 shares authorized, 23,673,756 shares issued and outstanding pro forma as adjusted	2	2	24
Additional paid-in capital	10,608	10,608	180,203
Deferred stock compensation	(3,178)	(3,178)	(3,178)
Notes receivable from stockholders	(656)	(656)	(656)
Accumulated other comprehensive income	7	7	7
Accumulated deficit	(74,825)	(74,825)	(74,825)
Total stockholders' equity (net capital deficiency)	(68,042)	(68,042)	101,575
Total capitalization	$ 15,593	$ 15,593	$101,575

DILUTION

Our net tangible book value as of September 30, 2003 was approximately $(68,042,000), or approximately $(36.76) per share of common stock. Net tangible book value per share represents total tangible assets less total liabilities, divided by the number of shares of common stock outstanding. Our pro forma net tangible book value reflects the issuance and exchange of 15,200,000 shares of ordinary stock of our subsidiary, Dynavax Asia Pte. Ltd., issued in October 2003 for gross proceeds of $15.2 million, into 2,111,111 shares of our common stock upon the completion of this offering, and assuming the conversion of all shares of preferred stock outstanding as of September 30, 2003 into common stock. Dilution in pro forma net tangible book value per share represents the difference between the amount per share paid by purchasers of common stock in this offering and the pro forma net tangible book value per share of our common stock immediately after the offering. After giving effect to our sale of shares of common stock in this offering at an assumed initial public offering price of $13.00 per share and after deduction of the underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma net tangible book value as of September 30, 2003 would have been approximately $101,575,000, or $4.30 per share. This represents an immediate increase in pro forma net tangible book value of $2.56 per share to existing stockholders and an immediate dilution in pro forma net tangible book value of $8.70 per share to purchasers of common stock in this offering.

Assumed initial public offering price per share		$13.00
Net tangible book value per share as of September 30, 2003	$(36.76)	
Increase per share due to the issuance and exchange of Dynavax Asia shares and conversion of all shares of preferred stock	$ 38.50	
Pro forma net tangible book value per share before this offering	$ 1.74	
Increase per share attributable to new investors	$ 2.56	
Pro forma net tangible book value per share after the offering		$ 4.30
Pro forma dilution per share to new investors		$ 8.70

The following table sets forth on a pro forma basis as of September 30, 2003, the total number of shares of common stock purchased from us, the total consideration paid for these shares and the average price per share paid by our existing stockholders and by new investors, before deducting underwriting discounts and commissions and estimated offering expenses payable by us at an assumed initial public offering price of $13.00 per share.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
			(in thousands)		
Existing stockholders	17,673,756	75%	$102,690	57%	$ 5.81
New investors	6,000,000	25%	$ 78,000	43%	$13.00
Total	23,673,756	100%	$180,690	100%	

This table assumes that no options or warrants were exercised after September 30, 2003. As of September 30, 2003, there were outstanding options to purchase a total of 911,695 shares of common stock at a weighted average exercise price of approximately $2.13 per share and warrant exercisable for 253,233 shares of Series D Preferred Stock, which will convert into a warrant exercisable for 84,411 shares of common stock issuable at the exercise price of $6.18 per share upon the completion of this offering.

SELECTED CONSOLIDATED FINANCIAL DATA

You should read the following selected consolidated financial data in conjunction with our consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus. The consolidated statements of operations data for the years ended December 31, 2000, 2001, and 2002 and the consolidated balance sheet data as of December 31, 2001 and 2002 are derived from the audited consolidated financial statements that are included elsewhere in this prospectus. The statements of operations data for the years ended December 31, 1998 and 1999 and the balance sheet data as of December 31, 1998, 1999 and 2000 are derived from our audited consolidated financial statements not included in this prospectus. The consolidated statements of operations data for the nine months ended September 30, 2002 and 2003 and the balance sheet data as of September 30, 2003 are derived from our unaudited interim consolidated financial statements that are included elsewhere in this prospectus. The unaudited interim consolidated financial statements have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the Company's consolidated financial position as of September 30, 2003 and consolidated results of operations for the nine months ended September 30, 2002 and 2003. Historical results are not necessarily indicative of the results of operations to be expected for future periods. See Note 3 of "Notes to Consolidated Financial Statements" for a description of the method that we used to compute our historical and pro forma basic and diluted net loss per share attributable to common stockholders.

	Year Ended December 31,					Nine Months Ended September 30,	
	1998	1999	2000	2001	2002	2002	2003
	(in thousands, except per share amounts)						
Consolidated Statements of Operations Data:							
Collaboration and other revenue	$ —	$ 450	$ 2,054	$ 2,359	$ 1,427	$ 1,356	$ 119
Operating expenses:							
Research and development*	5,978	6,049	8,267	17,363	15,965	12,050	10,050
General and administrative*	1,116	1,396	3,451	4,527	4,121	3,094	3,210
Total operating expenses	7,094	7,445	11,718	21,890	20,086	15,144	13,260
Loss from operations	(7,094)	(6,995)	(9,664)	(19,531)	(18,659)	(13,788)	(13,141)
Interest income, net	316	436	1,149	1,119	621	463	329
Net loss	(6,778)	(6,559)	(8,515)	(18,412)	(18,038)	(13,325)	(12,812)
Deemed dividend related to beneficial conversion feature of mandatorily redeemable convertible preferred stock	—	—	(18,209)	—	—	—	—
Net loss attributable to common stockholders	$(6,778)	$(6,559)	$(26,724)	$(18,412)	$(18,038)	$(13,325)	$(12,812)
Net loss per share attributable to common stockholders, basic and diluted	$(11.39)	$ (7.72)	$ (20.86)	$ (11.96)	$ (10.60)	$ (7.94)	$ (7.21)
Shares used in computing net loss per share attributable to common stockholders basic and diluted	595	850	1,281	1,539	1,701	1,678	1,778
Pro forma net loss per share attributable to common stockholders, basic and diluted(1)					$ (1.28)		$ (0.83)
Shares used in computing pro forma net loss per share attributable to common stockholders, basic and diluted(1)					14,063		15,390

(1) See Note 3 to our Notes to Consolidated Financial Statements for a description of pro forma net loss per share attributable to common stockholders.

* Includes non-cash charges for stock-based compensation expense as follows (in thousands):

	Year Ended December 31,					Nine Months Ended September 30,	
	1998	1999	2000	2001	2002	2002	2003
Research and development	$ —	$ 94	$ 492	$1,007	$ 953	$ 734	$ 790
General and administrative	—	52	699	1,049	868	744	360
	$ —	$146	$1,191	$2,056	$1,821	$1,478	$1,150

	December 31,					September 30,
	1998	1999	2000	2001	2002	2003
				(in thousands)		
Consolidated Balance Sheet Data:						
Cash, cash equivalents and marketable securities	$ 13,244	$ 8,479	$ 26,792	$ 11,757	$ 29,410	$ 17,558
Working capital	12,212	6,634	26,578	9,498	25,913	14,617
Total assets	14,329	9,622	29,590	15,117	31,478	19,141
Equipment financing, net of current portion	328	167	15	—	—	—
Mandatorily redeemable convertible preferred stock	23,124	24,079	45,486	45,479	—	—
Convertible preferred stock	—	—	5,799	5,799	83,635	83,635
Total stockholders' equity (net capital deficiency)	(10,467)	(16,820)	(23,798)	(40,216)	(56,371)	(68,042)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF

FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes appearing elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the following discussion and analysis.

Overview

We discover, develop and intend to commercialize innovative products to treat and prevent allergies, infectious diseases and chronic inflammatory diseases. Our clinical development programs are based on immunostimulatory sequences, or ISS, which are short DNA sequences that enhance the ability of the immune system to fight disease and control chronic inflammation. Our most advanced clinical programs include AIC, an immunotherapy product candidate for treatment of ragweed allergy that has completed Phase II trials, our hepatitis B vaccine, which is nearing completion of two Phase II trials, and an inhaled therapeutic product candidate for treatment of asthma, which is currently in a pilot Phase II trial. Based on results from Phase II trials, we plan to initiate in 2004 Phase IIb and Phase III trials for AIC and Phase III trials for our hepatitis B vaccine. We intend to commercialize our hepatitis B vaccine only outside the U.S. In addition, we have a cancer therapeutic product in Phase I trials and preclinical programs targeting additional allergies using our ISS technology. We have other preclinical programs focused on chronic inflammation, antiviral therapies and improved, next-generation vaccines using ISS and other technologies.

We have incurred significant losses since our inception. As of September 30, 2003, we had an accumulated deficit of approximately $74.8 million. We expect to incur substantial and increasing losses as we continue the development of our lead product candidates and advance our preclinical and research programs. It is likely that our lead clinical and preclinical programs will require investments that will increase our current rate of expenditures. If we were to receive regulatory approval for any of our product candidates, we would be required to invest significant capital to develop, or otherwise secure through collaborative relationships, commercial scale manufacturing, marketing and sales capabilities. Even if we are able to obtain approval for our product candidates, we are likely to incur increased operating losses until product sales grow sufficiently to support the organization.

We do not have any commercial products that generate revenue. Through the fiscal year ended December 31, 2002, we generated revenue primarily through research and development collaboration agreements. For the nine months ended September 30, 2003, our revenue was derived from a government grant.

Most of our expenditures to date have been for research and development activities and general and administrative expenses. Research and development expense consists of the costs of our preclinical experiments and clinical trials, activities related to regulatory filings, manufacturing our product candidates for our preclinical experiments and clinical trials, compensation and related benefits, facility costs, supplies and depreciation of laboratory equipment. We anticipate that our research and development expense will increase in connection with expanded clinical trials, in particular in connection with our planned Phase III clinical trials for AIC and our hepatitis B vaccine, which we expect to initiate in 2004. However, we manage our business and track our expenses, including our research and development expenses, by department rather than by project. In addition, drug development is characterized by many uncertainties. These uncertainties include the time and resources required to successfully develop safe and effective product candidates, our ability to fund development of and establish collaborative relationships with third parties to commercialize our product candidates and the likelihood, timing and conditions of regulatory approval to commence various stages of clinical trials, and, ultimately, of approval to market our product candidates. Consequently, we are unable to estimate the cost or time required to complete current and future clinical trials in any of our programs. We expense our research and development costs as they are incurred.

General and administrative expenses consist primarily of compensation and related benefits, facility costs and professional expenses, such as legal, accounting, consulting and public relations. We anticipate that general and administrative expenses will increase as a result of the expected expansion of our business, together with the additional costs associated with operating as a public company.

We have recorded no provision for Federal and state income taxes since inception. As of December 31, 2002, we had Federal net operating loss carryforwards of approximately $27.0 million. Utilization of net operating loss carryforwards may be subject to a substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization. We have provided a full valuation allowance on our deferred tax assets because we believe it is more likely than not that our deferred tax assets will not be realized.

Critical Accounting Policies

Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. Actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 2 to our financial statements appearing at the end of this prospectus, we believe that the following accounting policies relating to revenue recognition, clinical trial expenses and stock-based compensation expense are important to understanding and evaluating our reported financial results.

Revenue Recognition. We recognized revenue from our past collaboration agreements, and currently recognize revenue from our government grants, based on the terms specified in the agreements, generally as work is performed or approximating a straight-line basis over the period of the collaboration or grant. Any amounts received in advance of performance are recorded as deferred revenue. Upfront payments are deferred and amortized over the estimated research and development period. Revenue from milestones with substantive performance risk is recognized upon achievement of the milestone. All revenue recognized to date under these collaborations or grants and milestones is nonrefundable.

Clinical Trial Expenses. Research and development expenditures are charged to operations as incurred. Our expenses related to clinical trials are based on estimates of the services received and efforts expended pursuant to contracts with multiple research institutions and clinical research organizations that conduct and manage clinical trials on our behalf. The financial terms of these agreements are subject to negotiation and variation from contract to contract and may result in uneven payment flows. Payments under the contracts depend on factors such as the successful enrollment of patients or the completion of clinical trial milestones. Expenses related to clinical trials generally are accrued based on the level of patient enrollment and activity according to the protocol. We monitor patient enrollment levels and related activity to the extent possible and adjust our estimates accordingly.

Stock-Based Compensation Expense. In connection with the grant of stock options to employees and non-employees, we record deferred stock compensation as a component of stockholders' equity (net capital deficiency). Deferred stock compensation for options granted to employees is the difference between the estimated fair value of our common stock on the date the options were granted and their exercise price. For stock options granted to non-employees, the fair value of the options, estimated using the Black-Scholes valuation model, is initially recorded on the date of grant. Deferred stock compensation for unvested options granted to non-employees is periodically re-measured, with any change in the estimated fair value from period to period recorded as a change in deferred stock compensation. Deferred stock compensation is amortized as a charge to operations over the vesting periods of the options using the straight-line method. We recorded stock-based compensation expense of approximately $1.2 million, $2.1 million, and $1.8 million for the years ended December 31, 2000, 2001, and 2002, respectively, and approximately $1.2 million for the nine months ended September 30, 2003. The amount of stock-based compensation expense to be recorded in

future periods may decrease if unvested options, for which deferred stock compensation has been recorded, are subsequently canceled.

Since inception through September 30, 2003, the Company has recorded stock-based compensation expense of approximately $6.4 million. As of September 30, 2003, unamortized deferred stock compensation was approximately $3.2 million. Deferred stock compensation to be amortized to expense during the remainder of the year ending December 31, 2003, and during the years ending December 31, 2004, 2005, 2006, and 2007, is expected to be approximately $436,000, $1.3 million, $577,000, $577,000, and $259,000, respectively.

Results of Operations

Nine Months Ended September 30, 2003 and 2002

Collaboration and other revenue: Our revenue for the nine months ended September 30, 2003 was approximately $119,000, a decrease of 91.2% as compared to approximately $1.4 million in revenue for the nine months ended September 30, 2002. Revenue for the nine months ended September 30, 2003 resulted from a grant by the National Institutes of Health. Revenue for the nine months ended September 30, 2002 resulted from two research and development collaboration agreements and another agreement providing a customer an option to negotiate rights to license technology developed by us. The first of these two collaborations commenced in 1999 and focused on infectious diseases. This collaboration provided revenues of $918,000 for the nine months ended September 30, 2002 but did not generate any revenue for the nine months ended September 30, 2003. This collaboration was terminated by mutual consent in September 2002. The second of these two collaborations commenced in 2000 and focused on the treatment and prevention of hepatitis and HIV. This collaboration provided revenues of $188,000 for the nine months ended September 30, 2002 but did not generate any revenue for the nine months ended September 30, 2003. This collaboration was terminated by mutual consent in November 2002. The agreement providing a collaborator an option to negotiate rights to license technology developed by us commenced during 2002. This agreement generated revenue of $250,000 for the nine months ended September 30, 2002 but did not generate any revenue for the nine months ended September 30, 2003. This agreement lapsed in April 2002 when the collaborator did not exercise its option.

Research and development expenses: Research and development expenses were approximately $10.1 million for the nine months ended September 30, 2003, a decrease of 16.6% from approximately $12.1 million in research and development expenses for the nine months ended September 30, 2002. This decrease was primarily the result of fewer and less extensive clinical trials in our hepatitis B vaccine, asthma and TZP programs being conducted during the nine months ended September 30, 2003. Non-cash stock-based compensation expense included in research and development expense was approximately $790,000 and $734,000 for the nine months ended September 30, 2003 and 2002, respectively.

General and administrative expenses: General and administrative expenses were approximately $3.2 million for the nine months ended September 30, 2003, an increase of 3.7% as compared to approximately $3.1 million in general and administrative expenses for the nine months ended September 30, 2002. This increase reflects higher compensation and benefits during the nine months ended September 30, 2003 associated with the addition of key members of our management team and expenditures for consulting services. Non-cash stock-based compensation expense included in general and administrative expense was approximately $360,000 and $744,000 for the nine months ended September 30, 2003 and 2002, respectively.

Interest income, net: Interest income, net, was approximately $329,000 for the nine months ended September 30, 2003, a decrease of 28.9% as compared to approximately $463,000 in interest income, net, for the nine months ended September 30, 2002. The decrease was primarily due to lower average cash balances during the nine months ended September 30, 2003.

Years Ended December 31, 2002 and 2001

Collaboration and other revenue: Our revenue for the year ended December 31, 2002 was approximately $1.4 million, a decrease of 39.5% as compared to approximately $2.4 million in revenue for the year ended December 31, 2001. Revenue for 2002 resulted from two research and development collaboration agreements and another agreement providing a customer an option to negotiate rights to license technology developed by us. The first of these two collaborations commenced in 1999 and focused on infectious diseases. This collaboration provided revenues of $990,000 during the year ended December 31, 2002 and $46,000 during the year ended December 31, 2001. This collaboration was terminated by mutual consent in September 2002. The second of these two collaborations commenced in 2000 and focused on the treatment and prevention of hepatitis and HIV. This collaboration provided revenues of $188,000 during the year ended December 31, 2002 and approximately $2.1 million during the year ended December 31, 2001. This collaboration was terminated by mutual consent in November 2002. The agreement providing a collaborator with an option to negotiate rights to license technology developed by us commenced during 2002. This agreement generated revenue of $250,000 during the year ended December 31, 2002 but did not generate any revenue during the year ended December 31, 2001. This agreement lapsed in April 2002 when the collaborator did not exercise its option.

Research and development expenses: Research and development expenses were approximately $16.0 million for the year ended December 31, 2002, a decrease of 8.1% as compared to research and development expenses of approximately $17.4 million for the year ended December 31, 2001. The decrease was due primarily to the decreased clinical trial costs associated with our Phase II trials for AIC. Non-cash stock-based compensation expense attributable to research and development expenses was approximately $953,000 and $1.0 million for the years ended December 31, 2002 and December 31, 2001, respectively.

General and administrative expenses: General and administrative expenses were approximately $4.1 million for the year ended December 31, 2002, a decrease of 9.0% as compared to approximately $4.5 million in general and administrative expenses for the year ended December 31, 2001, due primarily to lower headcount. Non-cash stock-based compensation expense included in general and administrative expense was approximately $868,000 and $1.0 million for the years ended December 31, 2002 and 2001, respectively.

Interest income, net: Interest income, net, was approximately $621,000 for the year ended December 31, 2002, a decrease of 44.5% as compared to approximately $1.1 million in interest income, net for the year ended December 31, 2001. The decrease was primarily due to lower average cash balances coupled with lower average interest rate yields during 2002.

Years Ended December 31, 2001 and 2000

Collaboration and other revenue: Our revenue for the year ended December 31, 2001 was approximately $2.4 million, an increase of 14.8% as compared to approximately $2.1 million in revenue for the year ended December 31, 2000. Revenue during the year ended December 31, 2001 resulted from three collaboration agreements and a National Institutes of Health-funded grant focused on the treatment of asthma. The first of these three collaborations commenced in 1999 and focused on the development and commercialization of products to treat seasonal allergies. This collaboration generated $150,000 in revenue during 2001 but no revenue during 2000. The second of these three collaborations also commenced in 1999 and focused infectious diseases. This collaboration provided revenue of approximately $46,000 during 2001 and approximately $1.1 million during 2000. The third of these three collaborations commenced during 2000 and focused on the treatment and prevention of hepatitis and HIV. This collaboration generated approximately $2.1 million in revenue during 2001 and approximately $1.0 million in revenue during 2000. The National Institutes of Health-funded grant commenced during 2001 and generated $100,000 in revenue during 2001.

Research and development expenses: Research and development expenses were approximately $17.4 million in 2001, an increase of 110.0% as compared to approximately $8.3 million in research and development expenses in the year ended December 31, 2000. The increase in expenses was primarily due to expanded clinical trials in our AIC, infectious disease, cancer and TZP programs and attendant manufacturing costs for

clinical materials. Non-cash stock-based compensation included in research and development expense was approximately $1.0 million and $492,000 for the years ended December 31, 2001 and 2000, respectively.

General and administrative expenses: General and administrative expenses were approximately $4.5 million for the year ended December 31, 2001, an increase of 31.2% as compared to approximately $3.5 million in general and administrative expenses for the year ended December 31, 2000. The increase reflects increased compensation and related benefits expense of approximately $605,000 associated with increased headcount. Additionally, the increase reflects increased professional fees of approximately $211,000 for legal fees and approximately $212,000 for accounting fees associated with an attempted financing. Non-cash stock-based compensation included in general and administrative expense was approximately $1.0 million and $699,000 for the years ended December 31, 2001 and 2000, respectively.

Deemed dividend on preferred stock: In connection with a proposed initial public offering in 2000, the Company reflected a deemed dividend of approximately $18.2 million. The deemed preferred stock dividend was reflected in the 2000 statement of operations based on the difference between the estimated fair value of the common stock and the conversion price of the preferred stock at the commitment date. There was no impact on total stockholders' equity (net capital deficiency). The deemed preferred stock dividend increases the net loss applicable to common stockholders for the year ended December 31, 2000.

Interest income, net: Interest income, net, was approximately $1.1 million for the year ended December 31, 2001, a decrease of 2.6% as compared to the interest income, net for the year ended December 31, 2000. This decrease was primarily due to lower average cash balances during 2001.

Liquidity and Capital Resources

We have financed our operations from inception primarily through sales of shares of convertible preferred stock, which have yielded a total of approximately $83.3 million in net cash proceeds and, to a lesser extent, through amounts received under collaborative agreements and government grants. As of September 30, 2003, we had approximately $17.6 million in cash, cash equivalents and marketable securities. Our funds are currently invested in highly liquid, investment-grade corporate and government obligations.

Our operating activities used cash of approximately $11.7 million during the nine months ended September 30, 2003, compared to cash used in operating activities of approximately $10.7 million during the nine months ended September 30, 2002. This increase of approximately $1.0 million was due primarily to an increase in working capital, partially offset by a decrease in net loss.

Our investing activities provided cash of approximately $11.4 million during the nine months ended September 30, 2003, compared to cash used in investing activities of approximately $4.3 million during the nine months ended September 30, 2002. Cash provided by investing activities during the nine months ended September 30, 2003 consisted primarily of net sales and maturities of investments of approximately $11.5 million. Cash used in investing activities during the nine months ended September 30, 2002 consisted primarily of net purchases of investments of approximately $4.0 million.

Our financing activities provided cash of approximately $37,000 during the nine months ended September 30, 2003, compared to cash provided by financing activities of approximately $32.3 million during the nine months ended September 30, 2002. Cash provided by financing activities during the nine months ended September 30, 2003 consisted primarily of repayments by stockholders of notes receivable. Cash provided by financing activities during the nine months ended September 30, 2002 consisted primarily of approximately $32.3 million in net proceeds from issuance of preferred stock.

Our operating activities used cash of approximately $14.3 million during the year ended December 31, 2002, compared to approximately $13.7 million during the year ended December 31, 2001. This increase of approximately $600,000 was due primarily to an increase in working capital, partially offset by a decrease in net loss.

Our investing activities used cash of approximately $17.3 million during the year ended December 31, 2002, compared to cash provided by investing activities of approximately $14.7 million during the year ended December 31, 2001. Cash used in investing activities in 2002 consisted primarily of net purchases of investments of approximately $16.8 million and an investment of approximately $468,000 in property and

equipment. Cash provided by investing activities in 2001 consisted primarily of net sales and maturities of investments of approximately $15.8 million offset by an investment of approximately $1.1 million in property and equipment.

Our financing activities provided cash of approximately $32.4 million during the year ended December 31, 2002 compared to cash used in financing activities of approximately $204,000 during the year ended December 31, 2001. Cash provided by financing activities in 2002 consisted primarily of $32.4 million in net proceeds from issuance of preferred stock. Cash used in financing activities in 2001 consisted primarily of $152,000 in repayments on equipment financing.

In the third quarter of 2003, the Company was awarded government grants totaling approximately $8.4 million to be received over three and one-half years to fund research and development of certain biodefense programs. The revenue will be recognized as the related expenses are incurred.

In October 2003 we secured approximately $15.2 million of gross proceeds in a financing from investors in our subsidiary Dynavax Asia Pte. Ltd., or Dynavax Asia, which will become a wholly owned subsidiary upon the closing of this offering.

We have no long-term debt, and as of January 2004, we had contractual obligations related to operating leases as follows (in thousands):

	Payments Due by Period				
	Total	Less than 1 year	1-3 years	4-5 years	After 5 years
Operating leases	$7,690	$710	$1,435	$1,474	$4,071

Our long term commitments under operating leases shown above consist of payments relating to our real estate leases in Berkeley, California, expiring in May 2008 and March 2014, respectively, and our lease in Emeryville, California, expiring in March 2004.

The Company is obligated to make a one-time payment to the University of California upon the closing of the Company's initial public offering of approximately $217,000.

We believe our existing cash, cash equivalents and marketable securities, together with the estimated net proceeds of this offering, will be sufficient to meet our anticipated cash requirements for at least the next 24 months. Because of the significant time it will take for any of our product candidates to complete the clinical trials process, be approved by regulatory authorities and successfully commercialized, we will require substantial additional capital resources. We may raise additional funds through public or private equity offerings, debt financings, capital lease transactions, corporate collaborations or other means. We may attempt to raise additional capital due to favorable market conditions or strategic considerations even if we have sufficient funds for planned operations. To the extent that we raise additional funds by issuing equity securities, our stockholders will experience dilution, and debt financings, if available, may involve restrictive covenants or may otherwise constrain our financial flexibility. To the extent that we raise additional funds through collaborative arrangements, it may be necessary to relinquish some rights to our technologies or grant licenses on terms that are not favorable to us. In addition, payments made by potential collaborators, government agencies and other licensors generally will depend upon our achievement of negotiated development and regulatory milestones. Failure to achieve these milestones may significantly harm our future capital position.

Additional financing may not be available on acceptable terms, if at all. Capital may become difficult or impossible to obtain due to poor market or other conditions that are outside of our control. If at any time sufficient capital is not available, either through existing capital resources or through raising additional funds, we may be required to delay, reduce the scope of, eliminate or divest one or more of our research, preclinical or clinical programs or discontinue our business.

Recent Accounting Pronouncements

In November 2002, the Financial Accounting Standards Board (the "FASB") issued the FASB Interpretation No. 45 ("FIN 45"), *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*, which clarifies the requirements for a guarantor's accounting and

disclosures of certain guarantees issued and outstanding. This interpretation elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also clarifies that a guarantor is required to recognize, at its inception of guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. The initial recognition and initial measurement provisions of this interpretation are applicable on a prospective basis to guarantees issued or modified after December 31, 2002, irrespective of the guarantor's fiscal year-end. The disclosure requirements in this interpretation are effective for financial statements of interim or annual periods ending after December 15, 2002. The adoption of FIN 45 did not have a material impact on the Company's results of operations or financial position.

In November 2002, the EITF issued EITF Issue No. 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables* ("EITF 00-21"). EITF 00-21 addresses how to account for arrangements that may involve delivery or performance of multiple products, services, and/or rights to use assets, and when and, if so, how an arrangement involving multiple deliverables should be divided into separate units of accounting. It does not change otherwise applicable revenue recognition criteria. It applies to arrangements entered into in fiscal periods beginning after June 15, 2003, with early adoption permitted. The adoption of EITF 00-21 did not have a material impact on the Company's results of operations or financial position.

In May 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity* ("SFAS 150"). SFAS 150 requires that certain financial instruments, which under previous guidance were accounted for as equity, must now be accounted for as liabilities. The financial instruments affected include mandatorily redeemable stock, certain financial instruments that require or may require the issuer to buy back some of its shares in exchange for cash or other assets and certain obligations that can be settled with shares of stock. SFAS 150 is effective for all financial instruments entered into or modified after May 31, 2003 and otherwise is effective the beginning of the first interim period after June 15, 2003. The adoption of SFAS 150 did not have a material impact on the Company's results of operations or financial position.

Change in Accountants

We dismissed the accounting firm of PricewaterhouseCoopers LLP as our independent accountants upon approval of our board of directors on October 5, 2001. During the 1999 and 2000 fiscal years and the interim period through October 5, 2001, there were no disagreements on matters of accounting principles or practices, financial statement disclosure, or auditing scope or procedure between us and PricewaterhouseCoopers LLP, which disagreements if not resolved to the satisfaction of PricewaterhouseCoopers LLP would have caused them to make reference thereto in their report on the financial statements for such years. The audit reports of PricewaterhouseCoopers LLP on our consolidated financial statements for the years ended December 31, 1999 and 2000 did not contain any adverse opinion or disclaimer of opinion, nor was it qualified or modified as to uncertainty, audit scope or accounting principles. During the 1999 and 2000 fiscal years and the interim period through October 5, 2001 there were no reportable events as defined in Regulation S-K Item 304(a)(1)(v).

Quantitative and Qualitative Disclosure About Market Risk

The primary objective of our investment activities is to preserve principal while at the same time maximize the income we receive from our investments without significantly increasing risk. Some of the securities that we invest in may have market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. To minimize this risk in the future, we intend to maintain our portfolio of cash equivalents and investments in a variety of securities, including commercial paper, money market funds, government and non-government debt securities and corporate obligations. Because of the short-term maturities of our current investments, cash equivalents and marketable securities, we do not believe that an increase in market rates would have any significant negative impact on the realized value of our investments.

BUSINESS

Overview

We discover, develop and intend to commercialize innovative products to treat and prevent allergies, infectious diseases and chronic inflammatory diseases using versatile, proprietary approaches that alter immune system responses in highly specific ways. Our clinical development programs are based on immunostimulatory sequences, or ISS, which are short DNA sequences that enhance the ability of the immune system to fight disease and control chronic inflammation. Based on results from Phase II trials for our two lead product candidates, we plan to initiate Phase III trials in 2004. In addition, we have a third product candidate in Phase II trials. We also have a number of earlier stage clinical and preclinical programs. We retain full commercial rights for all of our product candidates.

Our most advanced clinical programs include:

- *AIC for Ragweed Allergy.* We have developed a novel injectable product candidate to treat ragweed allergy that we call AIC. AIC is an immunotherapeutic intervention for ragweed allergy, the most common seasonal allergy in North America. Unlike existing products that treat chronic ragweed allergy symptoms, our product candidate targets the underlying cause of ragweed-induced seasonal allergic rhinitis. AIC has completed several Phase II trials in the U.S., Canada and France. Results from completed Phase I and Phase II trials demonstrated AIC provided measurable clinical improvement and was well tolerated. We are currently planning a two-year, multi-site Phase IIb trial in the U.S. to evaluate the efficacy of AIC, and we expect to enroll patients in the first quarter of 2004. We anticipate that data from this study, in conjunction with data from a confirmatory Phase III trial to start later in 2004 and focused on the 2005 ragweed season, will support a Biologics License Application, or BLA, filing.

- *Hepatitis B Prophylaxis.* We are nearing completion of two Phase II trials in Canada for our hepatitis B vaccine. In these trials our hepatitis B vaccine induced more rapid immunity with fewer immunizations than currently available vaccines. As a result, our hepatitis B vaccine has the potential to increase compliance and decrease the spread of the disease. Results from Phase I and Phase II trials demonstrated that our hepatitis B vaccine was well tolerated and conferred protective hepatitis B antibody levels following two injections over a two-month period. We are currently planning to initiate Phase III trials outside the U.S. in 2004. Foreign regulatory agencies may require us to conduct additional clinical trials prior to approval.

- *Asthma.* We have an inhaled therapeutic product candidate for asthma in a pilot Phase II trial in Canada. Unlike current treatments for asthma, which require chronic use, our product may provide long-term relief following a single course of administration. Results from our Phase I trial demonstrated that our product candidate was well tolerated in healthy volunteers and may have the potential to suppress both clinical symptoms and the underlying inflammatory response associated with asthma. We expect results from our pilot Phase II trial in the first quarter of 2004.

We have an ISS-based cancer therapeutic product in Phase I trials and preclinical programs targeting additional allergies using our ISS technology. We have other preclinical programs focused on chronic inflammation, antiviral therapies and improved, next-generation vaccines using ISS and other technologies.

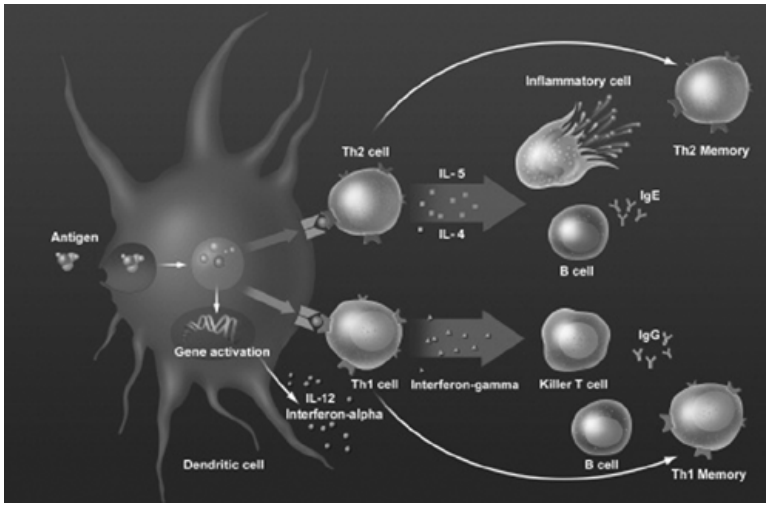
The Immune System

The immune system is the body’s natural defense mechanism against infectious pathogens, such as bacteria, viruses and parasites, and plays an important role in identifying and eliminating abnormal cells, such as cancer cells. The body’s first line of defense against any foreign substance is a specialized function called innate immunity, which serves as a rapid response that protects the body during the days or weeks needed for a second longer-term immune response, termed adaptive immunity, to develop. Unique cells called dendritic cells have two key functions in the innate immune response. They produce molecules called cytokines that contribute to the killing of viruses and bacteria. In addition, they ensure that pathogens and

other foreign substances are made highly visible to specialized helper T cells, called Th1 and Th2 cells, which coordinate the longer-term adaptive immune response. Dendritic cells recognize different types of pathogens or offending substances and are able to guide the immune system to make the most appropriate type of response. When viruses, bacteria and abnormal cells such as cancer cells are encountered, dendritic cells trigger a Th1 response, whereas detection of a parasite infection leads dendritic cells to initiate a Th2 response. Th1 and Th2 responses last for extended periods of time in the form of Th1 and Th2 memory cells, conferring long-term immunity.

The Th1 response leads to the production of specific cytokines, including interferon-alpha, interferon-gamma and interleukin 12, or IL-12, as well as the generation of killer T cells, a specialized immune cell. These cytokines and killer T cells are believed to be the body's most potent anti-infective weapons. In addition, protective IgG antibodies are generated that also help rid the body of foreign antigens and allergens. Once a population of Th1 cells specific to a particular antigen or allergen is produced, it persists for a long period of time in the form of memory Th1 cells, even if the antigen or allergen target is eliminated. If another infection by the same pathogen occurs, the immune system is able to react more quickly and powerfully to the infection, because the memory Th1 cells can reproduce immediately. When the Th1 response to an infection is insufficient, chronic disease can result. When the Th1 response is inappropriate, diseases such as rheumatoid arthritis can result, in part from elevated levels of Th1 cytokines.

Activation of the Th2 response results in the production of other cytokines, IL-4, IL-5 and IL-13. These cytokines attract inflammatory cells such as eosinophils, basophils and mast cells capable of destroying the invading organism. In addition, the Th2 response leads to the production of a specialized antibody, IgE. IgE has the ability to recognize foreign antigens and allergens and further enhances the protective response. An inappropriate activation of the Th2 immune response to allergens, such as plant pollens, can lead to chronic inflammation and result in allergic rhinitis, asthma and other allergic diseases. This inflammation is sustained by memory Th2 cells that are reactivated upon subsequent exposures to the allergen, leading to a chronic disease.



The diagram above is a visual representation of how the immune system reacts when it encounters antigen. Upon encountering antigen, a cascade of events is initiated that leads to either a Th1 or a Th2 immune response, as described more fully in the paragraphs above.

ISS and the Immune System

Our principal product development efforts are based on a technology that uses short synthetic DNA molecules, which we call ISS, that stimulate a Th1 immune response while suppressing Th2 immune responses. ISS contain specialized sequences that activate the innate immune system. ISS are recognized by a specialized subset of dendritic cells containing a unique receptor called Toll-Like Receptor 9, or TLR-9. The interaction of TLR-9 with ISS triggers the biological events that lead to the suppression of the Th2 immune response and the enhancement of the Th1 immune response.

We believe ISS have the following benefits:

- ISS work by changing or reprogramming the immune responses that cause disease rather than just treating the symptoms of disease.

- ISS influence helper T cell responses in a targeted and highly specific way by redirecting the response of only those T cells involved in a given disease. As a result, ISS do not alter the ability of the immune system to mount an appropriate response to infecting pathogens. In addition, because TLR-9 is found only in a specialized subset of dendritic cells, ISS do not cause a generalized activation of the immune system, which might otherwise give rise to an autoimmune response.

- ISS, in conjunction with an allergen or antigen, establish populations of memory Th1 cells, allowing the immune system to respond appropriately to each future encounter with a specific pathogen or allergen, leading to long-lasting therapeutic effects.

We have developed a number of proprietary ISS compositions and formulations that make use of the different ways in which the innate immune system responds to ISS. Depending on the indication for which ISS is being explored as a therapy, we use ISS in different ways.

ISS Linked to Allergens

We link ISS to allergens that are known to cause specific allergies. By chemically linking ISS to allergens, rather than simply mixing them, we generate a superior Th1 response due to the fact that the ISS and allergen are presented simultaneously to the same part of the immune system. The linked molecules generate an increased Th1 response by the immune system in the form of IgG antibodies and interferon-gamma. In addition, the ISS-linked allergens have a highly specific and potent inhibitory effect on the Th2 cells, thereby reprogramming the immune response away from the Th2 response that causes specific allergies. Upon subsequent natural exposure to the allergens, the Th1 memory response is triggered, providing long-term suppression of allergic responses.

ISS Linked to or Combined with Antigens

We also link ISS to antigens associated with cancer and pathogens such as viruses and bacteria to stimulate an immune response that will attack and destroy infected or abnormal cells. ISS, linked to or combined with appropriate antigens, increase the visibility of the antigen to the immune system and induce a highly specific and enhanced Th1 response, including increased IgG antibody production. As with ISS linked to allergens, this treatment also generates memory T cells, conferring long-term protection against specific pathogens. This treatment may also have the potential for synergy with other cancer or infectious disease therapies.

ISS Alone

We use ISS alone in diseases like asthma, where a large variety of allergens may be associated with an inappropriate immune response. ISS administered alone may suppress the Th2 inflammatory response caused by any number of allergens, modifying the underlying cause of inflammation, as well as providing symptomatic relief. ISS may also be used in conjunction with a variety of anti-tumor monoclonal antibodies as a combination therapy, with the goal of stimulating the elimination of cancer cells.

Advanced ISS Technologies

We have developed proprietary technologies that modify the molecular structure of ISS to significantly increase its versatility and potency. We are using these technologies in most of our preclinical programs and believe that they will be essential to our future product development efforts. Our advanced ISS technologies include novel ISS-like compounds, which we call CICs, as well as advanced ISS formulations.

CICs are molecules that are a mixture of nucleotide and non-nucleotide components. We have identified optimal sequences that induce particular immune responses, including potent interferon-alpha induction. CICs can be tailored to have specific immunostimulatory properties and can be administered alone, or linked to allergens or antigens.

We have also developed novel formulations for ISS and CICs that can dramatically increase their potency. These advanced formulations can be used in situations where high potency is required to see a desired clinical outcome and can decrease the dosage of ISS or CICs required to achieve therapeutic effect.

Our Primary Development Programs

We are using a proprietary ISS, a 22-base synthetic DNA molecule called 1018 ISS, in our clinical development programs for ragweed allergy, hepatitis B prophylaxis, asthma and cancer. To date, we have administered 1018 ISS to more than 350 people without observing any serious, drug-related, adverse events. We have demonstrated the clinical benefit of AIC and our hepatitis B vaccine, which are both 1018 ISS-based product candidates, in Phase II clinical trials. Our principal programs are:

	Indication	Technology	Status
Allergy Immunotherapy:	Ragweed Allergy	1018 ISS linked to allergen	Initiating Phase IIb in the first quarter of 2004
	Grass Allergy	Advanced ISS linked to allergen	Preclinical
	Tree Allergy	Advanced ISS linked to allergen	Preclinical
	Peanut Allergy	Advanced ISS linked to allergen	Preclinical
Hepatitis B:	Hepatitis B Prophylaxis	1018 ISS combined with antigen	Initiating Phase III in 2004
	Hepatitis B Immunotherapy	Advanced ISS linked to and combined with antigen	Preclinical
Chronic Inflammation:	Asthma	1018 ISS alone	Phase II

Allergy Immunotherapy

Ragweed Allergy

Commercial Opportunity

Medical management of seasonal allergic rhinitis is a multibillion-dollar global market. In the U.S. alone, approximately 40 million people suffer from allergic rhinitis. Many of these individuals experience allergies from more than one seasonal allergen, including ragweed, grasses and trees. The direct costs of prescription and over-the-counter, or OTC, interventions for allergic rhinitis in the U.S. is estimated to exceed $7.0 billion. In addition, approximately 20% of those who suffer from allergic rhinitis progress to asthma, leading to increased morbidity and disease management costs. Of the approximately 30 million people in the

U.S. who suffer from ragweed allergy, a portion receive conventional immunotherapy each year. We believe a more substantial number take multiple prescription and OTC remedies. We believe these population segments constitute the primary target markets for the adoption of AIC.

Current Allergy Treatments and their Limitations

Drug Treatments — Many individuals turn to prescription and OTC pharmacotherapies such as antihistamines, corticosteroids, anti-leukotriene agents and decongestants to manage their seasonal allergy symptoms. Although currently available pharmacotherapies may provide temporary symptomatic relief, they can be inconvenient to use and can cause side effects. Most importantly, these pharmacotherapies need to be administered chronically and do not modify the underlying disease state.

Allergy Shots (Immunotherapy) — Allergy shots, or immunotherapy, are employed to alter the underlying immune mechanisms that cause allergic rhinitis. Patients are recommended for allergy immunotherapy only after attempts to reduce allergic symptoms by drugs or limiting exposure to the allergen have been deemed inadequate. Conventional immunotherapy is a gradual immunizing process in which increasing individualized concentrations of pollen extracts are mixed by the allergist and administered to induce increased tolerance to natural allergen exposure. The treatment regimen generally consists of weekly injections over the course of six months to a year, during which the dosing is gradually built up to a therapeutic level so as not to induce a severe allergic reaction. Once a therapeutic dosing level is reached, individuals then receive bi-weekly or monthly injections to build and maintain immunity over another two to four years. A patient typically receives between 60 to 90 injections over the course of treatment. Adverse reactions to conventional allergy immunotherapy are common and can range from minor swelling at the injection site to systemic reactions, and, in extremely rare instances, death. Other major drawbacks from the patients' perspective include the inconvenience of repeated visits to doctors' offices for each injection, the time lag between the initiation of the regimen and the reduction of symptoms, and the total number of injections required to achieve a therapeutic effect. Consequently, patient compliance is a significant issue.

AIC for Ragweed Allergy and its Benefits

Our lead anti-allergy product, AIC, consists of 1018 ISS linked to the purified major allergen of ragweed, called Amb a 1. AIC targets the underlying cause of seasonal allergic rhinitis caused by ragweed and offers a convenient six-week treatment regimen potentially capable of providing long-lasting therapeutic results. The linking of ISS to Amb a 1 ensures that both ISS and ragweed allergen are presented simultaneously to the same immune cells, producing a highly specific and potent inhibitory effect and suppressing the Th2 cells responsible for inflammation associated with ragweed allergy. Moreover, this treatment reprograms the immune response away from the Th2 response and toward a Th1 memory response so that, upon subsequent natural exposure to the ragweed allergen, long-term immunity is achieved.

Clinical Status

Over the last several years, we have generated a substantial amount of clinical data on AIC. AIC has been tested in ten Phase I and Phase II trials in the U.S., France and Canada, with more than 175 people receiving over 1,350 AIC injections. In these trials, AIC was shown to be safe and well tolerated, to provide measurable improvements in allergy symptoms and to reduce medication use. We are currently planning a two-year multi-site Phase IIb trial in the U.S. to evaluate the efficacy of AIC and plan to begin enrolling patients in the first quarter of 2004. We anticipate that data from this study, in conjunction with data from a confirmatory Phase III trial to start later in 2004 and focused on the 2005 ragweed season, will support a BLA filing.

A Phase I trial, completed in the U.S. at Johns Hopkins University, suggested that AIC was better tolerated than conventional ragweed pollen extracts currently used in immunotherapy. This trial compared the skin test responses of six subjects receiving AIC and a commercially available ragweed immunotherapy product. The local allergic response to AIC was significantly less pronounced than that of the ragweed product. On average, approximately 180-fold more AIC was required to induce an allergic response equal to that of the ragweed product. These data support the potential for improved safety of AIC over ragweed extract for immunotherapy.

We conducted a Phase II trial in the U.S. in collaboration with Johns Hopkins University and the National Institutes of Health-sponsored Immune Tolerance Network. In the first year of the trial, 25 subjects were enrolled, 14 of whom received AIC and 11 of whom received placebo. Those receiving AIC were given a series of six weekly escalating doses of AIC ranging from 0.06 to 12.0 micrograms. All patients were treated prior to the 2001 ragweed season and then followed for symptoms during the season. Patients who received AIC therapy prior to the 2001 ragweed season had significantly lower nasal allergy symptoms and used less allergy medication during the 2001 season as compared to placebo. Patients were followed without further treatment during the 2002 ragweed season and results indicated the same level of efficacy. A statistically significant difference between AIC and placebo was observed in both years. Although the trial was small, these results suggest that a single six-injection course of AIC could provide protection against ragweed allergy that lasts for at least two allergy seasons.

We conducted a Phase II trial with similar design in Canada during the 2001 ragweed season. The primary endpoint of this trial was to examine the impact of AIC treatment on biological indicators of allergic response. In this trial, 28 subjects received AIC and 29 received placebo. After receiving the same dosage regimen as in the Phase II trial at Johns Hopkins University, patients were followed during the 2001 and 2002 ragweed seasons. With data from the 2001 ragweed season, this trial achieved a statistically significant increase in the number of Th2 cells secreting interferon-gamma, as well as a statistically significant decrease in the number of inflammatory cells, called eosinophils, and in the number of Th2 cells producing the inflammatory cytokine, IL-4. In addition, a strong trend towards a reduced number of Th2 cells secreting the inflammatory cytokine, IL-5, was also observed. These results indicated a shift away from a Th2 response towards a Th1 response. Although this trial met its primary endpoints, there was no impact on clinical symptom scores or medication use in 2001. We believe this result may have been due to more relaxed inclusion criteria which resulted in the enrollment of patients without significant ragweed allergies. Clinical symptoms were impacted positively by AIC immunotherapy in 2002 and reached statistical significance for a subset of symptoms.

Three Phase II trials were also performed in France to evaluate the safety, tolerability and preliminary activity of higher doses of AIC, as well as the safety, tolerability and preliminary activity of re-immunizing patients with AIC prior to a second ragweed season. Across all three trials, 134 patients were enrolled, 67 of whom received an AIC regimen of up to 30 micrograms. Data are currently being analyzed, but preliminary assessments suggest that AIC was safely administered at these higher doses. No systemic adverse reactions were associated with treatment, and local reactions were mild and did not result in dose reductions.

We intend to initiate a multi-site Phase IIb trial in the U.S. in the first quarter of 2004. We plan to enroll up to 462 eligible patients. Prior to the 2004 ragweed season, patients will receive a six-week regimen of either placebo or escalating doses of up to 30 micrograms of AIC. Some patients will receive two additional booster shots of AIC prior to the 2005 ragweed season. The primary endpoint of this trial will be the change in nasal symptoms relative to placebo following the 2005 ragweed season.

Other Seasonal Allergy Immunotherapy Candidates

As AIC progresses through clinical development, we intend to produce similar ISS-allergen linked product candidates for the treatment of other major seasonal allergies. Each of grass, birch and cedar-induced seasonal allergic rhinitis is caused by an allergic immune system response to identified and characterized allergens. Consequently, product candidates for each can be produced in a manner similar to AIC. For example, the major grass allergen, Lol p 1, can be linked to ISS. As with AIC, we believe our approach may provide distinct advantages over conventional immunotherapy for these allergies, including a potentially favorable safety profile, significantly shorter dosing regimen and long-term therapeutic benefits.

AIC and our other seasonal allergy products should be well positioned to compete against not only currently available immunotherapies, but also other interventions targeting the symptoms of seasonal allergic rhinitis. We believe that our additional seasonal allergy products will present the same advantages over symptomatic interventions as described for AIC. As a result of these advantages and by providing a broader

set of seasonal allergy immunotherapies, we may ultimately achieve an expansion into the large group of patients that currently chooses pharmacotherapies over existing immunotherapies.

Peanut Allergy

Commercial Opportunity

Peanut allergy accounts for the majority of severe food-related allergic reactions. Approximately 1.5 million people in the U.S. have a potentially life-threatening allergy to peanuts, with an estimated 50 to 100 deaths occurring in the U.S. each year.

Current Peanut Allergy Treatments and their Limitations

There are currently no products available that prevent peanut allergy. People allergic to peanuts must carefully monitor their exposure to peanuts and peanut byproducts. Emergency treatment following peanut exposure and the onset of allergic symptoms primarily consists of the administration of epinephrine to treat anaphylaxis. A clinical trial conducted by an academic research institution that attempted to desensitize patients with peanut allergy through conventional immunotherapy was halted due to the occurrence of a serious adverse event.

Our Approach to the Treatment of Peanut Allergy and its Benefits

We believe that ISS linked with the principal peanut allergen, Ara h 2, may be able to suppress the Th2 response and reduce or eliminate the allergic reaction without inducing anaphylaxis during the course of immunotherapy. Our primary advantage in this area is the potentially increased safety that may be achieved by linking ISS to the allergen. By using ISS to block recognition of the allergen by IgE and therefore prevent subsequent histamine release, we may be able to administer enough of the ISS-linked allergen to safely reprogram the immune response without inducing a dangerous allergic reaction. We believe the resulting creation of memory Th1 cells may provide long-term protection against an allergic response due to accidental exposure to peanuts.

Preclinical Status

We are developing a peanut allergy product candidate that consists of ISS linked to the major peanut allergen, Ara h 2. We have demonstrated in mice that peanut allergen linked to ISS induces much higher levels of Th1-induced IgG antibodies and much lower levels of IgE than natural peanut allergen. ISS-linked Ara h 2 also induces much higher levels of interferon-gamma and much lower levels of IL-5 than unmodified Ara h 2 in mice. Immunization with our product candidate has also been shown to protect peanut allergic animals from anaphylaxis and death following exposure to peanuts. In addition, we have demonstrated that ISS-linked Ara h 2 has significantly reduced allergic response as measured by in vitro histamine release assays using blood cells from peanut allergic patients.

Hepatitis B Products

Hepatitis B Prevention

Commercial Opportunity

Hepatitis B is a common chronic infectious disease with an estimated 350 million chronic carriers worldwide. Prevention of hepatitis caused by the hepatitis B virus is central to managing the spread of the disease, particularly in regions of the world with large numbers of chronically infected individuals. While many countries have recently instituted infant vaccination programs, compliance is not optimal. Moreover, there are large numbers of individuals born prior to the implementation of these programs who are unvaccinated and are at risk for the disease. In addition, not all individuals respond to currently approved vaccines. Annual sales of hepatitis B vaccines in 2001 exceeded $1.0 billion globally. If our hepatitis B vaccine product candidate is approved, we plan to introduce it in various markets outside the U.S. We cannot

distribute this product in the U.S. due to the presence of third-party patents covering hepatitis B surface antigen in the U.S. that extend to as late as 2019.

Current Hepatitis B Vaccines and their Limitations

Current hepatitis B vaccines consist of a three-dose immunization regimen administered over six months. If completed, current hepatitis B vaccination confers protective hepatitis B antibody responses to approximately 95% of healthy young adults. However, the protective hepatitis B antibody responses achieved by conventional vaccines is lower for persons who are overweight or who smoke. Additionally, there is an inversely proportional relationship between age and the degree to which current vaccines confer protective hepatitis B antibody responses: the older you are, the less effective current vaccines are. Compliance with the immunization regimen is also a significant issue, as many patients fail to receive all three doses. According to a survey of U.S. adolescents and adults published by the Centers for Disease Control, only 53% of those who received the first dose of vaccine received the second dose of vaccine and only 30% received the third. We believe that compliance rates in other countries are similar. For healthy young adults, protective hepatitis B antibody responses after the first dose are reported to be between 10% and 12% and improve to only 38% to 56% after the second dose. Factoring together published clinical efficacy with compliance data, we estimate “field efficacy” of current vaccines to be approximately 50%. Consequently, an unacceptably large number of individuals who start the immunization series remain susceptible to infection. Poor field efficacy is of particular concern in regions with high hepatitis B prevalence and constitutes a major public health issue.

Our Hepatitis B Vaccine Product Candidate and its Benefits

Current hepatitis B vaccines consist of hepatitis B surface antigen combined with alum as an adjuvant. Our vaccine candidate is composed of hepatitis B surface antigen combined with 1018 ISS and, unlike conventional vaccines, appears to require only two immunizations over two months to achieve protective hepatitis B antibody responses. In clinical trials we have been able to reduce both the time and number of injections required to reach protective hepatitis B antibody responses because of the potent immune-enhancing properties of ISS, which we believe may lead to protective hepatitis B antibody responses after one or two immunizations and thus provide superior field efficacy as compared to current hepatitis B vaccines.

Clinical Status

We intend to initiate international multi-site Phase III trials in 2004 with primary endpoints of protective hepatitis B antibody responses after each injection. Results from Phase I and interim results from Phase II trials showed that our vaccine candidate was well tolerated and induced more rapid immunity with fewer immunizations than other currently available vaccines. Our Phase I trial investigated the effects of escalating doses of ISS, from 0.3 mg to 3.0 mg, in each case administered with the same amount of hepatitis B surface antigen as used in conventional vaccines. In this trial we enrolled 48 subjects and demonstrated that all subjects who received two injections of at least 0.65 mg ISS with hepatitis B surface antigen achieved protective hepatitis B antibody responses. We are currently conducting a Phase II trial in Canada evaluating the efficacy of two injections of our vaccine candidate (hepatitis B surface antigen plus 3.0 mg of 1018 ISS) compared to a commercially available vaccine, Engerix-B®. A total of 97 healthy young adults have been enrolled in this study, randomized to our vaccine and Engerix-B®. Interim results show that our vaccine induces a 77% rate of protective hepatitis B antibody response after one injection and 100% protective hepatitis B antibody responses after the second injection at two months. In contrast, subjects receiving Engerix-B® had rates of protective hepatitis B antibody responses after the first and second injections of 9% and 62%, respectively. We are also conducting a second Phase II trial to evaluate the efficacy of our vaccine in subjects who fail to respond to a full course of Engerix-B®.

Hepatitis B Therapy

Commercial Opportunity

Management of hepatitis B infection is a large and costly problem. Hepatitis B infection causes major morbidity, including acute and chronic inflammatory liver disease, which in turn can lead to cirrhosis, liver cancer and death. We believe a significant market opportunity exists in foreign markets, particularly in South- East Asia and the Pacific Basin (excluding Japan, Australia and New Zealand), where the World Health Organization estimates that 8% to 20% of people are chronic carriers of hepatitis B. Approximately 25% of chronic carriers develop serious liver disease which needs to be medically managed.

Currently Available Hepatitis B Therapies and their Limitations

Currently available therapies for chronic hepatitis B infection include interferon alpha and antiviral drugs. Interferon-alpha has been shown to normalize liver enzyme function in approximately 40% of individuals treated. The approved antiviral drugs, which work by inhibiting viral replication, reduce hepatitis B viral load approximately 3,000-fold and normalize liver enzymes in 50% to 75% of patients. However, both interferon-alpha and antiviral drugs are expensive and may induce significant side effects. In addition, patients typically become resistant to antiviral drugs within one year of initiating treatment, ultimately rendering them ineffective as long-term therapies.

Benefits of our Approach to Hepatitis B Therapy

Our product candidate for hepatitis B therapy, in which advanced ISS is both linked to and combined with hepatitis B surface antigen, may provide a more effective alternative for the elimination of infection in chronic carriers, in conjunction with existing antiviral therapies. Our immunotherapy is expected to induce a potent immune response against virus infected cells in the liver and has the potential to eradicate the infection.

Preclinical Status

Preclinical experiments in mice and primates have shown that our product candidate for hepatitis B therapy redirects the immune response toward Th1-based immunity, producing strong interferon-gamma and cytotoxic T cell responses. Interferon-gamma and cytotoxic T cell responses are thought to be important for the control and/or elimination of chronic hepatitis B infection.

License and Supply Agreement with Berna Biotech

On October 28, 2003, we entered into an agreement with Berna Biotech, a publicly traded company based in Bern, Switzerland, in which Berna agreed to supply us with its proprietary hepatitis B surface antigen for use in our Phase III clinical trials for our hepatitis B vaccine and, if merited, its subsequent commercialization. According to terms of the agreement, we will receive without charge adequate supplies of hepatitis B surface antigen for clinical development, and then will pay fixed amounts for use of the antigen in the potential commercial vaccine. We also agreed to make certain commercialization and sales milestone payments to Berna regarding our hepatitis B vaccine. Under the terms of the agreement, Berna has an exclusive right to commercialize the hepatitis B vaccine under terms to be negotiated, but may choose to opt out of that right. Berna also agreed to supply its hepatitis B surface antigen for our use in further developing our product candidate for hepatitis B therapy. Berna also received an option to collaborate with us in the development and commercialization of our hepatitis B therapy product candidate.

Dynavax Asia

In October 2003 we formed Dynavax Asia Pte. Ltd., or Dynavax Asia, which will focus on our clinical and preclinical hepatitis B programs. Dynavax Asia is incorporated in Singapore and will become a wholly owned subsidiary upon the closing of this offering. We raised $15.2 million in gross proceeds from eight institutional investors to fund the operations of Dynavax Asia. Because of the high incidence of hepatitis B in

Asia, we intend to conduct the majority of our Phase III trials for our hepatitis B vaccine product candidate there. We also intend to continue preclinical research and, if merited, early human clinical trials for our hepatitis B immunotherapy product candidate in Asia. We anticipate that certain activities associated with the conduct of these trials, as well as preclinical research into the development of advanced ISS formulations, will occur in Singapore. We will support the activities of Dynavax Asia through our own personnel and through limited hiring in Singapore.

Chronic Inflammation

Asthma

Commercial Opportunity

Asthma is a chronic disorder caused primarily by allergic inflammation of the airways, leading to recurrent episodes of wheezing, breathlessness, chest tightness, and coughing, particularly in the night or early morning. If not properly managed, asthma can be life threatening.

Asthma affects more than 100 million individuals worldwide. In the U.S. alone, asthma is estimated to afflict 20 million people. In addition, cases of asthma are on the rise. Sales of asthma drugs worldwide exceeded $7.0 billion in 2002.

Current Asthma Therapies and their Limitations

Current asthma therapies are aimed at suppressing or manipulating the immune and inflammatory components of asthma. The most common therapy is the use of steroid hormones, called corticosteroids, either systemically or by inhalation. When administered as a drug, corticosteroids are known to reduce swelling and inflammation. The requirement for daily administration of inhaled corticosteroids to treat chronic asthma often leads to poor compliance, especially in younger patients. In addition, inhaled corticosteroids are associated with side effects such as reduced growth rate in children and possible bone demineralization. Other approaches block symptoms caused by inflammatory molecules, called leukotrienes, or prevent the release of histamines by blocking IgE antibodies, but both have modest efficacy.

Inhaled ISS for Asthma and its Benefits

In most people, asthma is an allergic inflammatory disease caused by multiple allergens. As a result, an approach relying on the linkage of ISS to a large number of allergens would be technically and commercially challenging. To address this issue, we have formulated ISS for pulmonary delivery with no linked allergen, relying on natural exposure to multiple allergens to produce specific long-term immunity. We anticipate that ISS would be administered on a weekly basis initially. Once the immune response to asthma-causing allergens has been reprogrammed to a Th1 response, it may be possible to reduce administrations of ISS to longer periodic intervals or only as needed. In addition, based on preclinical data, we believe that this therapy may lead to reversal of airway remodeling caused by asthma.

Clinical Status

Based on preclinical studies that demonstrated efficacy in mouse and primate asthma models, we have initiated a clinical development program for inhaled 1018 ISS in asthma. We have completed a Phase I trial to evaluate the safety and tolerability of inhaled 1018 ISS in 54 healthy subjects. In the first part of the trial, ISS was found to be well tolerated at escalating doses. In the second part of the trial, measurable increases in the expression of cytokines induced by 1018 ISS were observed in treated patients relative to placebo, confirming our understanding of its mechanism of action.

We are currently conducting a pilot Phase II trial to evaluate the preliminary safety and tolerability of 1018 ISS in mild asthmatics and assess the efficacy of the treatment following allergen challenge. In this trial, 30 patients are being given four weekly doses of either 1018 ISS or placebo. The primary endpoint of this trial is a comparison of the allergen-induced clinical symptoms between 1018 ISS and placebo following the final dose. Results from this trial are expected in early 2004.

Additional Programs

In addition to our primary product portfolio, we are pursuing the following earlier stage programs:

	Indication	Approach	Funding Status	Program Status
Next-Generation Vaccines:	Anthrax	Advanced ISS formulations	NIAID biodefense grant	Preclinical
	Human Viral Influenza	Advanced ISS linked to influenza nucleoprotein	NIAID biodefense grant	Preclinical
Cancer:	Non-Hodgkin's Lymphoma	1018 ISS in combination with Rituxan®	Internally funded	Phase I
Antiviral Applications:	Innate Immunity	Pulmonary delivery of advanced ISS	NIAID biodefense grant	Preclinical
Chronic Inflammation:	Rheumatoid Arthritis	TZP	Internally funded	Preclinical
	Crohn's Disease	TZP	Internally funded	Preclinical

Next-Generation Vaccines

Anthrax

The demand for a new anthrax vaccine was heightened by the bioterrorist attacks in 2001, when anthrax-laden envelopes were sent via the U.S. Mail. The only available anthrax vaccine, Anthrax Vaccine Adsorbed, or AVA, was approved in the U.S. in 1970 and has been used extensively by the military. The vaccine has been reported to cause relatively high rates of local and systemic adverse reactions. In addition, the administration of AVA requires six subcutaneous injections over 18 months with subsequent annual boosters.

We are using our advanced ISS technology to develop an improved anthrax vaccine that we expect will be well tolerated and provide protective immunity after one or two immunizations. Our vaccine candidate will be composed of recombinant anthrax protective antigen, or rPA, combined with advanced ISS enhanced by a proprietary formulation. The use of advanced ISS in this formulation should enhance both the speed and magnitude of the antibody response developed against rPA compared to AVA and other rPA-based products in development. Preclinical experiments have demonstrated that rPA combined with our advanced ISS formulations has generated significantly higher antibody responses compared to rPA alone or rPA combined with the standard vaccine adjuvant, alum. In the third quarter of 2003, the National Institute of Allergy and Infectious Diseases, or NIAID, awarded us a $3.7 million grant over three and a half years to fund research and development of an advanced anthrax vaccine as part of its biodefense program.

Human Viral Influenza

Human viral influenza is an acute respiratory disease of global dimension with high morbidity and mortality in annual epidemics. In the U.S., there are an estimated 20,000 viral influenza-associated deaths per year. Pandemics occur infrequently, on average every 33 years, with high rates of infection resulting in increased mortality. The last pandemic occurred 35 years ago, and virologists anticipate that a new pandemic strain could emerge any time.

Current flu vaccines are directed against specific surface antigen proteins. These proteins vary significantly each year, requiring the vaccine to be reconfigured and administered annually. Our approach links advanced ISS to nucleoprotein, one of the flu antigens that varies little from year to year, and then adds it to conventional vaccine to augment its activity. While nucleoprotein alone is not capable of inducing a protective immune response, we believe that linked ISS-nucleoprotein added to conventional vaccine will not only increase antibody responses capable of blocking viral infections but also confer protective immunity

against divergent influenza strains. In the third quarter of 2003 we were awarded a $3.0 million grant over three and a half years to fund research and development of an advanced pandemic influenza vaccine under an NIAID program for biodefense administered by the National Institutes of Health.

Cancer

We have used 1018 ISS in preclinical studies in conjunction with a variety of anti-tumor monoclonal antibodies as a combination therapy, with the goal of enhancing the cytotoxic effects that these antibodies have on cancer cells. This intervention has been shown to be effective in preclinical models utilizing anticancer monoclonal antibodies. We are currently conducting an open-label Phase I, dose-escalation trial of 1018 ISS in combination with Rituxan® in 26 patients with a cancer of the blood called non-Hodgkin's lymphoma to evaluate the safety, tolerability, pharmacokinetics and pharmacodynamics of 1018 ISS administered in combination with Rituxan®. We expect to complete the trial in 2004.

Antiviral Applications

The potential of natural or laboratory-engineered infectious microorganisms as weapons of terrorism and warfare is now recognized as a significant threat. In addition, naturally emerging infectious diseases are a constant threat and impossible to anticipate. Vaccination against a few of these organisms, such as anthrax and smallpox, is possible; however, predicting all possible biological threats is impractical. Increasing the resistance of individuals to a wide range of potential pathogens by stimulating their innate immune response would provide a complementary approach to vaccination against specific pathogens. As the most likely route of exposure to biological weapons is through the air, stimulation of innate immune mechanisms in the lungs would be particularly important.

We have shown in animal models that ISS enhances innate immunity and increases resistance to a variety of pathogens in both prophylactic and therapeutic settings. We are currently evaluating the effects of advanced ISS as prophylaxis against a broad spectrum of biological agents in both mouse and primate models. In the third quarter of 2003, we were awarded an NIAID biodefense grant of $1.7 million over two and one-half years. This grant will fund research and development of a product candidate using pulmonary delivery to elicit prophylactic innate immunity to airborne biological agents.

Chronic Inflammation

Tumor necrosis factor alpha, or TNF-alpha, is a cytokine that plays a major role in the body's response to infectious diseases. Following bacterial or viral infection, TNF-alpha is normally released as part of a Th1-dominated immune response to fight the invading pathogen. In a number of diseases, such as rheumatoid arthritis, Crohn's disease and psoriasis, however, inappropriately high levels of this cytokine are produced, leading to the debilitating symptoms of these conditions. A number of published studies have shown that inhibition of TNF-alpha is effective in the treatment of these diseases.

We are developing drugs based on a novel class of chemical compounds called thiazolopyrimidines, or TZPs, for the treatment of rheumatoid arthritis, a form of inflammatory bowel disease called Crohn's disease and other TNF-alpha mediated diseases. TZPs are our proprietary small molecules that inhibit the production of TNF-alpha and IL-12. They appear to have a novel mechanism of action, including a high degree of specificity, increasing their potential to be used as drugs.

We are conducting preclinical studies to determine the mechanism of action of TZPs as well as evaluate their activity ex-vivo. Based on the outcome of these studies, we will determine whether to initiate clinical trials using TZPs in rheumatoid arthritis, Crohn's disease or potentially in other inflammatory diseases.

We have contracted with BioSeek, Inc. to conduct preclinical studies to determine the mechanism of action for TZPs. Under the terms of the agreement, we are obligated to pay BioSeek a milestone payment upon determination of the mechanism of action. Additional milestone payments and royalties are payable to BioSeek if we partner or commercialize our TZP program.

Intellectual Property

Our intellectual property portfolio can be divided into three main technology areas: ISS, TZP and vaccines using DNA. We have entered into exclusive, worldwide license agreements with the Regents of the University of California for technology and related patent rights in these three technology areas.

- *ISS technology:* We have ten issued U.S. and foreign patents, 33 pending U.S. patent applications, and 82 pending foreign applications that seek worldwide coverage of compositions and methods using ISS technology. Some of these patents and applications have been exclusively licensed worldwide from the Regents of the University of California. Among others, we hold issued U.S. patents covering 1018 ISS as a composition of matter; the use of ISS alone to treat asthma; and ISS linked to allergens and viral or tumor antigens.

- *TNF-alpha inhibitors:* We have eight issued U.S. and foreign patents and eight pending U.S. and foreign patent applications providing worldwide rights to a group of small-molecule TNF-alpha synthesis inhibitors known as TZPs. We hold exclusive, worldwide licenses to these patents and patent applications held by the Regents of the University of California.

- *Vaccines using DNA:* We have 14 issued U.S. and foreign patents and nine pending U.S. and foreign patent applications covering methods and compositions for vaccines using DNA and methods for their use. We hold an exclusive worldwide license from the Regents of the University of California for patents and patent applications relating to vaccines using DNA, and we have the right to grant sublicenses to third parties. Effective January 1998, we entered into a cross-licensing agreement with Vical, Inc. that grants each company exclusive, worldwide rights to combine the other firm's patented technology for DNA immunization with its own for selected indications.

Under the terms of our license agreements with the Regents of the University of California, we are required to pay license fees, make milestone payments and pay royalties on net sales resulting from successful products originating from the licensed technologies. In addition, the license agreements require us to make a one-time cash payment to the Regents of the University of California upon the conclusion of this offering based on the initial public offering price as partial consideration for the licenses. This payment would be approximately $217,000, based on an assumed initial public offering price of $13.00 per share. We may terminate these agreements in whole or in part on 60 days' advance notice. The Regents of the University of California may terminate these agreements if we are in default for failure to make royalty payments, produce required reports or fund internal research and we do not cure a breach within 60 days after being notified of the breach. Otherwise, the agreements do not terminate until the last patent claiming a product licensed under the agreement or its manufacture or use expires, or in the absence of patents, until the date the last patent application is abandoned, except for the TZP agreement, which will expire on such date or in October 2013, whichever is later.

Although we believe our patents and patent applications, including those that we license, provide a competitive advantage, the patent positions of pharmaceutical and biopharmaceutical companies are highly uncertain and involve complex legal and factual questions. We and our collaborators or licensors may not be able to develop patentable products or be able to obtain patents from pending patent applications. Even if patent claims are allowed, the claims may not issue, or in the event of issuance, may not be sufficient to protect the technology owned by or licensed to us. These current patents, or patents that issue on pending applications, may be challenged, invalidated, infringed or circumvented, and the rights granted in those patents may not provide proprietary protection or competitive advantages to us. Patent applications filed before November 29, 2000 in the U.S. are maintained in secrecy until patents issue; later filed U.S. applications and patent applications in most foreign countries generally are not published until at least 18 months after they are filed. Scientific and patent publication often occurs long after the date of the scientific discoveries disclosed in those publications. Accordingly, we cannot be certain that we were the first to invent the subject matter covered by any patent application or that we were the first to file a patent application for any inventions.

Our commercial success depends significantly on our ability to operate without infringing patents and proprietary rights of third parties. A number of pharmaceutical companies, biotechnology companies, including Coley Pharmaceutical Group, or Coley, as well as universities and research institutions may have filed patent applications or may have been granted patents that cover technologies similar to the technologies owned or licensed to us. We cannot determine with certainty whether patents or patent applications of other parties may materially affect our ability to make, use or sell any products. The existence of third-party patent applications and patents could significantly reduce the coverage of the patents owned by or licensed to us and limit our ability to obtain meaningful patent protection.

If patents containing competitive or conflicting claims are issued to third parties, we may be enjoined from pursuing research, development or commercialization of products or be required to obtain licenses to these patents or to develop or obtain alternative technology. In addition, other parties may duplicate, design around or independently develop similar or alternative technologies to ours or our licensors. If another party controls patents or patent applications covering our products, we may not be able to obtain the rights we need to those patents or patent applications in order to commercialize our products. We have developed second-generation technology that we believe reduces many of these risks.

Litigation may be necessary to enforce patents issued or licensed to us or to determine the scope or validity of another party's proprietary rights. U.S. Patent Office interference proceedings may be necessary if we and another party both claim to have invented the same subject matter. Coley has issued U.S. patent claims, as well as patent claims pending with the U.S. Patent and Trademark Office, that, if held to be valid, could require us to obtain a license in order to commercialize one or more of our formulations of ISS in the U.S., including AIC. On December 17, 2003, the United States Patent and Trademark Office declared an interference to resolve first-to-invest disputes between a patent application filed by the Regents of the University of California, which is exclusively licensed to us, and an issued U.S. patent owned by Coley relating to immunostimulatory DNA sequences. The declaration of interference names the Regents of the University of California as senior party, indicating that a patent application filed by the Regents of the University of California and licensed to us was filed prior to a patent application owned by Coley that led to an issued U.S. patent. The interference provides the first forum to challenge the validity and priority of certain of Coley's patents. If successful, the interference action would establish our founders as the inventors of the inventions in dispute. If we do not prevail in the interference proceeding, we may not be able to obtain patent protection on the subject matter of the interference, which would have a material adverse impact on our business. In addition, if Coley prevails in the interference, it may seek to enforce its rights under issued claims, including, for example, by suing us for patent infringement. Consequently, we may need to obtain a license to issued and/or pending claims held by Coley by paying cash, granting royalties on sales of our products or offering rights to our own proprietary technologies. Such a license may not be available to us on acceptable terms, if at all.

We could incur substantial costs if:

- litigation is required to defend against patent suits brought by third parties;
- we participate in patent suits brought against or initiated by our licensors;
- we initiate similar suits; or
- we pursue an interference proceeding.

In addition, we may not prevail in any of these actions or proceedings. An adverse outcome in litigation or an interference or other proceeding in a court or patent office could:

- subject us to significant liabilities;
- require disputed rights to be licensed from other parties; or
- require us to cease using some of our technology.

We also rely on trade secrets and proprietary know-how, especially when we do not believe that patent protection is appropriate or can be obtained. Our policy is to require each of our employees, consultants and

advisors to execute a confidentiality and inventions agreement before beginning their employment, consulting or advisory relationship with us. These agreements generally provide that the individuals must keep
confidential and not disclose to other parties any confidential information developed or learned by the individuals during the course of their relationship with us except in limited circumstances. These agreements also generally provide that we own all inventions conceived by the individuals in the course of rendering services to us.

In the future, we may collaborate with other entities on research, development and commercialization activities. Disputes may arise about inventorship and corresponding rights in know-how and inventions resulting from the joint creation or use of intellectual property by us and our collaborators, licensors, scientific collaborators and consultants. In addition, other parties may circumvent any proprietary protection we do have. As a result, we may not be able to maintain our proprietary position.

Manufacturing

The process for manufacturing oligonucleotides such as ISS is well established and uses commercially available equipment and raw materials. To date, we have manufactured small quantities of our oligonucleotide formulations for research purposes. We have relied on a single contract manufacturer to produce our ISS for clinical trials. We have identified several additional manufacturers with whom we could contract for the manufacture of ISS.

AIC consists of ISS linked to Amb a 1, the principal ragweed allergen, which is purified from ragweed pollen purchased on an as-needed basis from commercial suppliers of ragweed pollen. If we are unable to purchase ragweed pollen from commercial suppliers, we may be required to contract directly with collectors of ragweed pollen which may in turn subject us to unknown pricing and supply risks.

As we develop product candidates addressing other allergies, including grass, tree and plant allergies, we may face similar supply risks. In the past, AIC was produced for us by a single contract manufacturer. Our existing supplies of AIC are sufficient for us to conduct our currently planned Phase IIb clinical trial. We plan to qualify and enter into manufacturing agreements with one or more new commercial manufacturers to produce additional supplies of AIC as required for completion of clinical trials and commercialization.

Our hepatitis B vaccine consists of ISS combined with clinical grade hepatitis B surface antigen using standard fill and finish processes. Hepatitis B surface antigen is manufactured worldwide by several companies. We have acquired hepatitis B surface antigen for our clinical trials to date from a single commercial manufacturer. We are currently in discussions with several potential suppliers of hepatitis B surface antigen to secure a supply of antigen necessary to permit us to commence our planned Phase III trials and to commercialize our hepatitis B vaccine product candidate.

Marketing

We have no sales, marketing or distribution capability. We currently intend to seek global partners to help us market certain product candidates within our seasonal allergy portfolio as well as our hepatitis B product candidates. Although we have not yet determined our commercialization strategy for our other product candidates, we are inclined to license commercial rights to large pharmaceutical companies with appropriate marketing and distribution capabilities, except in instances where it may prove feasible to build a small direct sales organization targeting a narrow specialty or therapeutic area.

Competition

The biotechnology and pharmaceutical industries are characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. Many of our competitors, including biotechnology and pharmaceutical companies, academic institutions and other research organizations, are actively engaged in the discovery, research and development of products that could compete directly or indirectly with our products under development.

If AIC is approved and commercialized, it will compete directly with conventional allergy immunotherapy. Conventional allergy immunotherapy products are mixed by allergists and customized for individual patients from commercially available plant material extracts. Because conventional immunotherapies are customized on an individual patient basis, they are not marketed or sold as FDA approved pharmaceutical products. In addition, a number of companies, including GlaxoSmithKline Plc, Merck & Co., Inc., and AstraZeneca Plc, produce pharmaceutical products, such as antihistamines, corticosteroids and anti-leukotriene agents, which manage seasonal allergy symptoms. We consider these pharmaceutical products as indirect competition for AIC because they are targeting the same disease, although they do not attempt to treat the underlying causation of the disease.

Our hepatitis B vaccine, if it is approved and commercialized, will compete directly with existing, three-injection vaccine products produced by Merck & Co., Inc., GlaxoSmithKline Plc, and Berna Biotech AG, among others. There are also two-injection hepatitis B vaccine products in clinical development, including a vaccine being developed by GlaxoSmithKline Plc. In addition, our hepatitis B vaccine will compete against a number of multivalent vaccines that simultaneously protect against hepatitis B in addition to other diseases. Our hepatitis B immunotherapy, if developed, approved and commercialized, will compete directly with existing hepatitis B therapeutic products, including those manufactured by Roche Group, Schering-Plough Corporation, Gilead Sciences, Inc. and GlaxoSmithKline Plc.

Our inhaled 1018 ISS asthma product candidate would indirectly compete with existing asthma therapies, including corticosteroids, leukotriene inhibitors and IgE monoclonal antibodies, including those produced by Novartis Corporation, AstraZeneca Plc, Schering-Plough Corporation and GlaxoSmithKline Plc. We consider these existing therapies to be indirect competition because they only attempt to address the symptoms of the disease and, unlike our product candidate, do not attempt to address the underlying cause of the disease. We are also aware of a preclinical injectable product which may target the underlying cause of asthma, rather than just the symptoms, which is being developed by Aventis Group under a collaboration agreement with Coley Pharmaceutical Group. This product, if approved and commercialized, may compete directly with our asthma product candidate.

Many of the entities developing and marketing these competing products have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing than us. Smaller or early-stage companies may also prove to be significant competitors, particularly for collaborative agreements with large, established companies and access to capital. These entities may also compete with us in recruiting and retaining qualified scientific and management personnel, as well as in acquiring technologies complementary to, or necessary for, our programs.

We expect that competition among products approved for sale will primarily be based on the efficacy, ease of use, safety profile, and price. Our ability to compete effectively, develop products that can be manufactured cost-effectively and market them successfully based on differentiated label claims will depend on our ability to:

- show efficacy and safety in our clinical trials;
- obtain required government and other public and private approvals on a timely basis;
- enter into collaborations to manufacture, market and sell our products;
- maintain a proprietary position in our technologies and products; and
- attract and retain key personnel.

Regulatory Considerations

The advertising, labeling, storage, record-keeping, safety, efficacy, research, development, testing, manufacture, promotion, marketing and distribution of our potential products are subject to extensive regulation by numerous governmental authorities in the U.S. and other countries. In the U.S., pharmaceutical products are subject to rigorous review by the Food and Drug Administration, or FDA, under the Federal

Food, Drug, and Cosmetic Act, the Public Health Service Act and other federal statutes and regulations. The steps ordinarily required by the FDA before a new drug or biologic may be marketed in the U.S. are similar to steps required in most other countries and include:

- completion of preclinical laboratory tests, preclinical trials and formulation studies;
- submission to the FDA of an investigational new drug application, or IND, for a new drug or biologic, which must become effective before clinical trials may begin;
- performance of adequate and well-controlled human clinical trials to establish the safety and efficacy of the drug or biologic for each proposed indication;
- the submission of a new drug application, or NDA, or a biologics license application, or BLA, to the FDA; and
- FDA review and approval of the NDA or BLA before any commercial marketing, sale or shipment of the drug.

If we do not comply with applicable requirements, U.S. regulatory authorities may:

- fine us;
- require that we recall our products;
- seize our products;
- require that we totally or partially suspend the production of our products;
- refuse to approve our marketing applications;
- criminally prosecute us; and
- revoke previously granted marketing authorizations.

To secure FDA approval, we must submit extensive non-clinical and clinical data, manufacturing information, and other supporting information to the FDA for each indication to establish a product candidate's safety and efficacy. The number of preclinical studies and clinical trials that will be required for FDA and foreign regulatory agency approvals varies depending on the product candidate, the disease or condition for which the product candidate is in development and regulations applicable to any particular drug candidate. Data obtained from preclinical and clinical activities are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval or clearance. Further, the results from preclinical testing and early clinical trials are often not predictive of results obtained in later clinical trials. Many new drugs that have shown promising results in early clinical trials subsequently failed to establish sufficient safety and efficacy to obtain regulatory approval. The approval process takes many years, requires the expenditures of substantial resources, involves post-marketing surveillance and may involve requirements for additional post-marketing studies. The FDA may also require post-marketing testing and surveillance to monitor the effects of approved products or place conditions on any approvals that could restrict the commercial applications of these products. The FDA may withdraw product approvals if we do not continue to comply with regulatory standards or if problems occur following initial marketing. Delays experienced during the governmental approval process may materially reduce the period during which we will have exclusive rights to exploit patented products or technologies. Delays can occur at any stage of clinical trials and as result of many factors, certain of which are not under our control, including:

- lack of efficacy, or incomplete or inconclusive results from clinical trials;
- unforeseen safety issues;
- failure by investigators to adhere to protocol requirements, including patient enrollment criteria;
- slower than expected rate of patient recruitment;
- failure by subjects to comply with trial protocol requirements;

- inability to follow patients adequately after treatment;
- inability to qualify and enter into arrangements with third parties to manufacture sufficient quality and quantities of materials for use in clinical trials;
- failure by a contract research organization to fulfill contractual obligations; and
- adverse changes in regulatory policy during the period of product development or the period of review of any application for regulatory approval or clearance.

Non-clinical studies involve laboratory evaluation of product characteristics and animal studies to assess the initial efficacy and safety of the product. The FDA, under its good laboratory practices regulations, regulates non-clinical studies. Violations of these regulations can, in some cases, lead to invalidation of those studies, requiring these studies to be replicated. The results of the non-clinical tests, together with manufacturing information and analytical data, are submitted to the FDA as part of an investigational new drug application, which must be approved by the FDA before we can commence clinical investigations in humans. Unless the FDA objects to an investigational new drug application, the investigational new drug application will become effective 30 days following its receipt by the FDA. Clinical trials involve the administration of the investigational product to humans under the supervision of a qualified principal investigator. We must conduct our clinical trials in accordance with good clinical practice under protocols submitted to the FDA as part of the investigational new drug application. In addition, each clinical trial must be approved and conducted under the auspices of an investigational review board and with patient informed consent. The investigational review board will consider, among other things, ethical factors, the safety of human subjects and the possibility of liability of the institution conducting the trial.

The stages of the FDA regulatory process include research and preclinical studies and clinical trials in three sequential phases that may overlap. Research and preclinical studies do not involve the introduction of a product candidate in human subjects. These activities involve identification of potential product candidates, modification of promising candidates to optimize their biological activity, as well as preclinical studies to assess safety and effectiveness in animals. In clinical trials, the product candidate is administered to humans. Phase I clinical trials typically involve the administration of a product candidate into a small group of healthy human subjects. These trials are the first attempt to evaluate a drug's safety, determine a safe dose range and identify side effects. During Phase II trials, the product candidate is introduced into patients who suffer from the medical condition that the product candidate is intended to treat. Phase II studies are designed to evaluate whether a product candidate shows evidence of effectiveness, to further evaluate dosage, and to identify possible adverse effects and safety risks. When Phase II evaluations demonstrate that a product candidate appears to be both safe and effective, Phase III trials are undertaken to confirm a product candidate's effectiveness and to test for safety in an expanded patient population. If the results of Phase III trials appear to confirm effectiveness and safety, the data gathered in all phases of clinical trials form the basis for an application for FDA regulatory approval of the product candidate.

We and all of our contract manufacturers are required to comply with the applicable FDA current good manufacturing practice regulations. Manufacturers of biologics also must comply with FDA's general biological product standards. Failure to comply with the statutory and regulatory requirements subjects the manufacturer to possible legal or regulatory action, such as suspension of manufacturing, seizure of product or voluntary recall of a product. Good manufacturing practice regulations require quality control and quality assurance as well as the corresponding maintenance of records and documentation. Prior to granting product approval, the FDA must determine that our or our third party contractor's manufacturing facilities meet good manufacturing practice requirements before we can use them in the commercial manufacture of our products. In addition, our facilities are subject to periodic inspections by the FDA for continued compliance with good manufacturing practice requirements following product approval. Adverse experiences with the product must be reported to the FDA and could result in the imposition of market restriction through labeling changes or in product removal.

Outside the U.S., our ability to market a product is contingent upon receiving marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical trials, marketing authorization, pricing and reimbursement vary widely from country to country.

At present, foreign marketing authorizations are applied for at a national level, although within the European Union registration procedures are mandatory for biotechnology and some other novel drugs and are available to companies wishing to market a product in more than one European Union member state. The regulatory authority generally will grant marketing authorization if it is satisfied that we have presented it with adequate evidence of safety, quality and efficacy.

We are also subject to various federal, state and local laws, regulations and recommendations relating to safe working conditions, laboratory and manufacturing practices, the experimental use of animals and the use and disposal of hazardous or potentially hazardous substances, including radioactive compounds and infectious disease agents, used in connection with our research. We cannot accurately predict the extent of government regulation that might result from any future legislation or administrative action.

Employees

As of the date of this prospectus, we have 43 full-time employees, including nine Ph.D.s, two M.D.s and nine others with advanced degrees. Of the 43 employees, 33 are dedicated to research and development activities. None of our employees is subject to a collective bargaining agreement, and we believe our relations with our employees are good.

Facilities

We lease approximately 11,500 square feet of laboratory and office space in Berkeley, California under a lease expiring in May 2008 and 8,700 square feet of general office space in Emeryville, California under a lease expiring in March 2004. In January 2004, we entered into a 10-year lease for approximately 20,500 square feet of laboratory and office space in Berkeley, California expiring in March 2014 to replace our Emeryville lease and provide for additional space.

Legal Proceedings

We are not a party to any material legal proceedings.

MANAGEMENT

Executive Officers and Directors

The following table sets forth the name, age and position of each of our executive officers and directors as of December 31, 2003.

Name	Age	Position
Dino Dina, M.D.	57	President and Chief Executive Officer and Director
Robert L. Coffman, Ph.D.	57	Vice President and Chief Scientific Officer
William J. Dawson	49	Vice President, Finance & Operations and CFO
Daniel Levitt, M.D., Ph.D.	56	Vice President and Chief Medical Officer
Stephen F. Tuck, Ph.D.	41	Vice President, Biopharmaceutical Development
Gary A. Van Nest, Ph.D.	54	Vice President, Preclinical Research
Daniel S. Janney	38	Chairman of the Board
Louis C. Bock	38	Director
Dennis Carson, M.D.	57	Director
Jan Leschly	63	Director
Arnold L. Oronsky, Ph.D.	63	Director

Dino Dina, M.D. has been our President and a member of our Board of Directors since May 1997 and our Chief Executive Officer since May 1998. From 1982 until he joined us in 1997, Dr. Dina was an employee of Chiron Corporation, a biopharmaceutical company. At Chiron, Dr. Dina held a series of positions with increasing responsibility. He ultimately served as president of Chiron Vaccines (formerly Biocine Company), which he directed from its inception in 1987. Under Dr. Dina's direction, Chiron Vaccines received the first-ever approval of an adjuvanted influenza vaccine in Italy, successfully completed development of the first genetically engineered pertussis vaccine and conducted clinical trials for vaccines to prevent HIV, herpes simplex type II, cytomegalovirus and hepatitis B infections. The virology group he directed was responsible for several key scientific findings, including the discovery, cloning and sequencing of the hepatitis C virus and the cloning and sequencing of the viral genomes for HIV and hepatitis A viruses. Prior to joining Chiron, Dr. Dina was employed at Albert Einstein College of Medicine in Bronx, New York, as an assistant professor of genetics from 1977 to 1982. He received his M.D. from the University of Genova Medical School in Italy.

Robert L. Coffman, Ph.D. has been our Vice President and Chief Scientific Officer since December 2000. Dr. Coffman joined Dynavax from the DNAX Research Institute where he had been since 1981, most recently as Distinguished Research Fellow. Prior to that, he was a postdoctoral fellow at Stanford University Medical School. Dr. Coffman has made fundamental discoveries about the regulation of immune responses in allergic and infectious diseases. He shared the William S. Coley Award for Research in Immunology for discovery of the Th1 and Th2 subsets of T lymphocytes, the cells that control most immune responses. Dr. Coffman received his Ph.D. from the University of California, San Diego and his AB from Indiana University.

William J. Dawson has been our Vice President, Finance & Operations, and Chief Financial Officer since August 2002. From 1998 through 2001, he was corporate senior vice president, business development, for McKesson Corporation, a healthcare services company, where he was responsible for mergers and acquisitions and venture capital investing. He was also acting chief financial officer of iMcKesson, an e-health subsidiary of McKesson with $300 million in revenue. Prior to McKesson, Mr. Dawson was a managing director in corporate finance at Volpe Brown Whelan LLC, an investment banking firm, where he specialized in biopharmaceutical companies. Mr. Dawson serves on the boards of directors of McGrath RentCorp, a public equipment finance company, and Wellington Trust Company, a subsidiary of Wellington Management Company LLC, a private institutional fund management company. Mr. Dawson earned his MBA from Harvard Business School and his AB in mechanical engineering from Stanford University.

Daniel Levitt, M.D., Ph.D. has been our Vice President and Chief Medical Officer since August 2003 and is responsible for our clinical, regulatory, and medical affairs. From 2002 until he joined us in 2003, Dr. Levitt was chief operating officer and head, research and development at Affymax. From 1996 to 2002, Dr. Levitt was senior vice president, drug development, and then president, research and development, at Protein Design Labs, Inc. Prior to Protein Design Labs, he had a successful and progressive career in scientific management, clinical, and regulatory affairs at Geron, from 1995 to 1996, Sandoz, from 1990 to 1995, and Hoffman-LaRoche, from 1986 to 1990. His academic appointments included Senior Scientist and Associate Director at the Guthrie Research Institute in Sayre, Pennsylvania from 1983 to 1986 and Assistant Professor of Pediatrics and Immunology at the University of Chicago Hospitals and Clinics from 1980 to 1983. He earned his M.D. and Ph.D. in biology from the University of Chicago, completed his residency at Yale-New Haven Hospital, was a clinical and research fellow at the University of Alabama Medical Center from 1977 to 1980 and graduated magna cum laude, Phi Beta Kappa from Brandeis University.

Stephen F. Tuck, Ph.D. has been our Vice President, Biopharmaceutical Development since November 2000 and previously served as our Senior Director of Biopharmaceutical Development since joining us in November 1997. From 1992 until he joined us in 1997, Dr. Tuck was employed by Chiron Corporation, where he had served in various capacities in the Technical Affairs and Process Development departments. At Chiron, Dr. Tuck was involved in the development of Fluad™, a novel adjuvanted influenza vaccine, various subunit vaccines, adjuvants and protein therapeutics. Prior to joining Chiron, Dr. Tuck was a post-doctoral fellow at Johns Hopkins University School of Medicine and the University of California, San Francisco. He has over 14 years of experience in pharmaceutical chemistry. Dr. Tuck received his Ph.D. and B.Sc. from Imperial College, University of London.

Gary A. Van Nest, Ph.D. has been our Vice President, Preclinical Research since November 2000 and previously served as our Senior Director of Preclinical Research since joining us in November 1997. From 1985 until he joined us in 1997, Dr. Van Nest was employed by Chiron Corporation, where he served in several positions of increasing responsibility culminating in a position as Acting Head of Vaccine Research. At Chiron, Dr. Van Nest directed the development of novel adjuvants and delivery vehicles for subunit vaccines for herpes, HIV, influenza, hepatitis B virus, hepatitis C virus and cytomegalovirus. Dr. Van Nest has authored over 40 publications. He received his Ph.D. in biochemistry from the University of Arizona and his BA from the University of California, Riverside.

Daniel S. Janney has been Chairman of our Board of Directors since December 1996. Since February 1996, he has been employed by Alta Partners, a venture capital firm, where he is a managing director. Prior to joining Alta Partners, Mr. Janney was a vice president of Montgomery Securities' health care and biotechnology investment banking group from 1993 to 1996. In addition to his position as our Chairman of the Board, Mr. Janney also sits on the boards of directors of several private companies. He received his MBA from the Anderson School at UCLA and his BA from Georgetown University.

Louis C. Bock has been a member of our Board of Directors since December 1999. Mr. Bock has been a managing director with Bank of America Ventures, a venture capital firm, since September 1997. From September 1989 to September 1997, Mr. Bock was employed by Gilead Sciences, a biopharmaceutical company, where he held various positions in research, project management, business development and sales. Prior to joining Gilead, Mr. Bock was a research associate at Genentech, a biopharmaceutical company, from November 1987 to September 1989. Mr. Bock also serves on the Board of Directors of diaDexus and Structural GenomiX and is responsible for investments in Seattle Genetics, Prestwick Pharmaceuticals and Corixa Corporation. He received his MBA from California State University, San Francisco and his BS in biology from California State University, Chico.

Dennis Carson, M.D. has been a member of our Board of Directors since December 1996. Dr. Carson is a noted researcher in the fields of autoimmune and immunodeficiency diseases and is co-discoverer with Dr. Eyal Raz of the immunostimulatory sequences that form the basis of our technology. He has played key roles in the founding of Vical, Inc., a gene therapy company, IDEC Pharmaceuticals, a biopharmaceutical company, and Triangle Pharmaceuticals. Dr. Carson is director of the Sam and Rose Stein Institute for

Research on Aging and has been a professor in the Department of Medicine at the University of California, San Diego since 1995. He received his M.D. from Columbia University and his BA from Haverford College.

Jan Leschly is Chairman and Partner at Care Capital. Before founding Care Capital in 2000, Mr. Leschly was Chief Executive of SmithKline Beecham PLC from 1994 to 2000. He joined SmithKline Beecham as Chairman of the Worldwide Pharmaceutical business in 1990 and was elected to the Board of Directors in 1990. Before joining SmithKline Beecham, Mr. Leschly served as President and Chief Operating Officer of Squibb Corporation. He joined Squibb in 1979 as Vice President, Commercial Development and in 1984 he was elected Group Vice President and a member of the Board of Directors with responsibility for the Worldwide Pharmaceuticals Products Group. Prior to this, he worked for seven years with Novo Nordisk, where he served as Executive Vice President and President of the Pharmaceutical Division. Mr. Leschly is a member of the boards of directors of the American Express Company, Viacom Inc. and the Maersk Group and serves on the International Advisory Board of DaimlerChrysler AG. He is a member of the Business Council and the Emory University Goizueta Business School Dean's Advisory Council. Before his business career, Mr. Leschly made his name in professional tennis, ranking 10th in the world in 1967. He serves as Chairman of the International Tennis Hall of Fame. Born in Denmark, Mr. Leschly received his MS in pharmacy from the Copenhagen College of Pharmacy and a BS in business administration from the Copenhagen School of Economics and Business Administration.

Arnold L. Oronsky, Ph.D. has been a member of our Board of Directors since November 1996. Dr. Oronsky is a general partner with InterWest Partners, a venture capital firm. Prior to joining InterWest Partners in 1994, Dr. Oronsky was vice president of discovery research for the Lederle Laboratories division of American Cyanamid, a pharmaceutical company. From 1973 until 1976, Dr. Oronsky was head of the inflammation, allergy and immunology research program at Ciba-Geigy Pharmaceutical Company. Dr. Oronsky also served as a senior lecturer in the Department of Medicine at The Johns Hopkins Medical School. Dr. Oronsky has won numerous grants and awards and has published over 125 scientific articles. Dr. Oronsky serves on the boards of directors of Coulter Pharmaceuticals, Inc., a biopharmaceutical company, Corixa Corporation, a biopharmaceutical company and BioTransplant Incorporated, a biopharmaceutical company. He received his Ph.D. from Columbia University, College of Physicians and Surgeons and his AB from New York University.

Board of Directors

Our Board of Directors is currently comprised of six directors and is authorized to have up to nine members. Upon completion of this offering, our board will be divided into three classes of directors serving staggered three-year terms. As a result, our stockholders will elect approximately one-third of the Board of Directors each year. The classification of our Board of Directors, together with other provisions in our certificate of incorporation, including provisions that allow our Board of Directors to fill vacancies on or increase the size of our board, may delay or prevent changes in control of our board or our management.

Our Board of Directors has designated that Messrs. Dina and Carson will serve as Class I directors, whose terms expire at the 2004 annual meeting of stockholders. Messrs. Leschly and Bock will serve as Class II directors whose terms expire at the 2005 annual meeting of stockholders. Messrs. Oronsky and Janney will serve as Class III directors whose terms expire at the 2006 annual meeting of stockholders.

Director Compensation

We intend to provide the following compensation to each of our new non-employee directors who will be joining us beginning in 2004 and who is not the direct or indirect beneficial owner of 1% or more of our stock.

Cash Compensation. Each such director will receive an annual fee of $15,000 for his or her service as a director and an additional annual fee of $2,500 will be paid to the chair of our audit committee. Each of these directors will also receive $2,000 for each board meeting attended in person and $500 for each board meeting attended by telephone. Each of these directors who is also a member of our audit or compensation committee will receive $1,000 for each committee meeting attended in person and $250 for each committee

meeting attended by telephone, provided that such committee meeting is held on a day when there is not also a board meeting.

Equity Compensation. Each such director will automatically be granted an option to acquire 16,000 shares of our common stock on the date the director is first elected or appointed to our Board of Directors. These options will vest and become exercisable in four equal installments on each anniversary of the grant date. The exercise price per share of these options will equal the fair market value of our common stock on the date of grant. In addition, upon the date of each annual stockholders' meeting, each such director who has been a member of our Board of Directors for at least eleven months prior to the date of the stockholders' meeting will receive an automatic grant of options to acquire 5,000 shares of our common stock. These options will vest and become exercisable in full on the first anniversary of the grant date.

Board Committees

Our Board of Directors has established a compensation committee and an audit committee. The compensation committee, consisting of Messrs. Bock and Janney, reviews and approves the salaries, bonuses and other compensation payable to our executive officers and administers and makes recommendations concerning our employee benefit plans.

The audit committee, consisting of Messrs. Janney, Leschly and Oronsky, makes recommendations to our Board of Directors regarding the selection of independent auditors. The audit committee reviews our accounting policies and practices and financial reporting and internal controls, makes recommendations to our Board of Directors regarding the selection of independent auditors to audit our financial statements and confers with the auditors and our officers for purposes of reviewing our financial structure and financial reporting.

Compensation Committee Interlocks and Insider Participation

No member of our compensation committee serves as a member of the Board of Directors or compensation committee of any entity that has one or more executive officers serving as a member of our Board of Directors or compensation committee. There are no family relationships among any of our directors or executive officers.

Executive Compensation

The following table sets forth information concerning compensation awarded by us during the fiscal year ended December 31, 2003, to our Chief Executive Officer and each of our four most highly compensated executive officers whose total salary, bonus and other compensation exceeded $100,000 during the fiscal year ended December 31, 2003, whom we refer to in this prospectus as named executive officers. In accordance with the rules of the Securities and Exchange Commission, or the SEC, the compensation described in this table does not include perquisites and other personal benefits received by the executive officers named in the table below that do not exceed the lesser of $50,000 or 10% of the total salary and bonus reported for these executive officers.

Summary Compensation Table

		Annual Compensation		Long-Term Compensation	
Name and Principal Position	Year	Salary	Bonus	Securities Underlying Options(#)	All Other Compensation
Dino Dina, M.D.	2003	$300,000	$120,000	400,000	—
President and Chief Executive	2002	$300,000	$105,000	200,000	—
Officer and Director	2001	$275,000	$ 82,500	—	—

Name and Principal Position	Year	Annual Compensation		Long-Term Compensation	All Other Compensation
		Salary	Bonus	Securities Underlying Options(#)	
Robert Coffman, Ph.D.	2003	$218,500	$66,000	66,667	—
Vice President and Chief	2002	$210,000	$63,000	—	—
Scientific Officer	2001	$200,000	$60,000	—	—
William J. Dawson(1)	2003	$225,000	$90,000	—	—
Vice President, Finance &	2002	$ 83,654	$33,750	133,333	—
Operations and CFO	2001	—	—	—	—
Stephen F. Tuck, Ph.D.	2003	$192,600	$57,600	70,000	—
Vice President, Biopharmaceutical	2002	$180,000	$54,000	—	—
Development	2001	$165,000	$49,500	—	—
Gary A. Van Nest, Ph.D.	2003	$192,600	$57,600	70,000	—
Vice President, Preclinical Research	2002	$180,000	$54,000	—	—
	2001	$165,000	$41,250	—	—

(1) Mr. Dawson began his employment with us in August 2002.

Options Granted in Fiscal Year Ended December 31, 2003

The following table sets forth information concerning grants of stock options to each of the executive officers named in the table above during the fiscal year ended December 31, 2003. All of these options were granted under our 1997 equity incentive plan, as amended, at an exercise price equal to the fair value of our common stock at the time of grant, as determined by our Board of Directors. Each option vests over a period of four years and is exercisable immediately. An option that is exercised prior to vesting is subject to a repurchase option in favor of the company in respect of shares that are unvested upon termination of the optionee's employment, at the per share exercise price. The exercise price may in some cases be paid by delivery of other shares or by offset of the shares subject to options. The percentage of total options set forth below is based on options to purchase an aggregate of shares of common stock granted to employees for the fiscal year ended December 31, 2003. Potential realizable value is based on an assumed initial public offering price of our common stock of $13.00. Potential realizable values are net of exercise price, but before taxes associated with exercise. Amounts representing hypothetical gains are those that could be achieved if options are exercised at the end of the option term. The assumed 5% and 10% rates of stock price appreciation are provided in accordance with rules of the SEC based on an assumed initial public offering price of $13.00 per share and do not represent our estimate or projection of the future stock price.

Name	Number of Securities Underlying Options	Percentage of Total Options Granted to Employees in Fiscal Year	Exercise Price Per Share	Expiration Date	Potential Realizable Value at Assumed Annual Rate of Stock Price Appreciation for Option Term	
					5%	10%
Dino Dina, M.D.(1)	400,000	48%	$3.00	12/17/2013	$7,270,252	$12,287,461
Robert Coffman, Ph.D.(2)	66,667	8%	$1.50	1/21/2013	$1,311,715	$ 1,381,250
William J. Dawson	—	—	—	—	—	—
Stephen F. Tuck, Ph.D.(4)	50,000	6%	$1.50	1/21/2013	$ 983,782	$ 1,035,933
	20,000	2%	$3.00	12/17/2013	$ 363,513	$ 414,373
Gary A. Van Nest, Ph.D.(6)	50,000	6%	$1.50	1/21/2013	$ 983,782	$ 1,035,933
	20,000	2%	$3.00	12/17/2003	$ 363,513	$ 414,373

Aggregate Option Exercises in Last Fiscal Year and Fiscal Year-End Values

The following table sets forth information concerning shares acquired on exercise during the fiscal year ended December 31, 2003 and exercisable and unexercisable stock options held by each of the executive officers named in the summary compensation table at the fiscal year ended December 31, 2003. The value realized and the value of unexercised in-the-money options is based on an assumed initial public offering price of $13.00 per share less the per share exercise price, multiplied by the number of shares acquired on exercise and the number of shares underlying the options. All options were granted under our 1997 equity incentive plan, as amended.

Name	Shares Acquired on Exercise (#)	Value Realized ($)	Number of Securities Underlying Options at Fiscal Year-End		Value of Unexercised In-the-Money Options at Fiscal Year-End	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Dino Dina, M.D.	—	—	600,000(1)	—	$1,799,997	—
Robert Coffman, Ph.D.	11,111	$127,777	55,556(2)	—	$ 638,894	—
William J. Dawson	—	—	133,333(3)	—	$1,533,330	—
Stephen F. Tuck, Ph.D.	—	—	103,333(4)	—	$1,188,330	—
Gary A. Van Nest, Ph.D.	—	—	103,333(5)	—	$1,188,330	—

(1) The shares issuable upon exercise of this option are subject to a repurchase option in favor of the company. As of December 31, 2003, the repurchase option had lapsed as to 48,958 shares and was still in effect as to 551,042 shares.

(2) The shares issuable upon exercise of this option are subject to a repurchase option in favor of the company. As of December 31, 2003, the repurchase option had lapsed as to 4,167 shares and was still in effect as to 51,389 shares.

(3) The shares issuable upon exercise of this option are subject to a repurchase option in favor of the company. As of December 31, 2003, the repurchase option had lapsed as to 44,444 shares and was still in effect as to 88,889 shares.

(4) The shares issuable upon exercise of this option are subject to a repurchase option in favor of the company. As of December 31, 2003, the repurchase option had lapsed as to 37,847 shares and was still in effect as to 65,486 shares.

(5) The shares issuable upon exercise of this option are subject to a repurchase option in favor of the company. As of December 31, 2003, the repurchase option had lapsed as to 37,847 shares and was still in effect as to 65,486 shares.

Management Continuity and Severance Agreements

Between August and October 2003, we entered into management continuity and severance agreements with Dr. Dino Dina, our President and Chief Executive Officer, William J. Dawson, our Vice President and Chief Financial Officer, Robert L. Coffman, Ph.D., our Vice President and Chief Scientific Officer, Dr. Daniel Levitt, M.D., Ph.D., our Vice President and Chief Medical Officer, Stephen F. Tuck, Ph.D., our Vice President of Biopharmaceutical Development and Gary A. Van Nest, Ph.D., our Vice President of Preclinical Research.

Under Dr. Dina's management continuity and severance agreement, if he is terminated without cause or is otherwise terminated involuntarily, he is entitled to a severance payment equal to 12 months salary, paid over 12 months in accordance with our payroll practices, 12 months of paid COBRA continuation coverage and an additional 12 months vesting of his options to purchase our stock. In the event of death or disability, the agreement provides that the exercise period of all vested options will be extended to 12 months from the date of termination due to such death or disability. In addition, under the agreement, we agreed to accelerate the vesting of any stock options held by Dr. Dina by two years as of and upon a change in control of our company if he either accepts a position with the successor company or is not offered an executive position with the successor company. If Mr. Dina is terminated within 24 months following such a change in control

he is also entitled to an additional severance payment equal to 12 months of his base salary, paid over 12 months in accordance with our payroll practices, plus his target incentive bonus and an additional 12 months of paid COBRA continuation coverage.

Under the other management continuity and severance agreements, if any of the other executive officers are terminated without cause or are otherwise terminated involuntarily, they are entitled to a lump-sum severance payment equal to six months salary, six months of paid COBRA continuation coverage and an additional six months vesting of their option to purchase our stock. In the event of death or disability, the agreements provide that the exercise period of all vested options will be extended to 12 months from the date of termination due to such death or disability. In addition, under the management continuity and severance agreements, we agreed to accelerate the vesting of any stock options held by any executive officer as of and upon a change in control of our company by two years if the executive officer either accepts a position with the successor company or is not offered an executive position with the successor company. If the executive officer is terminated within 24 months following such a change in control the executive officer is also entitled to an additional lump-sum severance payment equal to 12 months of the executive officer's base salary plus target incentive bonus and an additional 12 months of paid continued COBRA continuation coverage.

Loans to Executive Officers

In September 2000, we entered into loan arrangements with Dino Dina, M.D., Stephen F. Tuck, Ph.D. and Gary A. Van Nest, Ph.D., in connection with their purchase of our common stock, for loans in the amount of $190,463, $11,574 and $18,000, respectively. These loans accrue interest at the rate of 6.22% compounded annually and are due upon the earliest to occur of a sale of the underlying common stock, 90 days following the termination of the executive officer's status as director or employee for any reason other than death or disability, one year following the termination of their status as director or employee due to death or disability and September 15, 2005. As of November 30, 2003, the total outstanding principal and interest for the loans to Dr. Dina, Mr. Tuck and Mr. Van Nest were $231,146, $14,046 and $21,845, respectively.

In November 2000, we entered into a loan arrangement with Robert L. Coffman, Ph.D., in connection with his purchase of our common stock, for a loan in the amount of $250,000. This loan accrues interest at the rate of 6.01% compounded annually and is due upon the earliest to occur of a sale of the underlying common stock, 90 days following the termination of his status as an employee for any reason other than death or disability, one year following the termination of his status as employee due to death or disability and November 20, 2005. As of November 30, 2003, the total outstanding principal and interest for the loan to Mr. Coffman was $298,315.

Each of these loans is secured by the underlying common stock purchased by the executive officer.

Employee Benefit Plans

1997 Equity Incentive Plan

The 1997 equity incentive plan was approved by our Board of Directors and our shareholders in January 1997. As of December 31, 2003, we have a total of 2,481,210 shares of common stock reserved for issuance under the 1997 plan. As of December 31, 2003, options to purchase 802,214 shares of common stock had been exercised, options to purchase 1,331,333 shares of common stock were outstanding and 347,663 shares of common stock remained available for grant. As of September 30, 2003, the outstanding options were exercisable at a weighted average exercise price of approximately $2.46 per share. Outstanding options to purchase an aggregate of 164,888 shares were held by employees and consultants who are not officers or directors of our company.

As of the consummation of our initial public offering, the shares underlying awards granted under the 1997 plan that expire without having been exercised or are cancelled, up to a maximum of 900,000 shares, will become available for grant under the 2004 stock incentive plan. Awards under the 1997 plan consist of stock bonuses, restricted stock, incentive stock options, which are stock options that are intended to qualify

under Section 422 of the Internal Revenue Code and non-qualified stock options, which are stock options that do not qualify under Section 422 of the Internal Revenue Code.

Under the 1997 plan, the board may grant incentive stock options to employees, including officers and employee directors. Non-qualified stock options, stock bonuses and restricted stock may be granted to employees, directors, and consultants. The Board of Directors or a committee designated by the board administers our 1997 plan, including selecting the persons eligible under our 1997 plan that will be granted awards under our 1997 plan, determining the number of shares to be subject to each award, determining the exercise price, if any, of each award and determining the vesting and exercise periods of each award. The exercise price of all incentive stock options granted under our 1997 plan must be at least equal to the fair value of the common stock on the date of grant. The exercise price of all nonstatutory stock options granted under our 1997 plan shall be determined by the board, but in no event may be less than 85% of the fair value on the date of grant. With respect to any participant who owns stock possessing more than 10% of the voting power of all our classes of stock, the exercise price of any incentive stock option or nonstatutory stock option granted must equal at least 110% of the fair value on the grant date and the maximum term of any these options must not exceed five years. The maximum term of an incentive stock option or nonstatutory stock option granted to any participant who does not own stock possessing more than 10% of the voting power of all our classes of stock must not exceed ten years. The purchase price of restricted stock issued under our 1997 plan shall be determined by the board, but in no event may be less than 85% of the fair market value on the date of issuance. With respect to any participant who owns stock possessing more than 10% of the voting power of all our classes of stock, the purchase price of restricted stock must equal at least 100% of the fair market value on the date of issuance. The board may grant stock bonuses under our 1997 plan in consideration for past services rendered to the company or for its benefit.

If an optionee's status as an employee, director or consultant terminates for any reason other than death or disability, the optionee may exercise their vested options within the three-month period following the termination, or for such longer period specified in the option agreement. In the event the optionee dies while the optionee is an employee, director or consultant of our company, the options vested as of the date of death may be exercised prior to the earlier of their expiration date or 18 months from the date of the optionee's death, or for such longer period specified in the option agreement. In the event the optionee becomes disabled while the optionee is an employee, director or consultant of our company, the options vested as of the date of disability may be exercised prior to the earlier of their expiration date or 12 months from the date of the optionee's disability, or for such longer period specified in the agreement.

Restricted stock and stock bonuses granted under our 1997 plan may be subject to a repurchase option in our favor upon termination of the holder's status as an employee, director or consultant. With respect to restricted stock or stock bonuses, if the holder's status as an employee, director or consultant terminates for any reason, we may repurchase some or all of the unvested shares of restricted stock or stock bonuses from the holder within ninety days following termination of the holder's employment or relationship as director or consultant, as applicable, or any longer period agreed to by us and the holder of the restricted stock or stock bonus. We may repurchase the unvested shares of restricted stock or stock bonus at a repurchase price equal to the original purchase price paid for the shares of restricted stock or the fair market value of the common stock at the time the stock bonus is granted.

The type and maximum number of shares available under our 1997 plan, as well as the number and type of shares subject to, and per share exercise or purchase price of, outstanding awards under our 1997 plan will be appropriately adjusted in the event of certain corporate transactions affecting us which do not involve the receipt of consideration by the company.

In the event of a corporate transaction where the acquiror assumes or replaces awards granted under the 1997 plan, awards issued under the 1997 plan will not be subject to accelerated vesting unless provided otherwise by agreement with the holder of the award. In the event of a corporate transaction where the acquiror does not assume or replace awards granted under the 1997 plan, outstanding awards will become fully vested and if applicable, exercisable, immediately prior to the consummation of the corporate transaction and will terminate upon consummation of the corporate transaction. However, awards that are assumed will

automatically become fully vested and, if applicable, exercisable if the holder of the award is terminated by the acquiror without cause or terminates for good reason within 2 years after a corporate transaction.

Under the 1997 plan, a corporate transaction is defined as:

- a dissolution, liquidation or sale of all or substantially all of the assets of the company;
- a merger or consolidation in which our company is not the surviving entity; or
- a reverse merger in which the company is the surviving corporation but the shares of our common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property.

The 1997 plan will terminate automatically in 2007 unless terminated earlier by our Board of Directors. The Board of Directors has the authority to amend or terminate the 1997 plan, subject to stockholder approval of some amendments. However, no action may be taken which will adversely affect any option previously granted under the 1997 plan, without the optionee's consent.

We intend not to make further grants under our 1997 plan effective upon the closing of this offering.

2004 Stock Incentive Plan

Prior to the completion of this offering, we expect to establish a stock incentive plan. We expect to have our stockholders approve the plan prior to completion of this offering. We will reserve 3,500,000 shares of our common stock for issuance under our stock incentive plan, subject to adjustment for a stock split, or any future stock dividend or other similar change in our common stock or our capital structure. Commencing on the first business day of each calendar year beginning in 2005, during the term of our 2004 stock incentive plan, the number of shares of stock reserved for issuance under the 2004 stock incentive plan (including issuance as incentive stock options) will be increased annually by a number equal to the lesser of (a) 2% of the total number of shares outstanding as of that date, (b) 400,000 shares, or (c) a lesser number of shares determined by the board.

Our 2004 stock incentive plan will provide for the grant of stock options, restricted stock, stock appreciation rights, dividend equivalent rights, performance units and performance shares, collectively referred to as "awards." Stock options granted under the 2004 stock incentive plan may be either incentive stock options intended to qualify under the provisions of Section 422 of the Internal Revenue Code, or non-qualified stock options. Incentive stock options may be granted only to employees. Awards other than incentive stock options may be granted to employees, directors and consultants.

The Board of Directors or a committee designated by the board, referred to as the "plan administrator", will administer our 2004 stock incentive plan, including selecting the optionees, determining the number of shares to be subject to each award, determining the exercise or purchase price of each award and determining the vesting and exercise periods of each award.

The exercise price of all incentive stock options granted under our 2004 stock incentive plan must be at least equal to 100% of the fair market value of the common stock on the date of grant. If, however, incentive stock options are granted to an employee who owns stock possessing more than 10% of the voting power of all classes of our stock or the stock of any parent or subsidiary of us, the exercise price of any incentive stock option granted must equal at least 110% of the fair market value on the grant date and the maximum term of these incentive stock options must not exceed five years. The maximum term of an incentive stock option granted to any other participant must not exceed ten years. The plan administrator will determine the term and exercise or purchase price of all other awards granted under our 2004 stock incentive plan.

Under the 2004 stock incentive plan, incentive stock options may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised during the lifetime of the participant only by the participant. Other awards shall be transferable by will or by the laws of descent or distribution and to the extent and in the manner

provided in the award agreement to the participant's immediate family. The 2004 stock incentive plan permits the designation of beneficiaries by holders of awards, including incentive stock options.

In the event a participant in our 2004 stock incentive plan terminates employment or is terminated by us without cause, any options that have become exercisable prior to the time of termination will remain exercisable for three months from the date of termination (unless a shorter or longer period of time is determined by the plan administrator upon grant of the option). In the event a participant in our 2004 stock incentive plan is terminated by us for cause, any options which have become exercisable prior to the time of termination will immediately terminate. If termination was caused by death or disability, any options which have become exercisable prior to the time of termination, will remain exercisable for twelve months from the date of termination (unless a shorter or longer period of time is determined by the plan administrator upon grant of the option). In no event may a participant exercise the option after the expiration date of the option.

Awards granted under our 2004 stock incentive plan will automatically become fully vested immediately prior to the consummation of certain corporate events affecting the company if these awards are not assumed or replaced in connection with the corporate event. Awards that are assumed or replaced will not be accelerated. In addition, a grantee's awards then outstanding will automatically become fully vested if the grantee is terminated without cause or terminates employment for good reason within twelve months after certain corporate events affecting the company.

Unless terminated sooner, our 2004 stock incentive plan will automatically terminate in 2014. Our Board of Directors will have authority to amend or terminate our 2004 stock incentive plan. No amendment or termination of the 2004 stock incentive plan shall adversely affect any rights under awards already granted to a participant unless agreed to by the affected participant. To the extent necessary to comply with applicable provisions of federal securities laws, state corporate and securities laws, the Internal Revenue Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to awards granted to residents therein, we shall obtain stockholder approval of any such amendment to the 2004 stock incentive plan in such a manner and to such a degree as required.

2004 Non-Employee Director Option Program

Our 2004 non-employee director stock option program will be adopted as part of the 2004 stock incentive plan and will be subject to the terms and conditions of the 2004 stock incentive plan. The 2004 non-employee director stock option program is a discretionary program under the 2004 stock incentive plan and is not subject to stockholder approval. The 2004 non-employee director stock option program will become effective as of the effective date of this prospectus, and no awards will be made under this program until that time.

The purpose of the 2004 non-employee director stock option program will be to enhance our ability to attract and retain the best available non-employee directors, to provide them additional incentives and, therefore, to promote the success of our business.

The 2004 non-employee director stock option program will establish an automatic option grant program for the grant of awards to non-employee directors. Under this program, each non-employee director first elected or appointed to our Board of Directors following the closing of this offering will automatically be granted an option to acquire 16,000 shares of our common stock on the date the non-employee director is first elected or appointed to our Board of Directors. These options will vest and become exercisable in four equal installments on each anniversary of the grant date. The exercise price per share of an option granted under our 2004 non-employee director stock option program will equal the fair market value of our common stock on the date of grant. In addition, upon the date of each annual stockholders' meeting, each non-employee director first elected or appointed to our Board of Directors following the closing of this offering who has been a member of our Board of Directors for at least eleven months prior to the date of the stockholders' meeting will receive an automatic grant of options to acquire 5,000 shares of our common stock. These options will vest and become exercisable in full on the first anniversary of the grant date. The term of each automatic option grant and the extent to which it will be transferable will be provided in the agreement evidencing the option.

The 2004 non-employee director stock option program will be administered by the board or a committee designated by the board made up of two or more non-employee directors so that such awards would be exempt from Section 16(b) of the Exchange Act, the administrator is referred to as the "program administrator". Subject to the foregoing terms, the program administrator shall determine the terms and conditions of awards, and construe and interpret the terms of the program and awards granted under the program. Non-employee directors may also be granted additional awards under the 2004 stock incentive plan, subject to the discretion of the administrator of our 2004 stock incentive plan.

Unless terminated sooner, the 2004 non-employee director stock option program will terminate automatically in 2014 when the 2004 stock incentive plan terminates. Our Board of Directors will have the authority to amend, suspend or terminate the 2004 non-employee director stock option program. No amendment or termination of the 2004 non-employee director stock option program shall adversely affect any rights under options already granted to a non-employee director unless agreed to by the affected non-employee director. Under current law, stockholder approval is not required for any amendment of the 2004 non-employee director stock option program.

2004 Employee Stock Purchase Plan

Prior to the completion of this offering, we expect to establish our 2004 employee stock purchase plan. We expect to have our stockholders approve our 2004 employee stock purchase plan prior to the completion of this offering. Our 2004 employee stock purchase plan will be intended to qualify as an "Employee Stock Purchase Plan" under Section 423 of the Internal Revenue Code. Our 2004 employee stock purchase plan will provide our employees with an opportunity to purchase common stock through payroll deductions. An aggregate of 250,000 shares of common stock will be reserved for issuance and will be available for purchase under our 2004 employee stock purchase plan, subject to adjustment for a stock split, or any future stock dividend or other similar change in our common stock or our capital structure. Commencing on the first business day of each calendar year beginning in 2005 during the term of our 2004 employee stock purchase plan, the number of shares of stock reserved for issuance under the 2004 employee stock purchase plan will be increased annually by a number equal to the lesser of (a) 1% of the total number of shares outstanding as of that date, (b) 250,000 shares, or (c) a lesser number of shares determined by the board.

The Board of Directors or a committee designated by the board, referred to as the "plan administrator", will administer our 2004 employee stock purchase plan. All of our employees whose customary employment is for more than five months in any calendar year and more than 20 hours per week will be eligible to participate in an offer period under our 2004 employee stock purchase plan and will be automatically enrolled in the initial offer period. Employees hired after the consummation of our initial public offering who meet the foregoing requirement will be eligible to participate in an offer period under our 2004 employee stock purchase plan, subject to a 5 day waiting period after hiring. Non-employee directors, consultants, and employees subject to the rules or laws of a foreign jurisdiction that prohibit or make impractical their participation in an employee stock purchase plan will not be eligible to participate in our 2004 employee stock purchase plan.

Our 2004 employee stock purchase plan will designate offer periods, purchase periods and exercise dates. Offer periods will generally be overlapping periods of 24 months. The initial offer period will begin on the effective date of our 2004 employee stock purchase plan, which is the effective date of the registration statement relating to this offering, and will end on February 14, 2006. Additional offer periods will commence each February 15 and August 15. Purchase periods will generally be six-month periods within an offer period, with the initial purchase period commencing on the effective date of the registration statement relating to this offering and ending on August 15, 2004. Thereafter, purchase periods will commence each February 15 and August 15. Exercise dates are the last day of each purchase period. In the event we merge with or into another corporation, sell all or substantially all of our assets, or enter into other transactions in which all of our stockholders before the transaction own less than 40% of the total combined voting power of our outstanding securities following the transaction, the plan administrator may elect to shorten the offer periods then in progress.

On the first day of each offer period, a participating employee will be granted a purchase right. A purchase right is a form of option to be automatically exercised on the exercise dates within the offer period, during which offer period authorized deductions are to be made from the pay of participants and credited to their accounts under our 2004 employee stock purchase plan. When the purchase right is exercised, the participant's withheld salary is used to purchase shares of common stock. Participants in the initial offer period will be eligible to purchase shares during the first purchase period through direct payment rather than payroll deductions. The price per share at which shares of common stock are to be purchased under our 2004 employee stock purchase plan during any purchase period is the lesser of:

- 85% of the fair market value of the common stock on the date of the grant of the option, which is the commencement of the offer period; or

- 85% of the fair market value of the common stock on the exercise date, which is the last day of a purchase period.

The participant's purchase right is exercised in this manner on each exercise date arising in the offer period. If, on the first day of any purchase period, the fair market value of the common stock is lower than the fair market value of the common stock on the first day of the offer period underlying the purchase period, the original offer period will be terminated, and the participant in the original offer period will be automatically enrolled in a new offer period effective the same date.

Payroll deductions may range from 1% to 10% in whole percentage increments of a participant's regular base pay, exclusive of bonuses, overtime, annual awards, other incentive payments, reimbursements or other expense allowances. Except for the first purchase period of the initial offer period, participants may not make direct cash payments to their accounts. The maximum number of shares of common stock that any employee may purchase under our 2004 employee stock purchase plan during a purchase period is 2,500 shares. The Internal Revenue Code imposes additional limitations on the amount of common stock that may be purchased during any calendar year.

Unless terminated sooner, the 2004 employee stock purchase plan will terminate automatically in 2014. The plan administrator will have authority to amend or terminate our 2004 employee stock purchase plan. The plan administrator may terminate any offer period on any exercise date or establish a new exercise date with respect to any offer period then in progress if the plan administrator determines that the termination of the offer period is in the best interests of the Company and its stockholders. To the extent necessary to comply with applicable provisions of federal securities laws, state corporate and securities laws, the Internal Revenue Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to awards granted to residents therein, we shall obtain stockholder approval of any such amendment to the 2004 employee stock purchase plan in such a manner and to such a degree as required.

401(k) Plan

In September 1997, we implemented a 401(k) plan covering some of our employees eligible to participate in the 401(k) plan. Under the 401(k) plan, eligible employees may elect to reduce their current compensation up to the prescribed annual limit under the Internal Revenue Code, which is $13,000 in 2004, and contribute these amounts to the 401(k) plan. We may make contributions to the 401(k) plan on behalf of eligible employees. Employees are fully vested in their contributions and contributions we may make under the 401(k) plan immediately. The 401(k) plan is intended to qualify under Section 401 of the Internal Revenue Code so that contributions by employees or by us to the 401(k) plan, and income earned on the 401(k) plan contributions, are not taxable to employees until withdrawn from the 401(k) plan, and so that contributions by us, if any, will be deductible by us when made. The trustee under the 401(k) plan, at the direction of each participant, invests the 401(k) plan employee salary deferrals from among selected investment options. We have not made any matching contributions to the 401(k) plan through December 31, 2003; however, we may make matching contributions to the 401(k) plan in the future. We retain the right to amend or terminate the 401(k) plan at any time.

Limitation of Liability and Indemnification Matters

We reincorporated in Delaware in 2001. Our certificate of incorporation and bylaws provides that we will indemnify all of our directors and officers to the fullest extent permitted by Delaware law. Our certificate of incorporation and bylaws also authorize us to indemnify our employees and other agents, to the fullest extent permitted by Delaware law. We intend to enter into agreements to indemnify our directors and officers, in addition to indemnification provided for in our charter documents. These agreements, among other things, will provide for the indemnification of our directors and officers for expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by any person in any action or proceeding, including any action by or in the right of our company, arising out of that person's services as a director or officer of our company or any other company or enterprise to which that person provides services at our request to the fullest extent permitted by applicable law. We believe that these provisions and agreements will assist us in attracting and retaining qualified persons to serve as directors and officers. Delaware law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for any breach of the director's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law for liability arising under Section 174 of the Delaware General Corporation Law, or for any transaction from which the director derived an improper personal benefit. Our certificate of incorporation will provide for the elimination of personal liability of a director for breach of fiduciary duty, as permitted by Delaware law.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of our company in accordance with the provisions contained in our charter documents, Delaware law or otherwise, we have been advised that in the opinion of the SEC this indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. If a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by a director, officer or controlling person of our company in the successful defense of any action, suit, or proceeding) is asserted by such director, officer or controlling person, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act, and we will follow the court's determination. We intend to purchase and maintain insurance on behalf of our officers and directors, insuring them against liabilities that they may incur in such capacities or arising out of this status.

RELATED PARTY TRANSACTIONS

Private Placement Transactions

Series A. In December 1996, we issued and sold an aggregate of 6,700,000 shares of our Series A Preferred Stock at $1.00 per share to 10 investors, including 2,000,000 shares to Sanderling Venture Partners IV, L.P. and its affiliates, 2,000,000 shares to InterWest Partners V, L.P. and its affiliate and 2,000,000 shares to Alta California Partners, L.P. and its affiliate. These shares of Series A Preferred Stock will convert into 2,233,333 shares of common stock upon the closing of this offering.

Series B. In July 1998, we issued and sold an aggregate of 9,032,786 shares of our Series B Preferred Stock at $1.83 per share to 16 investors, including 2,185,792 shares to Bank of America Ventures and its affiliate, 1,366,120 shares to InterWest Partners V, L.P. and its affiliate, 1,366,120 shares to Alta California Partners, L.P. and its affiliate and 1,366,120 shares to Sanderling Venture Partners IV, L.P. and its affiliates. These shares of Series B Preferred Stock will convert into 3,010,928 shares of common stock upon the closing of this offering.

Series C. Between June and October 2000, we issued and sold an aggregate of 5,668,750 shares of our Series C Preferred Stock at $4.00 per share to 42 investors, including 250,000 shares to Alta California Partners, L.P. and its affiliate, 250,000 shares to InterWest Partners V, L.P. and its affiliate, 250,000 shares to

Sanderling Venture Partners IV, L.P. and its affiliates and 187,500 shares to Bank of America Ventures and its affiliate. These shares of Series C Preferred Stock will convert into 2,381,683 shares of common stock upon the closing of this offering.

Series D. Between March 2002 and July 2002, we issued and sold an aggregate of 16,882,220 shares of our Series D Preferred Stock at $2.06 per share to 46 investors, including 2,669,903 shares to CC Dynavax Holdings, L.P. and its affiliate, 1,747,573 shares to Sanderling Venture Partners IV, L.P. and its affiliates, 1,456,311 shares to Bank of America Ventures and its affiliate, 485,437 shares to Alta California Partners, L.P. and its affiliate and 485,437 to InterWest Partners V, L.P. and its affiliate. We issued a warrant for the purchase of 253,233 shares of Series D Preferred Stock at $2.06 per share to an affiliate of Bank of America Ventures for services it performed in connection with the Series D Preferred Stock offering. These shares of Series D Preferred Stock will convert into 5,627,406 shares of common stock upon the closing of this offering.

Dynavax Asia. In October 2003, our subsidiary Dynavax Asia Pte. Ltd. sold 15,200,000 ordinary shares at $1.00 per share to eight institutional investors, including 3,000,000 shares to Care Capital Investments II, L.P., an affiliate of CC Dynavax Holdings, L.P. and 2,000,000 shares to Sanderling Venture Partners IV, L.P. and its affiliates. Each of CC Dynavax Holdings, L.P. and Sanderling Ventures beneficially holds more than 5% of our capital stock before the offering. No other investor in Dynavax Asia beneficially holds more than 5% of our capital stock. All of these ordinary shares will be exchanged for 2,111,111 shares of our common stock at a conversion price of $7.20 per share upon the closing of this offering.

In connection with the closing of this offering, all outstanding shares of our preferred stock will automatically convert into shares of common stock.

Transactions with Directors, Executive Officers and Affiliates

In December 1998, we entered into a research agreement with the Regents of the University of California, on behalf of the University of California, San Diego, under which we agreed to fund a research project aimed at uncovering novel applications for ISS. This research agreement was amended twice in December 1999 and once in 2003. We agreed to fund the project in the amounts of approximately $912,000 in 1999, $948,000 in 2000, $986,000 in 2001, $1,026,000 in 2002, $711,000 in 2003 and $355,000 in 2004. The principal investigator of the research project is Dr. Eyal Raz, a holder of 468,452 shares of our common stock. The university-nominated representative on the evaluation committee created to oversee aspects of this agreement is Dr. Dennis Carson, a holder of 468,452 shares of our common stock and a member of our Board of Directors.

We have entered into agreements with holders of our preferred stock whereby we granted them registration rights with respect to their shares of common stock, including common stock issuable upon conversion of their preferred stock.

We intend to enter into indemnification agreements with each of our directors and officers. These indemnification agreements will require us to indemnify these individuals to the fullest extent permitted by Delaware law.

All of the transactions set forth above were made at arms-length. We intend that all future transactions between us and our officers, directors, principal stockholders and their affiliates will be approved by a majority of our Board of Directors, including a majority of the independent and disinterested outside directors on our Board of Directors, and will be on terms no less favorable to us than could be obtained from unaffiliated third parties.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock as of September 30, 2003 and as adjusted to reflect the sale of common stock being offered in this offering, by:

- each person or entity known by us to own beneficially more than 5% of our common stock;
- each of our directors and executive officers; and
- all of our directors and executive officers as a group.

The percentage of beneficial ownership before the offering is calculated based on 17,673,756 shares of our common stock issued and outstanding as of September 30, 2003, assuming the exchange of 15,200,000 ordinary shares of our subsidiary, Dynavax Asia Pte. Ltd., issued in October, 2003, into 2,111,111 shares of our common stock upon the completion of this offering and conversion of all outstanding shares of preferred stock into common stock upon the completion of this offering and treating as outstanding all options, if any, held by that stockholder and, in accordance with the rules of the SEC, exercisable as of November 29, 2003, which is 60 days after September 30, 2003. The percentage of beneficial ownership after completion of this offering includes the shares sold in the offering and is based on 23,673,756 shares of common stock issued and outstanding after completion of this offering.

Information with respect to beneficial ownership has been furnished by each director, officer or 5% or more stockholder. Beneficial ownership is determined under the rules of the SEC and generally includes voting or investment power with respect to securities. Except as otherwise indicated, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock held by them. Except as otherwise noted, the address for such person or entity is c/o Dynavax Technologies Corporation, 717 Potter Street, Ste. 100, Berkeley, California 94710-2722.

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
5% Stockholders			
Sanderling Ventures(1) 400 S. El Camino Real Suite 1200 San Mateo, CA 94402	2,083,779	11.79%	8.80%
Forward Ventures IV, L.P.(2) 9393 Towne Centre Drive, Suite 200 San Diego, CA 92121	1,509,883	8.54%	6.38%
Alta California Partners, L.P.(3) One Embarcadero Center, Suite 4050 San Francisco, CA 94111	1,388,887	7.86%	5.87%
InterWest Partners V, L.P.(4) 2710 Sand Hill Road 2nd Floor Menlo Park, CA 94025-7112	1,388,887	7.86%	5.87%
Bank of America Ventures(5) 950 Tower Lane, Suite 700 Foster City, CA 94404	1,377,221	7.79%	5.82%
CC Dynavax Holdings, L.P.(6) 47 Hulfish Street, Suite 310 Princeton, NJ 08542	1,306,633	7.39%	5.52%

Name and Address of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
Executive Officers and Directors			
Daniel S. Janney(7)	1,388,887	7.86%	5.87%
Arnold L. Oronsky Ph.D.(8)	1,380,207	7.81%	5.83%
Louis C. Bock(9)	193,921	1.10%	*
Jan Leschly(10)	1,306,633	7.39%	5.52%
Dennis Carson M.D.	468,452	2.65%	1.98%
Dino Dina, M.D.(11)	348,768	1.97%	1.47%
Robert L. Coffman, Ph.D.(12)	97,222	*	*
Gary A. Van Nest, Ph.D.(13)	76,111	*	*
Stephen F. Tuck, Ph.D.(14)	69,444	*	*
William J. Dawson(15)	41,666	*	*
Daniel Levitt, M.D., Ph.D.	—	—	—
All executive officers and directors as a group (11 persons)(16)	5,371,311	30.12%	22.54%

* Less than 1%.

(1) Represents 518,229 shares held by Sanderling Venture Partners IV, L.P., 202,175 shares held by Sanderling IV Limited Partnership, 57,496 shares held by Sanderling (Feri Trust) Venture Partners IV, L.P., 201,743 shares held by Sanderling IV Biomedical, L.P., 213,660 shares held by Sanderling IV Biomedical Co-Investment Fund, L.P., 366,112 shares held by Sanderling Venture Partners IV Co-Investment Fund, L.P., 166 shares held by Sanderling IV Ventures Management, 3,595 shares held by Sanderling Ventures Management IV FBO Fred Middleton, 58,618 shares held by Sanderling V Beteiligungs GmbH & Co. KG, 244,242 shares held by Sanderling V Biomedical Co-Investment Fund, L.P., 65,877 shares held by Sanderling V Limited Partnership, 7,794 shares held by Sanderling V Ventures Management, 491 shares held by Sanderling Venture Management IV, 143,581 shares held by Sanderling Venture Partners V Co-Investment Fund, L.P.

(2) Represents 895,000 shares held by Forward Ventures IV, L.P., 426,408 shares held by Forward Ventures III Institutional Partners, L.P., 112,602 shares held by Forward Ventures III, L.P., and 75,873 shares held by Forward Ventures IV B, L.P.

(3) Represents 1,356,392 shares held by Alta California Partners, L.P. and 32,495 shares held by Alta Embarcadero Partners, LLC.

(4) Represents 1,380,207 shares held by InterWest Partners V, L.P. and 8,680 shares held by InterWest Investors V.

(5) Represents 1,098,889 shares held by Bank of America Ventures and 193,921 shares held by BA Venture Partners IV. Also includes a warrant to purchase 84,411 shares held by Banc of America Securities, LLC.

(6) Represents 647,249 shares held by CC Dynavax Holdings, L.P. 242,718 shares held by CC/ Q Partners, L.P. and 416,666 shares held by Care Capital Investments II, L.P.

(7) Represents shares held by Alta California Partners, L.P. and its affiliate. Mr. Janney is a vice president of Alta Partners and is a managing director and member of various funds affiliated with Alta Partners. Mr. Janney disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.

(8) Represents shares held by InterWest Partners V, L.P. Dr. Oronsky is a general partner of the general partner of InterWest Partners V, L.P. Dr. Oronsky disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.

(9) Represents shares held by BA Venture Partners IV, of which Mr. Bock is a partner. Mr. Bock disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.

(10) Includes shares held by CC Dynavax Holdings, L.P. and its affiliates, of which Mr. Leschly is a Partner.

(11) Includes 303,214 shares held by the Dino Dina 1999 Revocable Trust, of which Dr. Dina is trustee, 3,333 shares held by the Stefania Dina Irrevocable Trust, created by Declaration of Trust dated March 2, 2000, of which Dr. Dina is trustee, 3,333 shares held by the Francesco Dina Irrevocable Trust, created by Declaration of Trust dated March 2, 2000, of which Dr. Dina is trustee and 8,333 shares held by the Jordan Moncharmont Irrevocable Trust, created by Declaration of Trust dated March 2, 2000, of which Dr. Dina is trustee, and options to purchase 30,555 shares of common stock exercisable within 60 days of September 30, 2003.

(12) Includes 24,305 shares of common stock subject to repurchase by us as of September 30, 2003 and options to purchase 13,888 shares of common stock exercisable within 60 days of September 30, 2003.

(13) Includes options to purchase 36,111 shares of common stock exercisable within 60 days of September 30, 2003.

(14) Includes options to purchase 36,111 shares of common stock exercisable within 60 days of September 30, 2003.

(15) Includes options to purchase 41,666 shares of common stock exercisable within 60 days of September 30, 2003.

(16) Includes 32,638 shares of common stock subject to repurchase by us as of September 30, 2003 and options to purchase 158,332 shares of common stock exercisable within 60 days of September 30, 2003.

DESCRIPTION OF CAPITAL STOCK

Upon the closing of this offering, our authorized capital stock will consist of 100,000,000 shares of common stock, $0.001 par value per share, and 5,000,000 shares of preferred stock, $0.001 par value share.

The following is a summary of the rights of our common stock and preferred stock. This summary is not complete. For more detailed information, please see our certificate of incorporation which is filed as an exhibit to the registration statement of which this prospectus is a part.

Common Stock

The holders of our common stock are entitled to one vote for each share held of record upon such matters and in such manner as may be provided by law. Subject to preferences applicable to any outstanding shares of preferred stock, the holders of common stock are entitled to receive ratably dividends, if any, as may be declared by our Board of Directors out of funds legally available for dividend payments. In the event we liquidate, dissolve or wind up, the holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities and liquidation preferences of any outstanding shares of the preferred stock. Holders of common stock have no preemptive rights or rights to convert their common stock into any other securities. There are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of common stock are fully paid and nonassessable. The rights, preferences and privileges of the holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

Preferred Stock

Upon the closing of this offering, all outstanding shares of our preferred stock will convert into an aggregate of 13,712,128 shares of common stock. Following the closing of this offering, we will be authorized to issue 5,000,000 shares of preferred stock that will not be designated as a particular class. Our Board of Directors will have the authority to issue the undesignated preferred stock in one or more series and to determine the powers, preferences and rights and the qualifications, limitations or restrictions granted to or imposed upon any wholly unissued series of undesignated preferred stock and to fix the number of shares constituting any series and the designation of the series, without any further vote or action by our stockholders. The issuance of preferred stock, while providing desirable flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, a majority of our outstanding voting stock. We have no present plans to issue any shares of preferred stock.

Registration Rights

Under the terms of agreements with some of our stockholders, after the closing of this offering, a number of holders of shares of our common stock will be entitled to registration rights with respect to their shares. Beginning 180 days after the date of this prospectus, a number of holders may require us to register all or part of their shares. In addition, some holders may require us to include their shares in future registration statements that we file and may require us to register their shares on Form S-3 or similar form. Furthermore, beginning 180 days after the date of this prospectus, some holders of our common stock may also require us to include their shares in future registration statements that we file. Upon effectiveness of those future registration statements, shares covered by those registration statements will be freely tradable in the public market without restriction.

All expenses in effecting these registrations, with the exception of underwriting discounts and selling commissions, will be borne by us. These registration rights are subject to conditions and limitations, among them the right of the underwriters of an offering to limit the number of shares included in the registration. We have agreed to indemnify the holders of these registration rights, and each selling holder has agreed to indemnify us, against liabilities under the Securities Act, the Securities Exchange Act or other applicable federal or state law.

Warrants

In July 2002, we issued a warrant to purchase an aggregate of 253,233 shares of our Series D preferred stock at an exercise price of $2.06 per share. If this warrant is not exercised prior to this offering, it will convert into a warrant exercisable for 84,411 shares of our common stock at an adjusted exercise price of $6.18 per share upon the closing of this offering.

Anti-Takeover Provisions

Provisions of Delaware law and our certificate of incorporation and bylaws could make our acquisition by means of a tender offer, a proxy contest or otherwise, and the removal of incumbent officers and directors more difficult. These provisions are expected to discourage types of coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control to first negotiate with us. We believe that the benefits of increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweighs the disadvantages of discouraging proposals, including proposals that are priced above the then current market value of our common stock, because, among other things, negotiation of these proposals could result in an improvement of their terms.

Delaware Law

We are governed by the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. A "business combination" includes mergers, asset sales or other transactions resulting in a financial benefit to the stockholder. An "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years, did own, 15% or more of the corporation's voting stock. The statute could have the effect of delaying, deferring or preventing a change of control.

Certificate of Incorporation and Bylaws

Our certificate of incorporation and bylaws will contain provisions that could have the effect of discouraging potential acquisition proposals or making a tender offer or delaying or preventing a change in control of our company.

Our certificate of incorporation and bylaws will provide that our Board of Directors will be divided into three classes of directors, as nearly equal in number as is reasonably possible, serving staggered terms so that directors' initial terms will expire at the first, second and third succeeding annual meeting of the stockholders following our initial public offering, respectively. At each such succeeding annual meeting, directors elected to succeed those directors whose terms are expiring at the meeting will be elected for a three-year term of office. A vote of at least 66 2/3% of our capital stock will be required to amend this provision.

Our certificate of incorporation and bylaws will provide that special meetings of the stockholders may be called only by our president, our secretary or at the direction of the board. Advance written notice will be required by a stockholder of a proposal or director nomination that the stockholder desires to present at a meeting of stockholders, which generally must be received by the secretary not less than 60 days nor more than 90 days prior to the one year anniversary of the date of the previous year's annual meeting. Any amendment of this provision will require a vote of at least 66 2/3% of our capital stock. Our charter documents will also provide that our stockholders will not be permitted to act by written consent.

Our certificate of incorporation and bylaws will not include a provision for cumulative voting in the election of directors. Under cumulative voting, a minority stockholder holding a sufficient number of shares may be able to ensure the election of one or more directors. The absence of cumulative voting may have the effect of limiting the ability of minority stockholders to effect changes in the board and, as a result, may have the effect of deterring a hostile takeover or delaying or preventing changes in control or management of our company.

Our certificate of incorporation and bylaws will provide that vacancies on our board may be filled by a majority of directors in office, although less than a quorum, and not by the stockholders. Our certificate of incorporation and bylaws will allow us to issue up to 5,000,000 shares of undesignated preferred stock with rights senior to those of the common stock and that otherwise could adversely affect the rights and powers, including voting rights, of the holders of common stock. In certain circumstances, this issuance could have the effect of decreasing the market price of the common stock, as well as having the anti-takeover effect discussed above.

These provisions are intended to enhance the likelihood of continuity and stability in the composition of our board and in the policies formulated by them, and to discourage certain types of transactions that may involve an actual or threatened change in control of our company. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal and to discouraging certain tactics that may be used in proxy fights. However, these provisions could have the effect of discouraging others from making tender offers for our shares that could result from actual or rumored takeover attempts. These provisions also may have the effect of preventing changes in our management.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, Inc. Its address is 350 Indiana Street, Suite 800, Golden, CO, 80401 and its telephone number is (303) 262-0600.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock. Market sales of shares or the availability of shares for sale may decrease the market price of our common stock prevailing from time to time. As described below, only a portion of our outstanding shares of common stock will be available for sale shortly after this offering due to contractual and legal restrictions to resale. Nevertheless, sales of substantial amounts of common stock in the public market after these restrictions lapse, or the perception that such sales could occur, could adversely affect the market price of the common stock and could impair our future ability to raise capital through the sale of our equity securities.

Future sales of our common stock and the availability of our common stock for sale may depress the market price for our common stock. Upon completion of this offering, 23,673,756 shares of common stock will be outstanding. All 6,000,000 of the shares sold in this offering will be freely tradable. Except as set forth below, the remaining shares of common stock outstanding after this offering will be restricted as a result of securities laws or lock-up agreements. These remaining shares will be available for sale in the public market roughly as follows:

Date of Availability of Sale	Approximate Number of Shares
As of the date of this prospectus	0
180 days after the date of this prospectus (although a portion of such shares will be subject to certain volume limitations pursuant to Rule 144)	15,562,645
Between 180 and 365 days after the date of this prospectus	2,111,111

Rule 144

In general, under Rule 144 under the Securities Act of 1933, as currently in effect, a person who has beneficially owned shares of our common stock for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately 236,738 shares immediately after this offering; or
- the average weekly trading volume of our common stock on the Nasdaq National Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales under Rule 144 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 144(k)

Under Rule 144(k), a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least two years, including the holding period of any prior owner other than an affiliate, is entitled to sell the shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. 1,327,107 shares of our common stock will qualify as “144(k)” shares within 180 days of the date of this prospectus.

Rule 701

Rule 701, as currently in effect, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions of Rule 144, including the holding period requirement. Most of our employees, officers, directors or consultants who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and under “Underwriting” and will become eligible for sale at the expiration of those agreements.

Lock-Up Agreements

Each of our executive officers, directors and holders of a substantial majority of our outstanding capital stock have agreed, subject to specified exceptions, that without the prior written consent of Bear, Stearns & Co. Inc., they will not, directly or indirectly, sell, offer, contract to sell, transfer the economic risk of ownership in, make any short sale, pledge or otherwise dispose of any shares of our capital stock or capital stock of our subsidiaries, or any securities convertible into or exchangeable or exercisable for or any other rights to purchase or acquire such capital stock for a period of 180 days from the date of this prospectus. Bear, Stearns & Co. Inc. may, in its sole discretion, permit early release of shares subject to the lock-up agreements. In considering any request to release shares subject to a lock-up agreement, Bear, Stearns & Co. Inc. will consider the possible impact of the release of the shares on the trading price of the stock sold in the offering.

Registration Rights

Upon completion of this offering, the holders of approximately 15,907,568 shares of our common stock, including shares issuable upon the exercise of a warrant, or their transferees, will be entitled to rights with respect to the registration of their shares under the Securities Act. Registration of their shares under the Securities Act would result in the shares becoming freely tradeable without restriction under the Securities Act, except for shares purchased by affiliates, immediately upon the effectiveness of the registration of those shares. See “Description of Capital Stock — Registration Rights.”

Stock Options

Immediately after this offering, we intend to file with the Securities and Exchange Commission registration statements under the Securities Act covering the shares of common stock reserved for issuance under our stock option plans and employee stock purchase plan. The registration statements are expected to become effective as soon as practicable after the closing of this offering. Accordingly, shares registered under these registration statements will, subject to Rule 144 volume limitations applicable to affiliates, be available for sale in the open market, beginning 180 days after the date of this prospectus.

UNDERWRITING

Subject to the terms and conditions described in an underwriting agreement between us and Bear, Stearns & Co. Inc., Deutsche Bank Securities Inc. and Piper Jaffray & Co., as representatives, we have agreed to sell to the underwriters, and the underwriters severally have agreed to purchase from us, the number of shares of common stock listed opposite their names below.

Underwriter	Number of Shares
Bear, Stearns & Co. Inc.	
Deutsche Bank Securities Inc.	
Piper Jaffray & Co.	
Total	

Bear, Stearns & Co. Inc. and Deutsche Bank Securities Inc. are acting as joint book-running managers for this offering.

The underwriters have agreed to purchase all of the shares sold under the underwriting agreement if any of the shares are purchased. The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

We have granted the underwriters an option exercisable for 30 days from the date of the underwriting agreement to purchase a total of up to 900,000 additional shares at the public offering price less the underwriting discount. The underwriters may exercise this option solely to cover any over-allotments, if any, made in connection with this offering. To the extent the underwriters exercise this option in whole or in part, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares approximately proportionate to that underwriter's initial commitment amount reflected in the above table.

The underwriters have advised us that they propose initially to offer the shares to the public at the public offering price on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. The underwriters may allow, and the dealers may reallow, a discount not in excess of $ per share to other dealers. After the public offering, the public offering price, concession and discount may be changed. In connection with this offering, the underwriters may allocate shares to accounts over which they exercise discretionary authority. The underwriters do not expect that allocations to these discretionary accounts will exceed 5% of the total number of shares in this offering.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their over-allotment option.

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds, before expenses, to Dynavax Technologies Corporation	$	$	$

The expenses of the offering, excluding the underwriting discount and commissions and related fees, are estimated at $1,541,781.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

We, each of our officers and directors and holders of substantially all of our common stock (including any securities convertible into or exchangeable or exercisable for or repayable with common stock) have agreed, with certain limited exceptions, not to sell or transfer any of our securities for 180 days after the date of the final prospectus without first obtaining the written consent of Bear, Stearns & Co. Inc. Specifically, we and these other individuals have agreed not to directly or indirectly:

- offer, sell or contract to offer or sell any common stock, any other equity security of Dynavax Technologies Corporation or any of our subsidiaries, and any security convertible into, or exercisable or exchangeable for, any common stock or other such equity security;
- solicit offers to purchase any such securities;
- grant any call option with respect to any such securities;
- purchase any put option with respect to any such securities;
- pledge, borrow or otherwise dispose of any such securities;
- establish or increase any "put equivalent position" with respect to any such securities;
- liquidate or decrease any "call equivalent position" with respect to any such securities; or
- enter into any swap, derivative or other transaction or arrangement that transfers to another, in whole or in part, any economic consequences of ownership of any of such securities, whether such transaction is to be settled by delivery of such securities, other securities, cash or other consideration.

The lockup provisions do not prevent a security holder from transferring such securities by bona fide gift or by will or intestate succession to his or her immediate family or to a trust, the sole beneficiary of which is one or more of the security holder and his or her immediate family. Furthermore, if the security holder is a partnership or limited liability company, pro rata distributions may be made to its partners or members, respectively. Bear, Stearns & Co. Inc. may waive this lockup without public notice. This lockup provision does not limit our ability to grant options to purchase common stock under our stock option plans.

We have applied for quotation on the Nasdaq National Market under the symbol "DVAX."

A prospectus in electronic format may be made available on the Internet sites or through other online services maintained by one or more of the underwriters of this offering, or by their affiliates. Other than any prospectus made available in electronic format in this manner, the information on any web site containing the prospectus is not part of this prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us or any underwriter in such capacity and should not be relied on by prospective investors.

In connection with the offering, some participants in the offering may purchase and sell shares of common stock in the open market. These transactions may include short sales, syndicate covering transactions and stabilizing transactions. Short sales involve sales by the underwriters of common stock in excess of the number of shares required to be purchased by the underwriters in the offering, which creates a syndicate short position. "Covered" short sales are sales of shares made in an amount up to the number of shares represented by the underwriters' over-allotment option. Transactions to close out the covered syndicate short involve either purchases of the common stock in the open market after the distribution has been completed or the exercise of the over-allotment option. In determining the source of shares to close out the covered syndicate short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. The underwriters may also make "naked" short sales, or sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares of common stock in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of bids for or purchases of shares in the open market while the offering is in progress.

The underwriters also may impose a penalty bid. Penalty bids permit the underwriters to reclaim a selling concession from an underwriter or syndicate member when the underwriters repurchase shares originally sold by that underwriter or syndicate member in order to cover syndicate short positions or make stabilizing purchases.

Any of these activities may have the effect of raising or maintaining the market price of the common stock or preventing or retarding a decline in the market price of the common stock. As a result, the price of the common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the Nasdaq National Market or otherwise. If the underwriters commence any of these transactions, they may discontinue them at any time.

In connection with this offering, the underwriters may engage in passive market making transactions in our common stock on the Nasdaq National Market in accordance with Rule 103 of Regulation M under the Exchange Act during a period before the commencement of offers or sales of common stock and extending through the completion of distribution. A passive market maker must display its bid at a price not in excess of the highest independent bid of that security. However, if all independent bids are lowered below the passive market maker's bid, that bid must then be lowered when specified purchase limits are exceeded.

Prior to this offering, there has been no public market for our common stock. The initial public offering price will be determined by negotiations between us and the representatives. Among the factors to be considered in determining the initial public offering price will be our future prospects and those of our industry in general, our financial operating information in recent periods, and market prices of securities and financial and operating information of companies engaged in activities similar to ours. The estimated initial public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors.

In October 2003, we sold 300,000 shares of ordinary stock of our subsidiary, Dynavax Asia Pte. Ltd., to an entity associated with Piper Jaffray & Co. in a private financing. These securities may not be sold, transferred, assigned or hypothecated for a period of one year following the effective date of this offering except in accordance with NASD rules.

LEGAL MATTERS

Morrison & Foerster LLP will pass upon the validity of the common stock offered by this prospectus for us. Latham & Watkins LLP will pass upon certain legal matters in connection with this offering for the underwriters. Attorneys employed by Morrison & Foerster LLP or investment partnerships of which they are the beneficial owners hold approximately 7,113 shares of our common stock.

EXPERTS

Ernst & Young LLP, independent auditors, have audited our consolidated financial statements at December 31, 2001 and 2002 and for the years then ended as set forth in their report. We have included our consolidated financial statements in this prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

The financial statements for the one-year period ended December 31, 2000 included in this prospectus have been so included in reliance on the report of PricewaterhouseCoopers LLP, independent auditors, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission, or SEC, a registration statement on Form S-1 under the Securities Act of 1933, as amended, with respect to the shares of common stock offered under this prospectus. This prospectus does not contain all of the information in the registration statement and the exhibits. For further information with respect to us and our common stock, we refer you to the registration statement and to the exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at www.sec.gov. You may also read and copy any document we file with the SEC at its public reference facilities at 450 Fifth Street, N.W., Washington, D.C. 20549. You may also obtain copies of the document at prescribed rates by writing to the Public Reference Section of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

Upon completion of this offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934, as amended, and we will file reports, proxy statements and other information with the SEC. We also intend to furnish our stockholders with annual reports containing our financial statements audited by an independent public accounting firm and quarterly reports containing our unaudited financial information.

DYNAVAX TECHNOLOGIES CORPORATION

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

To the Board of Directors and Stockholders

Dynavax Technologies Corporation

We have audited the accompanying consolidated balance sheets of Dynavax Technologies Corporation as of December 31, 2001 and 2002, and the related consolidated statements of operations, convertible preferred stock and stockholders' equity (net capital deficiency), and cash flows for the years then ended. 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 audits.

We conducted our audits in accordance with auditing standards generally accepted in the United 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 provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Dynavax Technologies Corporation at December 31, 2001 and 2002, and the consolidated results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States.

ERNST & YOUNG LLP

Palo Alto, California

February 28, 2003,
except for Note 13, as to which the date is
October 21, 2003.

The foregoing report is in the form that will be signed upon the consummation of the reverse stock split described in Note 13 to the consolidated financial statements.

/S/ ERNST & YOUNG LLP

Palo Alto, California

January 15, 2004

REPORT OF PRICEWATERHOUSECOOPERS LLP, INDEPENDENT AUDITORS

To the Board of Directors and Shareholders

of Dynavax Technologies Corporation:

The stock split described in Note 13 to the consolidated financial statements has not been consummated at October 23, 2003. When it has been consummated, we will be in a position to furnish the following report:

"In our opinion, the accompanying statements of operations, of stockholders' net capital deficiency and of cash flows for the year ended December 31, 2000 present fairly, in all material respects, the results of operations and cash flows of Dynavax Technologies Corporation for the year ended December 31, 2000, in conformity with accounting principles generally accepted in the United States of America. 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 audit of these statements in accordance with auditing standards generally accepted in the United States of America, 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 audit provides a reasonable basis for our opinion."

/s/ PricewaterhouseCoopers LLP

San Jose, California

July 20, 2001 except as to the second paragraph of Note 13
which is as of October 23, 2003

DYNAVAX TECHNOLOGIES CORPORATION

CONSOLIDATED BALANCE SHEETS

(In thousands, except per share amounts)

	December 31,		September 30,	Pro Forma Stockholders' Equity at
	2001	2002	2003	September 30, 2003
			(unaudited)	
Assets				
Current assets:				
Cash and cash equivalents	$ 4,347	$ 5,171	$ 4,834	
Marketable securities	7,410	24,239	12,724	
Accounts receivable	1,402	—	24	
Prepaid expenses and other current assets	394	717	583	
Total current assets	13,553	30,127	18,165	
Property and equipment, net	1,510	1,300	958	
Other assets	54	51	18	
Total assets	$ 15,117	$ 31,478	$ 19,141	
Liabilities, convertible preferred stock and stockholders' equity (net capital deficiency)				
Current liabilities:				
Accounts payable	$ 445	$ 1,396	$ 484	
Accrued liabilities	2,506	2,068	2,314	
Deferred revenue	1,089	750	750	
Current portion of equipment financing	15	—	—	
Total current liabilities	4,055	4,214	3,548	
Commitments and contingencies				
Mandatorily redeemable convertible preferred stock: no par value; 21,402 shares authorized; 21,402 shares issued and outstanding at December 31, 2001	45,479	—	—	$ —
Convertible preferred stock: $0.001 par value; 22,732 shares authorized at December 31, 2001 and 40,732 shares authorized at December 31, 2002 and September 30, 2003 (unaudited); 1,230 shares issued and outstanding at December 31, 2001 and 39,514 shares issued and outstanding at December 31, 2002 and September 30, 2003 (unaudited) (liquidation value of $86,682 at December 31, 2002 and September 30, 2003 (unaudited)); no shares outstanding pro forma (unaudited)	5,799	83,635	83,635	—
Stockholders' equity (net capital deficiency):				
Common stock: $0.001 par value; 17,667 shares authorized; 1,902, 1,849 and 1,851 shares issued and outstanding at December 31, 2001, 2002, and September 30, 2003 (unaudited), respectively; 17,674 shares outstanding pro forma (unaudited)	2	2	2	18
Additional paid-in capital	9,811	8,423	10,608	94,227
Deferred stock compensation	(5,267)	(2,120)	(3,178)	(3,178)
Notes receivable from stockholders	(804)	(714)	(656)	(656)
Accumulated other comprehensive income	17	51	7	7
Accumulated deficit	(43,975)	(62,013)	(74,825)	(74,825)
Total stockholders' equity (net capital deficiency)	(40,216)	(56,371)	(68,042)	$ 15,593
Total liabilities, convertible preferred stock and stockholders' equity (net capital deficiency)	$ 15,117	$ 31,478	$ 19,141	

See accompanying notes.

DYNAVAX TECHNOLOGIES CORPORATION

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

	Years ended December 31,			Nine months ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Collaboration and other revenue	$ 2,054	$ 2,359	$ 1,427	$ 1,356	$ 119
Operating expenses:					
Research and development (including stock-based compensation expense of $492, $1,007, $953, $734, and $790 for the years ended December 31, 2000, 2001, 2002, and the nine months ended September 30, 2002 and 2003 (unaudited), respectively)	8,267	17,363	15,965	12,050	10,050
General and administrative (including stock-based compensation expense of $699, $1,049, $868, $744, and $360 for the years ended December 31, 2000, 2001, 2002, and the nine months ended September 30, 2002 and 2003 (unaudited), respectively)	3,451	4,527	4,121	3,094	3,210
Total operating expenses	11,718	21,890	20,086	15,144	13,260
Loss from operations	(9,664)	(19,531)	(18,659)	(13,788)	(13,141)
Interest income, net	1,149	1,119	621	463	329
Net loss	(8,515)	(18,412)	(18,038)	(13,325)	(12,812)
Deemed dividend upon issuance of convertible preferred stock	(18,209)	—	—	—	—
Net loss attributable to common stockholders	$(26,724)	$(18,412)	$(18,038)	$(13,325)	$(12,812)
Basic and diluted net loss per share attributable to common stockholders	$ (20.86)	$ (11.96)	$ (10.60)	$ (7.94)	$ (7.21)
Shares used to compute basic and diluted net loss per share attributable to common stockholders	1,281	1,539	1,701	1,678	1,778
Pro forma basic and diluted net loss per share attributable to common stockholders (unaudited)			$ (1.28)		$ (0.83)
Shares used to compute pro forma basic and diluted net loss per share attributable to common stockholders (unaudited)			14,063		15,390

See accompanying notes.

DYNAVAX TECHNOLOGIES CORPORATION

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)

(in thousands, except per share amounts)

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Deferred Stock Compensation	Notes Receivable From Stockholders	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
	Shares	Amount	Shares	Par Amount						
Balances at December 31, 1999	15,933	$24,079	1,211	$ 1	$ 273	$ (49)	$ —	$ 3	$(17,048)	$(16,820)
Issuance of Series R convertible preferred stock at $4.65, net of issuance costs of $85	430	1,915	—	—	—	—	—	—	—	—
Issuance of Series S-1 preferred stock of $5.00 per share, net of issuance costs of $51	200	$ 949	—	—	—	—	—	—	—	—
Issuance of Series T convertible preferred stock at $5.00, net of issuance costs of $21	400	1,979	—	—	—	—	—	—	—	—
Issuance of Series C convertible preferred stock at $4.00, net of issuance costs of $313	5,669	22,363	—	—	—	—	—	—	—	—
Issuance of common stock upon exercise of options at $0.30 to $3.00 per share for cash and notes receivable from stockholders	—	—	650	1	726	—	(686)	—	—	41
Beneficial conversion feature related to issuance of Series C mandatorily redeemable convertible preferred stock	—	—	—	—	18,209	—	—	—	—	18,209
Deemed dividend related to issuance of Series C mandatorily redeemable convertible preferred stock	—	—	—	—	(18,209)	—	—	—	—	(18,209)
Common shares repurchased	—	—	(1)	—	(1)	—	—	—	—	(1)
Deferred stock compensation	—	—	—	—	9,080	(9,080)	—	—	—	—
Amortization of deferred stock compensation	—	—	—	—	—	1,191	—	—	—	1,191
Issuance of common stock for services in connection with issuance of preferred stock	—	—	11	—	275	—	—	—	—	275
Comprehensive loss:										
Change in unrealized gain on marketable securities	—	—	—	—	—	—	—	31	—	31
Net loss	—	—	—	—	—	—	—	—	(8,515)	(8,515)
Comprehensive loss										(8,484)
Balances at December 31, 2000	22,632	51,285	1,871	2	10,353	(7,938)	(686)	34	(25,563)	(23,798)

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Deferred Stock Compensation	Notes Receivable From Stockholders	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
	Shares	Amount	Shares	Par Amount						
Series C convertible preferred stock issuance costs	—	(7)	—	—	—	—	—	—	—	—
Issuance of common stock upon exercise of options at $3.00 to $12.00 per share for cash and notes receivable	—	—	35	—	78	—	(75)	—	—	3
Interest accrued on notes receivable from stockholders	—	—	—	—	—	—	(43)	—	—	(43)
Common stock repurchased	—	—	(4)	—	(5)	—	—	—	—	(5)
Deferred stock compensation	—	—	—	—	(615)	615	—	—	—	—
Amortization of deferred stock compensation	—	—	—	—	—	2,056	—	—	—	2,056
Comprehensive loss:										
Change in unrealized gain on marketable securities	—	—	—	—	—	—	—	(17)	—	(17)
Net loss	—	—	—	—	—	—	—	—	(18,412)	(18,412)
Comprehensive loss										(18,429)
Balances at December 31, 2001 (carried forward)	22,632	$51,278	1,902	$ 2	$9,811	$(5,267)	$(804)	$ 17	$(43,975)	$(40,216)

See accompanying notes.

DYNAVAX TECHNOLOGIES CORPORATION

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (NET CAPITAL DEFICIENCY) (CONTINUED)

(in thousands, except per share amounts)

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Deferred Stock Compensation	Notes Receivable From Stockholders	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
	Shares	Par Amount	Shares	Par Amount						
Balances at December 31, 2001 (brought forward)	22,632	$51,278	1,902	$ 2	$ 9,811	$(5,267)	$(804)	$ 17	$(43,975)	$(40,216)
Issuance of Series D convertible preferred stock at $2.06, net of cash issuance costs of $2,420 and non-cash issuance costs of $322	16,882	32,357	—	—	—	—	—	—	—	—
Issuance of common stock upon exercise of options at $0.30 to $12.00 per share for cash	—	—	4	—	3	—	—	—	—	3
Interest accrued on notes receivable from stockholders	—	—	—	—	—	—	(46)	—	—	(46)
Repayment of notes receivable from stockholders	—	—	—	—	—	—	136	—	—	136
Common stock repurchased	—	—	(57)	—	(65)	—	—	—	—	(65)
Deferred stock compensation	—	—	—	—	(1,326)	1,326	—	—	—	—
Amortization of deferred stock compensation	—	—	—	—	—	1,821	—	—	—	1,821
Comprehensive loss:										
Change in unrealized gain on marketable securities	—	—	—	—	—	—	—	34	—	34
Net loss	—	—	—	—	—	—	—	—	(18,038)	(18,038)
Comprehensive loss										(18,004)
Balances at December 31, 2002	39,514	83,635	1,849	2	8,423	(2,120)	(714)	51	(62,013)	(56,371)
Issuance of common stock upon exercise of options at $0.30 to $3.00 per share for cash (unaudited)	—	—	20	—	21	—	—	—	—	21
Interest accrued on notes receivable from stockholders (unaudited)	—	—	—	—	—	—	(30)	—	—	(30)
Repayment of notes receivable from stockholders (unaudited)	—	—	—	—	—	—	88	—	—	88
Common shares repurchased (unaudited)	—	—	(18)	—	(44)	—	—	—	—	(44)
Deferred stock compensation, net of reversals (unaudited)	—	—	—	—	2,208	(2,208)	—	—	—	—
Amortization of deferred stock compensation (unaudited)	—	—	—	—	—	1,150	—	—	—	1,150

	Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Deferred Stock Compensation	Notes Receivable From Stockholders	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Net Capital Deficiency)
	Shares	Par Amount	Shares	Par Amount						
Comprehensive loss:										
Change in unrealized gain on marketable securities (unaudited)	—	—	—	—	—	—	—	(44)	—	(44)
Net loss (unaudited)	—	—	—	—	—	—	—	—	(12,812)	(12,812)
Comprehensive loss (unaudited)										(12,856)
Balances at September 30, 2003 (unaudited)	39,514	$83,635	1,851	$ 2	$10,608	$(3,178)	$(656)	$ 7	$(74,825)	$(68,042)

See accompanying notes.

DYNAVAX TECHNOLOGIES CORPORATION

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Years ended December 31,			Nine months ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Operating activities					
Net loss	$ (8,515)	$(18,412)	$(18,038)	$(13,325)	$(12,812)
Adjustments to reconcile net loss to net cash used in operating activities:					
Depreciation and amortization	313	475	678	507	453
Employee loan forgiveness	8	—	—	—	—
Stock-based compensation expense	1,191	2,056	1,821	1,478	1,150
Changes in operating assets and liabilities:					
Accounts receivable	(500)	(902)	1,402	1,402	(24)
Prepaid expenses and other current assets	(1,023)	980	(323)	(149)	134
Other assets	2	(33)	3	3	33
Accounts payable	204	(403)	951	170	(912)
Accrued liabilities	751	1,464	(438)	(475)	246
Deferred revenue	(1,054)	1,043	(339)	(268)	—
Net cash used in operating activities	(8,623)	(13,732)	(14,283)	(10,657)	(11,732)
Investing activities					
Purchases of marketable securities	(26,163)	(8,346)	(28,425)	(14,121)	(6,531)
Maturities and sale of marketable securities	4,750	24,105	11,630	10,130	18,000
Purchases of property and equipment	(455)	(1,082)	(468)	(346)	(111)
Net cash provided by (used in) investing activities	(21,868)	14,677	(17,263)	(4,337)	11,358
Financing activities					
Proceeds from issuance of preferred stock, net of issuance costs	27,481	(7)	32,357	32,344	—
Proceeds from issuance of common stock, net of repurchases	40	(45)	28	(26)	37
Repayments of equipment financing	(161)	(152)	(15)	(15)	—
Net cash provided by (used in) financing activities	27,360	(204)	32,370	32,303	37
Net increase (decrease) in cash and cash equivalents	(3,131)	741	824	17,309	(337)
Cash and cash equivalents at beginning of period	6,737	3,606	4,347	4,347	5,171
Cash and cash equivalents at end of period	$ 3,606	$ 4,347	$ 5,171	$ 21,656	$ 4,834
Supplemental disclosure of cash flow information					
Interest paid	$ 36	$ 12	$ —	$ —	$ —
Supplemental disclosure of noncash investing and financing activities					
Issuance of common stock for services	$ 275	$ —	$ —	$ —	$ —
Issuance of common stock for notes receivable	$ 686	$ 75	$ —	$ —	$ —
Repurchase of common stock	$ —	$ —	$ 65	$ 16	$ 42
Deemed dividend upon issuance of convertible preferred stock	$ 18,209	$ —	$ —	$ —	$ —

See accompanying notes.

1. Company

Dynavax Technologies Corporation ("Dynavax" or the "Company") was incorporated on August 29, 1996, in California. The Company reincorporated on March 22, 2001, in Delaware. Dynavax is a biopharmaceutical company developing innovative products for treating and preventing allergy, inflammation-mediated diseases, infectious diseases, and cancer.

2. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements include the accounts of Dynavax and its wholly owned Singapore subsidiary, Dynavax Asia Pte. Ltd. ("Dynavax Asia"). All significant intercompany accounts and transactions have been eliminated. The Company operates in one business segment, the development of biopharmaceutical products.

Certain reclassifications of prior year amounts have been made to conform with the current year presentation.

Use of Estimates

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

Unaudited Interim Consolidated Results

The accompanying consolidated balance sheet as of September 30, 2003, the consolidated statements of operations and cash flows for the nine months ended September 30, 2002 and 2003 and the consolidated statement of convertible preferred stock and stockholders' equity (net capital deficiency) for the nine months ended September 30, 2003 are unaudited. The unaudited interim consolidated financial statements have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to present fairly the Company's consolidated financial position as of September 30, 2003 and consolidated results of operations and cash flows for the nine months ended September 30, 2002 and 2003. The consolidated financial data and other information disclosed in these notes to consolidated financial statements as of September 30, 2003 and related to the nine-month periods ended September 30, 2002 and 2003 are unaudited. The consolidated results for the nine months ended September 30, 2003 are not necessarily indicative of the results to be expected for the year ending December 31, 2003 or for any other interim period or for any other future year.

Pro Forma Stockholders' Equity

In October 2003, the Board of Directors authorized management of the Company to file a registration statement with the Securities and Exchange Commission permitting the Company to sell shares of its common stock to the public. If the initial public offering is completed under the terms presently anticipated, all of the convertible preferred stock outstanding at the time of the offering will automatically convert into 13,612,026 shares of common stock. Unaudited pro forma stockholders' equity, as adjusted for the assumed conversion of the preferred stock, is set forth on the accompanying balance sheets.

Foreign Currency

The functional currency of Dynavax Asia is the local currency. Accordingly, the assets and liabilities of Dynavax Asia are translated into U.S. dollars using the exchange rate in effect at the end of the period. Revenues and expenses are translated using the average exchange rates for the period. Adjustments resulting from currency translations are included in comprehensive income (loss). Gains and losses resulting from currency transactions are recognized in current operations. Planned operations in Singapore have not yet commenced and as such, no foreign currency transaction or translation gains or losses have been recorded for the periods presented.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

Fair Value of Financial Instruments

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, marketable securities, accounts receivable, accounts payable, and accrued liabilities, approximate fair value due to their short maturities.

Marketable Securities

The Company classifies all short-term investments as available-for-sale in accordance with Statement of Financial Accounting Standards No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. Available-for-sale securities are carried at market value, with unrealized gains and losses included in accumulated other comprehensive income in stockholders' equity (net capital deficiency). Realized gains and losses are included in interest income. The cost of securities sold is based on the specific identification method. The Company's marketable securities consist primarily of corporate bonds that mature at various dates through 2003. The amounts of net unrealized gains (losses) were approximately $17,000 and $51,000 at December 31, 2001 and 2002, respectively, and approximately $7,000 at September 30, 2003 (unaudited).

Concentration of Credit Risk and Other Risks and Uncertainties

The Company's financial instruments that are subject to concentration of credit risk consist primarily of cash and cash equivalents, accounts receivable, and marketable securities. The Company's policy is to invest its cash and cash equivalents and marketable securities with high credit quality financial institutions in order to limit the amount of credit exposure. The Company has not experienced any losses on its deposits of cash and cash equivalents.

Trade accounts receivable are recorded at invoice value. The Company reviews its exposure to accounts receivable and to date has not experienced any losses.

The following table summarizes the revenues and accounts receivable balances from customers in excess of 10% of the total revenues and total accounts receivable balances, respectively:

Significant Customers	Revenues				
	Years ended December 31,			Nine months ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
A	51%	2%	69%	68%	—
B	49%	88%	13%	14%	—
C	—	—	18%	18%	—

Significant Customers	Accounts Receivable		
	December 31,		September 30,
	2001	2002	2003
			(unaudited)
A	71%	—	—
B	22%	—	—
C	7%	—	—

The Company's future products will require approval from the Food and Drug Administration and may require approval from certain international regulatory agencies before commercial sales can commence. There can be no assurance that the Company's products will receive any of these required approvals. If the Company were denied such approvals or such approvals were delayed, it would have a material adverse impact on the Company's consolidated financial position and results of operations.

The Company relies on a single contract manufacturer to produce material for certain of its clinical trials. While the Company has identified several additional manufacturers with whom it could contract for the manufacture of material, the Company has not entered into agreements with them and loss of its current supplier could delay development or commercialization of the Company's product candidates. To date, the Company has manufactured only small quantities of material for research purposes.

The Company is subject to risks common to companies in the biopharmaceutical industry, including, but not limited to, new technological innovations, protection of proprietary technology, compliance with government regulations, uncertainty of market acceptance of products, product liability, and the need to obtain additional financing.

Property and Equipment

Property and equipment are recorded at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, three years for computer equipment and five years for laboratory equipment and furniture. Leasehold improvements are amortized using the straight-line method over the remaining life of the initial lease term or the estimated useful lives of the assets, typically five years, whichever is shorter. Repair and maintenance costs are charged to expense as incurred.

Impairment of Long-Lived Assets

The Company identifies and records impairment losses on long-lived assets when events and circumstances indicate that the assets may be impaired. Recoverability is measured by comparison of the assets' carrying amounts to the future net undiscounted cash flows the assets are expected to generate. If these assets are considered impaired, the impairment recognized is measured by the amount by which the carrying value of the assets exceed the projected discounted future net cash flows associated with the assets. None of

these events or circumstances has occurred with respect to the Company's long-lived assets, which consist primarily of computers and equipment, furniture and fixtures, and leasehold improvements.

Revenue Recognition

The Company recognizes collaboration revenue based on the terms specified in the agreements, generally as the related services are performed or approximating the straight-line basis over the period of the research and development collaboration. Collaboration payments are generally made based on the number of full-time equivalent researchers assigned to the collaboration project and the related research and development expenses incurred. Any amounts received in advance of performance are recorded as deferred revenue. Upfront payments are deferred and amortized over the estimated research and development period. Payments related to substantive performance milestones that are at risk at the initiation of an agreement are recognized upon successful achievement of a performance milestone event.

Revenues related to government grants are recognized as the related research expenses are incurred. Any amounts received in advance of performance are recorded as deferred revenue until earned.

Option payments are deferred when received. When an option is exercised, revenue is recognized on a straight-line basis over the remaining term of the resulting agreement. In the event that an option expires without exercise, the payment is recognized in full at the expiration of the agreement.

Research and Development Costs

Research and development costs are expensed as incurred and include costs associated with research performed pursuant to collaboration agreements. Research and development costs consist of direct and indirect internal costs related to specific projects, as well as fees paid to clinical research organizations, research institutions and other service providers, which conduct certain research activities on behalf of the Company. Expenses related to clinical trials are generally accrued based on the level of patient enrollment and activity according to the protocol. The Company monitors patient enrollment level and related activity to the extent possible and adjusts estimates accordingly.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis, and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that included the enactment date. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some or all of the deferred tax assets may not be realized.

Stock-Based Compensation Expense

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 amended by Statement of Financial Accounting Standards No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure* ("SFAS 148"). As permitted, the Company continues to recognize employee stock-based compensation expense under the intrinsic value method of accounting as prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB 25") and its interpretations. Under APB 25, compensation expense is based on the difference, if any, on the date of grant between the estimated fair value

of the Company's common stock and the option exercise price, and is amortized over the related vesting period of the options using the straight-line method. The pro forma effects of applying SFAS 123, as amended by SFAS 148, on the Company's net loss had compensation cost for options granted to employees been determined based on the fair value based method prescribed by SFAS 123, would be as follows (in thousands, except per share amounts):

	Years ended December 31,			Nine months ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Net loss attributable to common stockholders:					
As reported	$(26,724)	$(18,412)	$(18,038)	$(13,325)	$(12,812)
Add:					
Stock-based employee compensation expense included in net loss	897	2,056	1,821	1,478	1,150
Less:					
Stock-based employee compensation expense determined under the fair value based method	(1,212)	(2,171)	(2,013)	(1,612)	(1,376)
Pro forma	$(27,039)	$(18,527)	$(18,230)	$(13,459)	$(13,038)
Net loss per share attributable to common stockholders:					
Basic and diluted, as reported	$ (20.86)	$ (11.96)	$ (10.60)	$ (7.94)	$ (7.21)
Basic and diluted, pro forma	$ (21.11)	$ (12.04)	$ (10.72)	$ (8.02)	$ (7.34)

Such pro forma disclosure may not be representative of future stock-based compensation expense because such options vest over several years and additional grants may be made each year.

The estimated fair value of each option grant to employees is estimated on the date of grant using the Black-Scholes option pricing method with the following weighted average assumptions:

	Years ended December 31,			Nine months ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Expected dividend yield	0%	0%	0%	0%	0%
Risk-free interest rate	6.1% to 6.3%	3.5% to 4.3%	1.3% to 2.4%	1.3% to 2.4%	1.1% to 2.6%
Expected life (in years)	4	4	4	4	4
Volatility	0.7	0.7	0.7	0.7	0.7

The weighted-average fair value per share of employee stock options granted during the years ended December 31, 2000, 2001, 2002, and the nine month periods ended September 30, 2002 and 2003 (unaudited), was $18.33, $1.95, $1.32, $1.33 and $7.03, respectively.

The Company accounts for stock options issued to nonemployees in accordance with the provisions of SFAS 123 and Emerging Issues Task Force ("EITF") No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services* ("EITF 96-18").

Stock-based compensation expense for options granted to consultants is periodically remeasured as the underlying options vest in accordance with EITF 96-18.

Comprehensive Loss

Comprehensive loss is comprised of net loss and other comprehensive income (loss), which includes certain changes in equity that are excluded from net income (loss). The Company includes unrealized holding gains and losses on marketable securities and foreign currency translation adjustments in accumulated other comprehensive income (loss).

Recent Accounting Pronouncements

In November 2002, the Financial Accounting Standards Board (the "FASB") issued the FASB Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* ("FIN 45"), which clarifies the requirements for a guarantor's accounting and disclosures of certain guarantees issued and outstanding. This interpretation elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also clarifies that a guarantor is required to recognize, at its inception of guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. The initial recognition and initial measurement provisions of this interpretation are applicable on a prospective basis to guarantees issued or modified after December 31, 2002, irrespective of the guarantor's fiscal year-end. The disclosure requirements in this interpretation are effective for financial statements of interim or annual periods ending after December 15, 2002. The adoption of FIN 45 did not have a material impact on the Company's consolidated results of operations or financial position.

In November 2002, the EITF issued EITF Issue No. 00-21, *Accounting for Revenue Arrangements with Multiple Deliverables* ("EITF 00-21"). EITF 00-21 addresses how to account for arrangements that may involve delivery or performance of multiple products, services, and/or rights to use assets, and when and, if so, how an arrangement involving multiple deliverables should be divided into separate units of accounting. It does not change otherwise applicable revenue recognition criteria. It applies to arrangements entered into in fiscal periods beginning after June 15, 2003, with early adoption permitted. The adoption of EITF 00-21 did not have a material impact on the Company's consolidated results of operations or financial position.

In May 2003, the FASB issued SFAS No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity* ("SFAS 150"). SFAS 150 requires that certain financial instruments, which under previous guidance were accounted for as equity, must now be accounted for as liabilities. The financial instruments affected include mandatorily redeemable stock, certain financial instruments that require or may require the issuer to buy back some of its shares in exchange for cash or other assets and certain obligations that can be settled with shares of stock. SFAS 150 is effective for all financial instruments entered into or modified after May 31, 2003 and otherwise is effective the beginning of the first interim period after June 15, 2003. The adoption of SFAS 150 did not have a material impact on the Company's consolidated results of operations or financial position.

3. Net Loss Per Share Attributable to Common Stockholders

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss by the weighted-average number of common shares outstanding for the period, without consideration for potential common shares. Diluted net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period and dilutive potential common shares using the treasury-stock method. For purposes of this calculation, common stock subject to repurchase by the Company, preferred stock, options, and warrants are

considered to be potential common shares and are only included in the calculation of diluted net loss per share attributable to common stockholders when their effect is dilutive.

The unaudited pro forma basic and diluted net loss per share attributable to common stockholders calculations assume the conversion of all outstanding shares of preferred stock into shares of common stock upon completion of the initial public offering using the as-if-converted method as of January 1, 2002 or the date of issuance, if later.

	Years ended December 31,			Nine months ended September 30,	
	2000	2001	2002	2002	2003
				(unaudited)	
Historical (in thousands, except per share amounts)					
Numerator:					
Net loss attributable to common stockholders	$(26,724)	$(18,412)	$(18,038)	$(13,325)	$(12,812)
Denominator:					
Weighted-average common shares outstanding	1,395	1,889	1,886	1,892	1,844
Less: Weighted-average unvested common shares subject to repurchase	(114)	(350)	(185)	(214)	(66)
Denominator for basic and diluted net loss per share attributable to common stockholders	1,281	1,539	1,701	1,678	1,778
Basic and diluted net loss per share attributable to common stockholders	$ (20.86)	$ (11.96)	$ (10.60)	$ (7.94)	$ (7.21)
Pro forma (in thousands, except per share amounts) (unaudited)					
Pro forma net loss attributable to common stockholders			$(18,038)		$(12,812)
Pro forma basic and diluted net loss per share attributable to common stockholders			$ (1.28)		$ (0.83)
Shares used above:			1,701		1,778
Pro forma adjustments to reflect assumed weighted-average effect of conversion of preferred stock			12,362		13,612
Shares used to compute pro forma basic and diluted net loss per share attributable to common stockholders			14,063		15,390
Historical outstanding dilutive securities not included in diluted net loss per share attributable to common stockholders calculation (in thousands):					
Preferred stock	7,544	7,544	13,612	13,612	13,612
Options to purchase common stock	169	279	691	698	912
Warrants	6	6	90	90	84
	7,719	7,829	14,393	14,400	14,608

4. Property and Equipment

Property and equipment consist of the following (in thousands):

	December 31,		September 30,
	2001	2002	2003
			(unaudited)
Laboratory equipment	$ 1,588	$ 1,837	$ 1,937
Computer and equipment	450	571	360
Furniture and fixtures	322	354	575
Leasehold improvements	287	321	322
	2,647	3,083	3,194
Less accumulated depreciation and amortization	(1,137)	(1,783)	(2,236)
	$ 1,510	$ 1,300	$ 958

Depreciation and amortization expense on property and equipment was approximately $313,000, $475,000, and $678,000 for the years ended December 31, 2000, 2001, and 2002, respectively, and approximately $507,000 and $453,000 for the nine months ended September 30, 2002 and 2003 (unaudited), respectively.

5. Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	December 31,		September 30,
	2001	2002	2003
			(unaudited)
Payroll and related expenses	$ 659	$ 712	$ 617
Legal expenses	432	179	337
Third party scientific research expense	1,325	1,091	1,236
Other accrued liabilities	90	86	124
	$2,506	$2,068	$2,314

6. Equipment Financing

In September 1997, the Company entered into a master financing agreement, which provides for borrowings for equipment purchased; amounts borrowed are collateralized by the related equipment.

During 1998, the Company borrowed $55,000 and $107,000 under the master financing agreement. These notes were repaid in 48 monthly installments of $1,000 and $3,000, respectively. These notes bore interest at approximately 14% per annum and required a final payment equal to 5% of the original principal amounts, resulting in an effective interest rate of 15%. These notes matured at various dates from September 1, 2000, to April 1, 2002.

7. Commitments and Contingencies

The Company leases its facilities under two noncancelable operating leases that expire on March 31, 2004, and May 31, 2008. Rent expense for the years ended December 31, 2000, 2001, and 2002, was approximately $386,000, $500,000, and $551,000, respectively, and approximately $414,000 and $471,000 for the nine months ended September 30, 2002 and 2003 (unaudited), respectively.

Future minimum payments under the noncancelable operating leases at December 31, 2002, are as follows (in thousands):

Year ending December 31,	
2003	$ 631
2004	513
2005	454
2006	454
2007 and thereafter	643
	$2,695

Guarantees and Indemnifications

The Company, as permitted under Delaware law and in accordance with its bylaws, indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The maximum amount of potential future indemnification is unlimited; however, the Company has a director and officer insurance policy that limits its exposure and may enable it to recover a portion of any future amounts paid. The Company believes the estimated fair value of these indemnification agreements is minimal. Accordingly, the Company has no liabilities recorded for these agreements as of December 31, 2002 and September 30, 2003 (unaudited).

The Company enters into indemnification provisions under its agreements with other companies in its ordinary course of business, typically with business partners, contractors, clinical sites and customers. Under these provisions, the Company generally indemnifies and holds harmless the indemnified party for losses suffered or incurred by the indemnified party as a result of the Company's activities. These indemnification provisions generally survive termination of the underlying agreement. The maximum potential amount of future payments the Company could be required to make under these indemnification provisions is unlimited. The Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements. As a result, the estimated fair value of these agreements is minimal. Accordingly, the Company has no liabilities recorded for these agreements as of December 31, 2002 and September 30, 2003 (unaudited).

8. Stockholders' Equity (Net Capital Deficiency)

Convertible Preferred Stock

The Company has authorized 40,731,644 shares of convertible preferred stock, designated in various series. The convertible preferred stock defined as Series A, Series B, Series C, Series D, Series S-1, Series R, and Series T (collectively referred to as "Preferred Stock") are summarized as follows (in thousands, except per share amounts):

	Shares Designated	Minimum Liquidation Preference Per Share	Shares Issued and Outstanding at December 31, 2001	Shares Issued and Outstanding at December 31, 2002	Shares Issued and Outstanding at September 30, 2003	Aggregate Liquidation Value at December 31, 2002 and September 30, 2003
					(unaudited)	(unaudited)
Series A	6,700	$1.00	6,700	6,700	6,700	$ 6,700
Series B	9,033	$1.83	9,033	9,033	9,033	16,530
Series S-1	500	$5.00	400	400	400	2,000
Series R	430	$4.65	430	430	430	2,000
Series T	400	$5.00	400	400	400	2,000
Series C	5,669	$4.00	5,669	5,669	5,669	22,675
Series D	18,000	$2.06	–	16,882	16,882	34,777
	40,732		22,632	39,514	39,514	$86,682

During the period from June to October 2000, the Company issued 5,668,750 shares of Series C Preferred Stock for gross proceeds of $22,675,000. In connection with a proposed initial public offering in 2000, the Company reflected a deemed dividend of approximately $18,209,000. The deemed preferred stock dividend was reflected in the 2000 statement of operations based on the difference between the estimated fair value of the common stock and the conversion price of the preferred stock at the commitment date. There was no impact on total stockholders' equity (net capital deficiency). The deemed preferred stock dividend increases the net loss applicable to common stockholders for the year ended December 31, 2000.

In March and April 2002, the Company issued a total of 16,882,220 shares of Series D Preferred Stock for gross proceeds of $34,777,372. In connection with the issuance of the Series D Preferred Stock, the Company incurred issuance costs of approximately $2,742,000, of which approximately $123,000 was settled by the issuance of 59,671 shares of Series D Preferred Stock and of which approximately $322,000 was settled by the issuance of warrants to purchase 253,233 shares of Series D Preferred Stock.

Voting

The holders of Preferred Stock have various rights and preferences as follows:

Each share of Series A, Series B, Series C, Series D, Series S-1, Series R, and Series T Preferred Stock has voting rights equal to the number of shares of common stock into which it is convertible and votes together as one class with the common stock, except as otherwise discussed below.

As long as any shares of Preferred Stock remain outstanding, with the exception of Series A Preferred Stock (in which case at least 500,000 shares of Series A Preferred Stock must remain outstanding), the Company must obtain a vote from at least 75%, 77%, and 66 2/3% of the holders of Series A, Series B, and Series C Preferred Stock voting as a single class, respectively, in order to alter the certificate of incorporation or the bylaws, as they relate to the Preferred Stock, changes in the authorized number of shares of Preferred

Stock, or to create or issue new shares or series of Preferred Stock. Additionally, as long as any shares of Series D Preferred Stock remain outstanding, the Company must obtain a vote from at least 51% of the holders of Series D Preferred Stock voting as a single class in order to alter the Certificate of Incorporation, as they relate to the Preferred Stock, changes in the authorized number of shares of Preferred Stock, or to create or issue new shares or series of Preferred Stock, increase the size of the Board of Directors to a number of members in excess of nine, the payment of dividends or making other distributions of the Company's capital stock, a liquidation or winding down of the Company and the Company's entering into strategic alliances involving the issuance of capital stock over $20,000,000.

The vote of a majority of the holders of the Series A, Series B, Series C, Series D, Series S-1, Series R, and Series T Preferred Stock is required to issue any shares of common stock, any redemption, repurchase, dividend, or other distribution with respect to common stock, any asset transfer, or acquisition, and any redemption, repurchase, dividend, or other distribution with respect to the Preferred Stock. The vote of a majority of the stockholders of Series A, Series B, Series C, and Series D Preferred Stock is required to increase or decrease the authorized number of shares of common stock or Preferred Stock and to increase or decrease the size of the Board of Directors or to voluntarily dissolve or liquidate the Company.

Holders of Series A, Series B, Series S-1, Series R, Series T, Series C, and Series D Preferred Stock are entitled to receive noncumulative dividends at the rate of 8% of the original issue price per annum, when and if declared by the Board of Directors. To date, the Company has not declared any dividends.

Liquidation

In the event of any liquidation, dissolution, or winding up of the Company, including a merger, acquisition, or sale of assets where the holders of the Company's common stock and Preferred Stock own less than 51% of the resulting voting power of the surviving entity, the holders of the Series D Preferred Stock will receive, in preference to all other holders of equity securities, an amount per share equal to 2.0 times the original purchase price of $2.06 per share plus any accrued but unpaid dividends if such event occurs thereafter. After payment of the liquidation preference to the holders of Series D Preferred Stock, the holders of all other Preferred Stock are entitled to receive, prior and in preference to the holders of common stock, an amount equal to the original issue price ($1.00, $1.83, $4.00, $5.00, $4.65, and $5.00 for Series A, Series B, Series C, Series S-1, Series R, and Series T Preferred Stock, respectively) plus any accrued but unpaid dividends. After payment of the liquidation preference to holders of all series of Preferred Stock, the remaining assets of the Company are available for distribution on a pro rata weighted basis to the holders of common stock and holders of Series A, Series B and Series D Preferred Stock, on an as converted basis. To the extent that holders of Series A, Series B and Series D have received an aggregate of $3.00, $5.50 and $2.06 per share, respectively, any remaining assets will be additionally available for distribution solely to the holders of common stock.

Conversion

Each share of Series A, Series B, Series C, Series D, Series S-1, Series R, and Series T Preferred Stock is convertible into shares of the Company's common stock, at the option of the holder, according to a defined conversion ratio, which is subject to adjustment for dilution.

Each share of Series A, Series B, Series C, Series D, Series S-1, Series R, and Series T Preferred Stock automatically converts at a rate of one share of common stock for three shares of Preferred Stock, adjusted for stock splits and certain other transactions, either i) at the affirmative election of the holders of at least 66 2/3% of the outstanding shares of Preferred Stock voting as a single class (except for Series C and Series D, which each shall convert on a vote of at least 66 2/3% of the outstanding shares of the respective series), or ii) at the closing of a public offering of common stock in which the price per share is equal to or greater than $12.36 per share and gross proceeds to the Company are at least $30 million. In addition, in the event of a sale of

common stock, as defined per the amended and restated articles of incorporation, below the conversion price of Series A, Series B, Series C, Series D, and Series R Preferred Stock, such preferred stock conversion price shall be subject to adjustment. At December 31, 2002 and September 30, 2003 (unaudited), the outstanding shares of Series C Preferred Stock were convertible into an additional 400,492 shares of common stock and Series R Preferred Stock were convertible into an additional 40,246 shares of common stock as a result of such adjustment. None of the shares convertible into shares of common stock had been converted as of those dates.

Redemption Rights

Neither the Company nor the holders of the Preferred Stock have the right to call or redeem or cause to have called or redeemed any shares of Preferred Stock.

Reserved Shares

The Company had reserved shares of common stock for future issuance as follows:

	December 31, 2002	September 30, 2003 (unaudited)
Stock option plan	713,988	1,045,375
Conversion of preferred stock	13,612,026	13,612,026
Preferred stock warrants	84,411	84,411
	14,410,425	14,741,812

Warrant for Preferred Stock

In connection with the closing of the Series D Preferred Stock financing, the Company issued a warrant to purchase 253,233 shares of Series D Preferred Stock at an exercise price of $2.06 per share, to its lead underwriter. The estimated fair value of the warrant was valued using the Black-Scholes option pricing model at approximately $322,000. The warrant is exercisable from the date of grant for five years. At December 31, 2002 and September 30, 2003 (unaudited), the warrant remained outstanding.

Warrant for Common Stock

In connection with the master financing agreement (see Note 6), during 1997 the Company granted the lender a warrant to purchase 6,000 shares of common stock at an exercise price of $3.75 per share, subject to adjustments upon the occurrence of certain events such as a merger of the Company, stock split, stock dividends and other distributions, and other antidilution events. The estimated fair value of the warrant was not significant. This warrant was exercisable from the date of the grant through the earlier of (i) six years after the date of grant or (ii) the completion of an initial public offering of the Company's common stock with net proceeds of at least $10 million. At December 31, 2002, this warrant remained outstanding. This warrant was not outstanding as of September 30, 2003 as it had expired unexercised.

Stock Option Plan

In January 1997, the Company adopted the 1997 Equity Incentive Plan (the "1997 Plan"). The 1997 Plan provides for the granting of stock options to employees and nonemployees of the Company. Options granted under the 1997 Plan may be either incentive stock options ("ISOs") or nonqualified stock options ("NSOs"). ISOs may be granted to Company employees (including officers and directors who are also employees). NSOs may be granted to employees and nonemployees.

Options under the 1997 Plan may be granted for periods of up to ten years and at prices no less than 85% of the estimated fair value of the shares on the date of grant as determined by the Board of Directors, provided, however, that (i) the exercise price of an ISO shall not be less than 100% of the estimated fair value of the shares on the date of grant, and (ii) the exercise price of an ISO granted to a 10% stockholder shall not be less than 110% of the estimated fair value of the shares on the date of grant. The options are exercisable immediately and generally vest over a four-year period (generally 25% after one year and in monthly ratable increments thereafter) for stock options issued to employees, officers, directors, and scientific advisors, and quarterly vesting over a four-year period or immediate vesting for stock options issued to all other nonemployees. All unvested shares issued under the 1997 Plan are subject to repurchase rights held by the Company under such conditions as agreed to by the Company and the optionee.

Activity under the 1997 Plan is set forth below:

		Options Outstanding	
	Shares Available for Grant	Number of Shares	Weighted-Average Price Per Share
Balance at December 31, 1999	299,975	373,801	$0.48
Options authorized	333,333	—	—
Options granted	(506,583)	506,583	$1.86
Options exercised	—	(650,192)	$1.11
Options canceled	61,047	(61,047)	$0.69
Shares repurchased	1,067	—	$0.60
Balance at December 31, 2000	188,839	169,145	$2.07
Options authorized	333,333	—	—
Options granted	(164,800)	164,800	$3.81
Options exercised	—	(35,121)	$2.22
Options canceled	19,880	(19,880)	$2.25
Shares repurchased	4,136	—	$1.05
Balance at December 31, 2001	381,388	278,944	$3.06
Options granted	(458,933)	458,933	$2.16
Options exercised	—	(3,820)	$0.84
Options canceled	42,850	(42,850)	$3.00
Shares repurchased	57,476	—	$1.14
Balance at December 31, 2002	22,781	691,207	$2.48
Options authorized (unaudited)	333,333	—	—
Options granted (unaudited)	(364,500)	364,500	$1.50
Options exercised (unaudited)	—	(19,882)	$1.03
Options canceled (unaudited)	124,130	(124,130)	$2.40
Shares repurchased (unaudited)	17,936	—	$2.37
Balance at September 30, 2003 (unaudited)	133,680	911,695	$2.13

The following summarizes options outstanding and exercisable under the 1997 Plan as of December 31, 2002:

Exercise Price	Number Outstanding	Average Remaining Contractual Life
		(In years)
$0.30	8,997	4.5
$0.60	10,618	6.0
$1.20	23,692	7.2
$1.50	250,533	9.7
$3.00	385,367	8.7
$12.00	12,000	8.3
	691,207	8.9

The following summarizes options outstanding and exercisable under the 1997 Plan as of September 30, 2003 (unaudited):

Exercise Price	Number Outstanding	Average Remaining Contractual Life
		(In years)
$0.60	10,618	5.2
$1.20	21,640	6.4
$1.50	553,703	9.3
$3.00	314,401	8.1
$12.00	11,333	7.5
	911,695	8.7

Deferred Stock Compensation

During the year ended December 31, 2000, the Company recorded deferred stock compensation for the excess of the estimated fair value of its common stock over the option exercise price at the date of grant of $8,810,000 related to options granted to employees. During the years ended December 31, 2001 and 2002, the Company recorded reversals of deferred stock compensation resulting from employee terminations of approximately $(615,000) and $(1,326,000), respectively. During the nine months ended September 30, 2002 and 2003, the Company recorded similar reversals of deferred stock compensation of approximately $(331,000) and $(111,000), respectively (unaudited). Stock-based compensation expense is being recognized over the option vesting period of four years using the straight-line method.

During the period ended September 30, 2003, the Company recorded additional deferred stock compensation for the excess of the estimated fair value of its common stock over the option exercise price at the date of grant of approximately $2,426,000 related to options granted to employees. During the nine months ended September 30, 2003, the Company recorded reversals of this deferred stock compensation from employee terminations of approximately $(107,000). Stock-based compensation expense is being recognized over the option vesting period of four years using the straight-line method.

For options granted to nonemployees, the Company determined the estimated fair value of the options using the Black-Scholes option pricing model. Compensation expense is generally being recognized over the

option vesting period. For the years ended December 31, 2000 and 2001, the Company recorded stock-based compensation expense (reversal) of approximately $294,000 and $(12,000), respectively, in connection with options granted to nonemployees. No stock-based compensation expense was recorded for the year ended December 31, 2002 and the nine months ended September 30, 2002 and 2003 (unaudited).

9. Employee Benefit Plan

Effective September 1997, the Company adopted the Dynavax Technologies Corporation 401(k) Plan (the "401(k) Plan"), which 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. The Company may, at its discretion, contribute for the benefit of eligible employees. To date, the Company has not contributed to the 401(k) Plan.

10. Related-Party Transactions

From September 2000 through June 2001, the Company loaned $752,000 to certain employees and officers for the exercise of incentive stock options. These are full recourse notes, which accrue interest within a range of 5.02% to 6.22% and are due on September 2000 through June 2006. The shares of common stock held by the employees also collateralize these notes. At December 31, 2001 and 2002, $804,000 and $714,000, respectively, remained outstanding. At September 30, 2003, approximately $656,000 (unaudited) remained outstanding.

In December 1998, the Company entered into a research agreement with the Regents of the University of California, or UC, on behalf of the University of California, San Diego, under which the Company agreed to fund a research project aimed at uncovering novel applications for ISS (See Note 11). The principal investigator of the research project is Dr. Eyal Raz, a holder of 468,452 shares of our common stock, and the university-nominated representative on the evaluation committee created to oversee aspects of this agreement is Dr. Dennis Carson, a holder of 468,452 shares of our common stock and a member of our Board of Directors.

The Company entered into agreements with holders of its preferred stock whereby it granted them registration rights with respect to their shares of common stock, including common stock issuable upon conversion of their preferred stock.

11. Collaborative Research, Development, and License Agreements

University of California

The Company entered into a series of exclusive license agreements with UC in March 1997 and October 1998. These agreements provide the Company with certain technology and related patent rights and materials. Under the terms of the agreements, the Company pays annual license or maintenance fees and will be required to pay milestones and royalties on net sales of products originating from the licensed technologies. The agreements will expire on either the expiration date of the last-to-expire patent licensed under the agreements or the date upon which the last patent application licensed under the agreements is abandoned. The Company incurred license fees of $20,000, $20,000, and $20,000 and patent expenses of approximately $277,000, $278,000, and $405,000 in the years ended December 31, 2000, 2001, and 2002, respectively, and approximately $275,000 and $158,000 in the nine months ended September 30, 2002 and 2003 (unaudited), respectively, in connection with these license agreements, each of which was recorded as research and development expense. Included in accounts payable at December 31, 2001, 2002, and September 30, 2003 (unaudited), was approximately $78,000, $66,000 and $18,000, respectively, related to patent expenses. The Company is obligated to make a one-time payment to UC upon the closing of the Company's initial public offering as partial consideration for the technology licenses. A charge to operations will be recorded in

the period the payment becomes probable, which is expected to be dated as of the closing of the Company's initial public offering.

In December 1998, the Company entered into a research agreement with UC to fund a research project on "Biological Effects of ISS and IIS-ODN." Title to any inventions shall be determined in accordance with U.S. Patent laws. The project commenced in January 1999 and will continue for a period of five years, unless terminated in accordance with the terms of the agreement. The Company agreed to fund and support future project costs of approximately $1 million per year, to a maximum aggregate amount of $4.9 million. In connection with this agreement the Company incurred research and development expenses associated with the project of approximately $948,000, $986,000 and $1,026,000 during the years ended December 31, 2000, 2001 and 2002, respectively, and approximately $769,000 and $533,000 during the nine months ended September 30, 2002 and 2003 (unaudited), respectively. In December 1998, the Company also contributed to UC equipment with a net book value of $283,000 for use in connection with the project, which was charged to research and development expense. The principal investigator of the research project is one of the Company's founders and stockholders.

Other Collaborative Agreements

In November 1999, the Company entered into a collaboration agreement with Stallergènes to develop and commercialize products to treat seasonal allergies. Under this agreement, both the Company and Stallergènes agreed to conduct preclinical and clinical development activities on two different forms of treatment for a particular allergy. Additionally, the Company granted Stallergènes a nonexclusive option, which has expired, to negotiate a license agreement. During 2001, revenues of $150,000 have been recognized. Separately, Stallergènes purchased 400,000 shares of Series S-1 Preferred Stock at $5.00 per share on November 22, 1999. The agreement lapsed in April 2002.

In December 1999, the Company entered into a two-year collaboration agreement with Aventis Pasteur S.A. ("Aventis") to develop new vaccines and therapeutic drugs for a variety of infectious diseases. Under this agreement, Aventis paid the Company for certain research to be completed pursuant to the terms of the agreement at a rate of cost plus 10%, with a maximum total cost of $1,500,000 for the first product and an additional $600,000 for the second product being developed. Additionally, the Company granted Aventis a nonexclusive option, which has expired, to negotiate a license agreement. The Company received an up-front payment of $1,100,000, all of which has been earned and recognized as revenue through December 31, 2001. During 2002, a further $990,000 of revenue was recognized for completed collaboration work. The agreement was mutually terminated in September 2002. Separately, Aventis purchased 215,054 shares of Series R Preferred Stock at $4.65 per share on March 7, 2000.

In March 2000, the Company entered into an 18-month collaboration and license agreement with Triangle Pharmaceuticals Inc. ("Triangle Pharmaceuticals") to develop therapies for the treatment and prevention of hepatitis and HIV. Under this agreement, the Company licensed certain technology to Triangle Pharmaceuticals for its use in research and development activities. Additionally, Triangle Pharmaceuticals paid the Company to perform certain research and development activities and for the achievement of certain mutually agreed-upon milestones. During 2000, the company recognized revenue of $250,000 based on achievement of a milestone. During the year ended December 31, 2002 and the nine months ended September 30, 2002 (unaudited), the Company recognized revenue of approximately $188,000 in relation to the collaboration and license agreement. The agreement was mutually terminated in November 2002. Separately, Triangle Pharmaceuticals purchased 400,000 shares of Series T Preferred Stock at $5.00 per share on March 31, 2000.

In June 2003, the Company entered into a development collaboration agreement with BioSeek to analyze and characterize the activity of certain compounds using BioSeek technology with the objective of advancing the development of such compounds. Under this agreement, the Company will make various payments to

BioSeek for the achievement of certain milestones outlined in the agreement. Additionally, the Company will make various payments to BioSeek based on the success and timing of the Company's signing of a third party partnering agreement where the Company grants to the third party, directly or indirectly, any right or option to market, sell, distribute or otherwise commercialize a thiazolopyrimidine (TZP) product in any geographic territory. The agreement may be terminated by either party prior to BioSeek meeting the first contractual milestone, in accordance with the terms of the agreement. As of September 30, 2003 (unaudited), no payments had been made to BioSeek as no milestones had been achieved.

In the third quarter of 2003, the Company was awarded government grants totaling approximately $8,400,000 (unaudited) to be received over three and one-half years, assuming annual review criteria are met, to fund research and development of certain biodefense programs. The revenue will be recognized as the related expenses are incurred.

12. Income Taxes

Deferred tax assets and liabilities consist of the following (in thousands):

	December 31,	
	2001	2002
Deferred tax assets:		
Net operating loss carry forwards	$ 6,560	$ 10,227
Research tax credit carry forwards	1,078	1,122
Accruals and reserves	1,225	85
Depreciation and amortization	9,781	11,529
Other	245	177
Total deferred tax assets	18,889	23,140
Less valuation allowance	(18,889)	(23,140)
	$ —	$ —

Management believes that, based on a number of factors, it is more likely than not that the deferred tax assets will not be realized. Accordingly, a full valuation allowance has been recorded for all deferred tax assets at December 31, 2001 and 2002. The valuation allowance increased by approximately $3,156,000, $8,190,000 and $4,251,000 during the years ended December 31, 2000, 2001 and 2002, respectively.

As of December 31, 2002, the Company had federal net operating loss carryforwards of approximately $27,000,000, which expire at various dates from 2011 through 2022, and federal research and development tax credits of approximately $600,000, which expire at various dates from 2018 through 2022 if not utilized.

The Tax Reform Act of 1986 limits the annual use of net operating loss and tax credit carryforwards in certain situations where changes occur in stock ownership of a company. In the event the Company has a change in ownership, as defined, the annual utilization of such carryforwards could be limited.

13. Subsequent Events

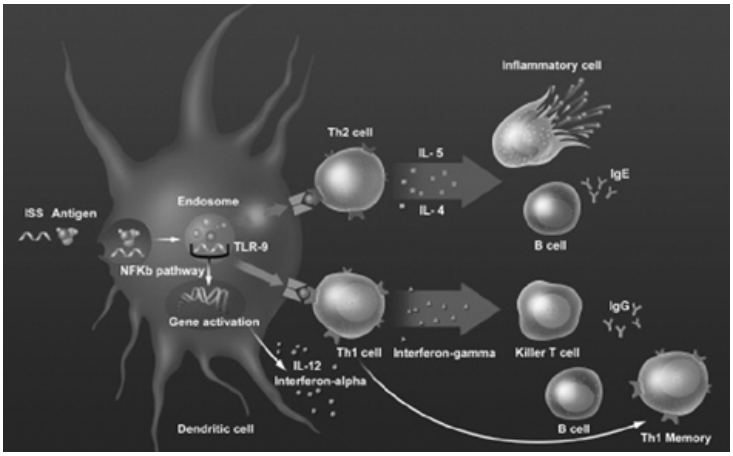
Dynavax Asia

In October 2003, the Company completed a sale of 15,200,000 ordinary shares in the Company's Singapore subsidiary, Dynavax Asia, which will be exchanged for 2,111,111 shares of common stock of the Company at a conversion price of $7.20 per share in connection with the closing of the Company's initial public offering. The Company's ownership in the Asian subsidiary was reduced from 100% to 50% as a result of the sale of the ordinary shares. The Asian subsidiary was set-up and the financing occurred in its current

form as an accommodation to the lead investor in the financing. The sale raised gross proceeds of $15,200,000. In connection with the proposed initial public offering, the Company will record a deemed dividend, limited to the amount of proceeds of $15,200,000 based on the difference between the estimated fair value of the common stock and the exchange price of the ordinary stock at the issuance date. The Company anticipates accounting for the sale of the ordinary shares initially as a minority interest liability and the exchange into common shares as a capital transaction.

Reverse Stock Split

In October 2003, the Board of Directors and Stockholders approved a one-for-three reverse stock split of its outstanding shares of common stock. An amended and restated certificate of incorporation will be filed prior to effectiveness of the registration statement relating to the initial public offering. All common share and per share amounts contained in the consolidated financial statements have been retroactively adjusted to reflect this stock split.



Our principal product development efforts are based on a technology that uses short synthetic DNA molecules known as ISS. As shown above, ISS can stimulate a Th1 immune response while suppressing Th2 immune responses. ISS contain specialized sequences that activate the innate immune system. ISS are recognized by a specialized subset of dendritic cells containing a unique receptor called Toll-Like Receptor 9, or TLR-9. The interaction of TLR-9 with ISS triggers the biological events that lead to the suppression of the Th2 immune response and the enhancement of the Th1 immune response.

6,000,000 shares

Common Stock

PROSPECTUS

, 2004

Bear, Stearns & Co. Inc. **Deutsche Bank Securities**

Piper Jaffray

Until , 2004 (25 days after the commencement of this offering), all dealers that buy, sell or trade shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. ***Other Expenses of Issuance and Distribution***

The expenses to be paid by the Registrant in connection with the distribution of the securities being registered, other than underwriting discounts and commissions, are as follows:

	Amount
Securities and Exchange Commission Filing Fee	$ 7,281
NASD Filing Fee	$ 9,500
Nasdaq National Market Listing Fee	$ 100,000
Accounting Fees and Expenses	$ 400,000
Blue Sky Fees and Expenses	$ 15,000
Legal Fees and Expenses	$ 600,000
Transfer Agent and Registrar Fees and Expenses	$ 10,000
Printing Expenses	$ 200,000
Miscellaneous Expenses	$ 200,000
Total	$1,541,781

Item 14. ***Indemnification of Directors and Officers***

Section 145 of the Delaware General Corporation Law authorizes a court to award, or a corporation's board of directors to grant indemnity to officers, directors and other corporate agents under certain circumstances and subject to certain limitations. The Registrant certificate of incorporation and bylaws provide that the Registrant shall indemnify its directors, officers, employees and agents to the full extent permitted by Delaware General Corporation Law, including in circumstances in which indemnification is otherwise discretionary under Delaware law. In addition, the Registrant intends to enter into separate indemnification agreements with its directors, officers and certain employees, which would require the Registrant, among other things, to indemnify them against certain liabilities, which may arise by reason of their status as directors, officers or certain other employees. The Registrant also intends to maintain director and officer liability insurance, if available on reasonable terms.

These indemnification provisions and the indemnification agreement to be entered into between the Registrant and its officers and directors may be sufficiently broad to permit indemnification of the Registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

The underwriting agreement, which is Exhibit 1.1 to this registration statement, provides for indemnification by our underwriters and their officers and directors for certain liabilities arising under the Securities Act or otherwise.

Item 15. ***Recent Sales of Unregistered Securities***

Since December 1996, the Registrant has issued and sold the following unregistered securities:

1. In December 1996, the Registrant issued and sold an aggregate of 6,700,000 shares of its Series A Preferred Stock to ten investors for an aggregate purchase price of $6,700,000. These sales were made in reliance on Section 4(2) of the Securities Act.

2. Between January 1, 1997 and December 31, 2003, the Registrant granted 2,522,578 shares of restricted common stock and options to purchase shares of common stock at prices ranging from $0.30

to $12.00 to employees, directors and consultants pursuant to its 1997 Equity Incentive Plan. These issuances were made in reliance on Rule 701 of the Securities Act.

3. In September 1997, the Registrant issued a warrant to purchase 6,000 shares of its common stock to Lease Management Services, Inc. in connection with a leasing arrangement. The warrant was issued in reliance on Section 4(2) of the Securities Act.

4. In July 1998, the Registrant issued and sold an aggregate of 9,032,786 shares of its Series B Preferred Stock to a total of 16 investors for an aggregate purchase price of $16,529,998.38. These sales were made in reliance on Section 4(2) of the Securities Act.

5. From December 1999 to March 2000, the Registrant issued and sold an aggregate of 400,000 shares of its Series S-1 Preferred Stock to Stallergènes S.A. for an aggregate purchase price of $2,000,000 in connection with a collaboration agreement with Stallergènes S.A. This sale was made in reliance on Section 4(2) of the Securities Act.

6. In March 2000, the Registrant issued and sold an aggregate of 430,108 shares of its Series R Preferred Stock to Aventis Pasteur S.A. for an aggregate purchase price of $2,000,002.20 in connection with a collaboration agreement with Aventis Pasteur S.A. This sale was made in reliance on Section 4(2) of the Securities Act.

7. In April 2000, the Registrant issued and sold an aggregate of 400,000 shares of its Series T Preferred Stock to Triangle Pharmaceuticals, Inc. for an aggregate purchase price of $2,000,000 in connection with a License Agreement with Triangle Pharmaceuticals, Inc. This sale was made in reliance on Section 4(2) of the Securities Act.

8. From June 2000 to October 2000, the Registrant issued and sold an aggregate of 5,668,750 shares of its Series C Preferred Stock to a total of 42 investors for an aggregate purchase price of $22,675,000. These sales were made in reliance on Section 4(2) of the Securities Act.

9. In July 2000, the Registrant issued an aggregate of 11,111 shares of its common stock to Parteurope Development as compensation for services valued at approximately $275,000 in connection with a consulting agreement. This issuance was made in reliance on Section 4(2) of the Securities Act.

10. From March 2002 to July 2002, the Registrant issued and sold an aggregate of 16,882,220 shares of its Series D Preferred Stock to a total of 46 investors for an aggregate purchase price of $34,777,373.20. These sales were made in reliance on Section 4(2) of the Securities Act.

11. In August 2002, the Registrant issued a warrant to purchase 253,233 shares of its Series D Preferred Stock to Banc of America Securities LLC as placement agent in connection with the Series D financing. The warrant was issued in reliance on Section 4(2) of the Securities Act.

12. In October 2003, Dynavax Asia Pte. Ltd., a subsidiary of the Registrant incorporated under the laws of Singapore, issued and sold an aggregate of 15,200,000 ordinary shares to a total of eight investors for an aggregate purchase price of $15,200,000. The ordinary shares will be exchanged for 2,111,111 shares of common stock of the Registrant upon the completion of this offering. These sales were made in reliance on Section 4(2) of the Securities Act.

The issuances of the securities in the transactions above were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act promulgated thereunder as transactions by an issuer not involving a public offering, where the purchasers represented their intention to acquire the securities for investment only and not with a view to distribution and received or had access to adequate information about the Registrant, or Rule 701 promulgated under the Securities Act as transactions pursuant to a compensatory benefit plan or a written contract relating to compensation.

Appropriate legends were affixed to the stock certificates issued in the above transactions. Similar legends were imposed in connection with any subsequent sales of any such securities. No underwriters were employed in any of the above transactions.

Item 16. ***Exhibits and Financial Statement Schedules***

(a) Exhibits

The exhibits are as set forth in the Exhibit Index.

(b) Financial Statement Schedules.

All schedules have been omitted because they are not required or are not applicable or the required information is shown in the financial statements or related notes.

Item 17. ***Undertakings***

The Registrant hereby undertakes to provide to the underwriters at the closing specified in the Underwriting Agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California on the 16th day of January, 2004.

DYNAVAX TECHNOLOGIES CORPORATION

By: /s/ WILLIAM J. DAWSON

William J. Dawson
Vice President and Chief Financial Officer

POWER OF ATTORNEY

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

Signature	Title	Date
*	President, Chief Executive Officer and Director *(Principal Executive Officer)*	January 16, 2004
Dino Dina		
/s/ WILLIAM J. DAWSON	Vice President and Chief Financial Officer *(Principal Financial and Accounting Officer)*	January 16, 2004
William J. Dawson		
*	Chairman of the Board	January 16, 2004
Daniel S. Janney		
*	Director	January 16, 2004
Louis C. Bock		
*	Director	January 16, 2004
Dennis Carson, M.D.		
*	Director	January 16, 2004
Jan Leschly		
*	Director	January 16, 2004
Arnold L. Oronsky, Ph.D.		
*Pursuant to Power of Attorney /s/ WILLIAM J. DAWSON		January 16, 2004
Attorney-in-fact		

EXHIBIT INDEX

Exhibit Number	Document
1.1	Form of Underwriting Agreement
3.1*	Form of Amended and Restated Certificate of Incorporation of the Registrant to be in effect upon the closing of this offering
3.2*	Form of Bylaws of the Registrant to be in effect upon the closing of this offering
4.1	Reference is made to Exhibits 3.1 and 3.2
4.2	Specimen Stock Certificate of the Registrant
4.3	Fourth Amended Investors' Rights Agreement, dated as of October 20, 2003, between the Registrant and certain holders of the Registrant's preferred stock
5.1*	Opinion of Morrison & Foerster LLP as to the legality of the common stock
10.1**	Form of Indemnification Agreement between the Registrant and each of its executive officers and directors
10.2	Registrant's 1997 Equity Incentive Plan, as amended
10.3	2004 Stock Incentive Plan, including forms of agreements thereunder
10.4	2004 Employee Stock Purchase Plan, including forms of agreements thereunder
10.5	Triple Net Laboratory Lease, dated as of January 30, 1998, between the Registrant and Fifth & Potter Street Associates, LLC, including two amendments thereof
10.6	Standard Industrial/ Commercial Multi-Tenant Lease — Gross, dated January 31, 2001, between the Registrant and Neil Goldberg and Hagit Cohen
10.7**+	Development Collaboration Agreement, dated June 10, 2003, between the Registrant and BioSeek, Inc.
10.8**+	License and Supply Agreement, dated October 28, 2003, between the Registrant and Berna Biotech AG
10.9**+	Exclusive License Agreement, dated March 26, 1997, between the Registrant and the Regents of the University of California, for Method, Composition and Devices for Administration of Naked Nucleotides which Express Biologically Active Peptides and Immunostimulatory Oligonucleotide Conjugates, including three amendments thereof
10.10**+	Exclusive License Agreement, dated October 2, 1998, between the Registrant and the Regents of the University of California, for Compounds for Inhibition of Ceramide-Mediated Signal Transduction and New Anti-Inflammatory Inhibitors: Inhibitors of Stress Activated Protein Kinase Pathways, including one amendment thereof
10.11**	Management Continuity Agreement, dated as of October 15, 2003, between the Registrant and Dino Dina
10.12**	Management Continuity Agreement, dated as of September 2, 2003, between the Registrant and Daniel Levitt
10.13**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and William J. Dawson
10.14**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and Stephen Tuck
10.15**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and Robert Lee Coffman
10.16**	Management Continuity and Severance Agreement, dated as of August 1, 2003, between the Registrant and Gary Van Nest
10.17	Lease, dated as of January 7, 2004, between the Registrant and 2929 Seventh Street, L.L.C.
16.1**	Letter from PricewaterhouseCoopers LLP, regarding change in certifying accountants
23.1*	Consent of Morrison & Foerster LLP (see Exhibit 5.1)
23.2	Consent of Ernst & Young LLP, Independent Auditors
23.3	Consent of PricewaterhouseCoopers LLP, Independent Accountants
24.1**	Power of Attorney. Reference is made to the signature page included with the initial filing of the registration statement on Form S-1 with the SEC on October 24, 2003

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* To be filed by amendment

** Previously filed

\+ Confidential treatment has been requested with regard to certain portions of this document.

_____ Shares of Common Stock

DYNAVAX TECHNOLOGIES CORPORATION

UNDERWRITING AGREEMENT

_____, 2004

BEAR, STEARNS & CO. INC.
DEUTSCHE BANK SECURITIES INC.
PIPER JAFFRAY & CO.
As Representatives (the "Representatives") of the
several Underwriters named in
Schedule I attached hereto
c/o Bear, Stearns & Co. Inc.
383 Madison Avenue
New York, New York 10179

Ladies/Gentlemen:

Dynavax Technologies Corporation, a corporation organized and existing under the laws of Delaware (the "Company"), proposes, subject to the terms and conditions stated herein, to issue and sell to the several underwriters named in Schedule I hereto (the "Underwriters") an aggregate of _____ shares (the "Firm Shares") of its common stock, par value $0.001 per share (the "Common Stock") and, for the sole purpose of covering over-allotments in connection with the sale of the Firm Shares, at the option of the Underwriters, up to an additional _____ shares (the "Additional Shares") of Common Stock. The Firm Shares and any Additional Shares purchased by the Underwriters are referred to herein as the "Shares." The Shares are more fully described in the Registration Statement and Prospectus referred to below. Bear, Stearns & Co. Inc. ("Bear Stearns") and Deutsche Bank Securities Inc. are acting as lead managers (the "Lead Managers") in connection with the offering and sale of the Shares contemplated herein (the "Offering").

The Company also proposes, subject to the terms of this agreement (this "Agreement"), the applicable rules, regulations and interpretations of the NASD (as defined below) and all other applicable laws, rules and regulations, that up to ___% of the Firm Shares (the "Directed Shares") shall be reserved for sale by the Underwriters to certain officers, directors, employees and other persons designated by the Company ("Directed Share Purchasers"). To the extent that sales of Directed Shares are not orally confirmed for purchase by Directed Share Purchasers by the end of the first day after the date of this Agreement, the Directed Shares will be offered to the public as part of the Offering.

1. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, each of the Underwriters that:

(a) The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-1 (No. 333-109965), and amendments thereto, and related preliminary prospectuses for the registration under the Securities Act of 1933, as amended (the "Securities Act"), of the Shares which registration statement, as so amended, has been declared effective by the Commission and copies of which have heretofore been delivered to the Underwriters. The registration statement, as amended at the time it became effective, including the prospectus, financial statements, schedules, exhibits and other information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A or 434(d) under the Securities Act, is hereinafter referred to as the "Registration Statement." If the Company has filed or is required pursuant to the terms hereof to file a registration statement pursuant to Rule 462(b) under the Securities Act registering additional shares of Common Stock (a "Rule 462(b) Registration Statement"), then, unless otherwise specified, any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462(b) Registration Statement. Other than a Rule 462(b) Registration Statement, which, if filed, becomes effective upon filing, no other document with respect to the Registration Statement has heretofore been filed with the Commission. All of the Shares have been registered under the Securities Act pursuant to the Registration Statement or, if any Rule 462(b) Registration Statement is filed, will be registered under the Securities Act with the filing of such Rule 462(b) Registration Statement. No stop order suspending the effectiveness of either the Registration Statement or the Rule 462(b) Registration Statement, if any, has been issued and no proceeding for that purpose has been initiated or threatened by the Commission. The Company, if required by the Securities Act and the rules and regulations of the Commission (the "Rules and Regulations"), proposes to file the Prospectus with the Commission pursuant to Rule 424(b) under the Securities Act ("Rule 424(b)"). The prospectus, in the form in which it is to be filed with the Commission pursuant to Rule 424(b), or, if the prospectus is not to be filed with the Commission pursuant to Rule 424(b), the prospectus in the form included as part of the Registration Statement at the time the Registration Statement became effective, is hereinafter referred to as the "Prospectus," except that if any revised prospectus or prospectus supplement shall be provided to the Underwriters by the Company for use in connection with the Offering which differs from the Prospectus (whether or not such revised prospectus or prospectus supplement is required to be filed by the Company pursuant to Rule 424(b)), the term "Prospectus" shall also refer to such revised prospectus or prospectus supplement, as the case may be, from and after the time it is first provided to the Underwriters for such use. Any preliminary prospectus or prospectus subject to completion included in the Registration Statement or filed with the Commission pursuant to Rule 424 under the Securities Act is hereafter called a "Preliminary Prospectus." Any reference herein to the Registration Statement, any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include any wrapper or supplement thereto prepared in connection with the distribution of Directed Shares in any jurisdiction. All references in this Agreement to the Registration Statement, the Rule 462(b) Registration Statement, a Preliminary Prospectus and the Prospectus, or any amendments or supplements to any of the foregoing, shall be deemed to include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").

(b) At the time of the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement or the effectiveness of any post-effective amendment to the Registration Statement, when the Prospectus is first filed with the Commission pursuant to Rule 424(b) or Rule 434 under the Securities Act ("Rule 434"), when any supplement to or amendment of the Prospectus is filed with the Commission and at the Closing Date and the Additional Closing Date, if any (as hereinafter respectively defined), the Registration Statement and the Prospectus and any amendments thereof and supplements thereto complied or will comply in all material respects with the applicable provisions of the Securities Act and the Rules and Regulations and did not and will not contain an untrue statement of a material fact and did not and will not omit to state any material fact required to be stated therein or necessary in order to make the statements therein (i) in the case of the Registration Statement, not misleading and (ii) in the case of the Prospectus or any related Preliminary Prospectus in light of the circumstances under which they were made, not misleading. When any Preliminary Prospectus was first filed with the Commission (whether filed as part of the registration statement for the registration of the Shares or any amendment thereto or pursuant to Rule 424(a) under the Securities Act) and when any amendment thereof or supplement thereto was first filed with the Commission, such Preliminary Prospectus and any amendments thereof and supplements thereto complied in all material respects with the applicable provisions of the Securities Act and the Rules and Regulations and did not contain an untrue statement of a material fact and did not omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. If Rule 434 is used, the Company will comply with the requirements of Rule 434 and the Prospectus shall not be "materially different," as such term is used in Rule 434, from the Prospectus included in the Registration Statement at the time it became effective. No representation and warranty is made in this subsection (b), however, with respect to any information contained in or omitted from the Registration Statement or the Prospectus or any related Preliminary Prospectus or any amendment thereof or supplement thereto in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Lead Managers specifically for use therein. The parties acknowledge and agree that such information provided by or on behalf of any Underwriter consists solely of the material included in paragraphs ___, ___ and ___ under the caption "Underwriting" in the Prospectus.

(c) Each of Ernst & Young LLP and PricewaterhouseCoopers, who have certified certain financial statements and supporting schedules and information of the Company that are included in the Registration Statement and the Prospectus, whose reports appear in the Registration Statement and the Prospectus and who have delivered the initial letters referred to in Section 6(e) hereof, are independent public accountants as required by the Securities Act and the Rules and Regulations. Except as described in the Registration Statement and the Prospectus and as preapproved in accordance with the requirements set forth in Section 10A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Ernst & Young LLP has not engaged in any "prohibited activities" (as defined in Section 10A of the Exchange Act) on behalf of the Company.

(d) Subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, except as disclosed in the Registration Statement and the Prospectus, the Company has not declared, paid or made any dividends or

other distributions of any kind on or in respect of its capital stock and there has been no material adverse change or any development involving a prospective material adverse change, whether or not arising from transactions in the ordinary course of business, in or affecting (i) the business, condition (financial or otherwise), results of operations, stockholders' equity, properties or prospects of the Company and its sole subsidiary, Dynavax Asia Pte., Ltd. ("Dynavax Asia" or the Subsidiary"), taken as a whole; (ii) the long-term debt or capital stock of the Company or its Subsidiary; or (iii) the Offering or consummation of any of the other transactions contemplated by this Agreement, the Registration Statement or the Prospectus (a "Material Adverse Change"). Since the date of the latest balance sheet presented in the Registration Statement and the Prospectus, neither the Company nor its Subsidiary has incurred or undertaken any liabilities or obligations, whether direct or indirect, liquidated or contingent, matured or unmatured, or entered into any transactions, including any acquisition or disposition of any business or asset, which are material to the Company and the Subsidiary taken as a whole, except for liabilities, obligations and transactions which are disclosed in the Registration Statement and the Prospectus.

(e) The authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus in the column headed "Actual" under the caption "Capitalization" and, after giving effect to the Offering and the other transactions contemplated by this Agreement, the Registration Statement and the Prospectus, including the conversion or exchange of Ordinary Shares of Dynavax Asia into shares of capital stock of the Company as set forth in that certain Stock Purchase Agreement and as described in the Registration Statement and the Prospectus (the "Dynavax Asia Conversion"), will be as set forth in the column headed "Pro Forma As Adjusted" under the caption "Capitalization." All of the issued and outstanding shares of capital stock of the Company are fully paid and non-assessable and have been duly and validly authorized and issued, in compliance with all applicable state, federal and foreign securities laws and not in violation of or subject to any preemptive or similar right that does or will entitle any person, upon the issuance or sale of any security, to acquire from the Company or the Subsidiary any Common Stock or other security of the Company or the Subsidiary or any security convertible into, or exercisable or exchangeable for, Common Stock or any other such security (any "Relevant Security"), except for such rights as may have been fully satisfied or waived prior to the effectiveness of the Registration Statement. All of the shares of capital stock of the Company to be issued in the Dynavax Asia Conversion will be, upon issuance, fully paid and non-assessable and duly and validly authorized and issued, in compliance with all applicable state, federal and foreign securities laws and not in violation of or subject to any preemptive or similar right that does or will entitle any person, upon the issuance or sale of any security, to acquire from the Company or the Subsidiary any Relevant Security.

(f) The Shares have been duly and validly authorized and, when delivered in accordance with this Agreement, will be duly and validly issued, fully paid and non-assessable, will have been issued in compliance with all applicable state, federal and foreign securities laws and will not have been issued in violation of or subject to any preemptive or similar right that does or will entitle any person to acquire any Relevant Security from the Company or the Subsidiary upon issuance or sale of Shares in the Offering, other than the Dynavax Asia Conversion. The Common Stock and the Shares conform to the descriptions thereof contained in the Registration Statement and the Prospectus. Except as disclosed in the Registration Statement and the Prospectus, neither the Company nor the Subsidiary has

outstanding warrants, options to purchase, or any preemptive rights or other rights to subscribe for or to purchase, or any contracts or commitments to issue or sell, any Relevant Security.

(g) Dynavax Asia is the only subsidiary of the Company within the meaning of Rule 405 under the Securities Act (subject, in the case of Dynavax Asia, to the consummation of the Dynavax Asia Conversion). Except for the Subsidiary, the Company holds no ownership or other interest, nominal or beneficial, direct or indirect, in any corporation, partnership, joint venture or other business entity. All of the issued shares of capital stock of or other ownership interests in the Subsidiary have been duly and validly authorized and issued in compliance with all applicable state, federal and foreign securities laws, and are fully paid and non-assessable and (with respect to the capital stock of Dynavax Asia, following the Dynavax Asia Conversion) are owned directly or indirectly by the Company free and clear of any lien, charge, mortgage, pledge, security interest, claim, or other encumbrance or restriction of any kind whatsoever (any "Lien").

(h) Each of the Company and the Subsidiary has been duly organized and is validly existing as a corporation, partnership or limited liability company in good standing under the laws of its jurisdiction of organization. Each of the Company and the Subsidiary has all requisite power and authority to carry on its business as it is currently being conducted and as described in the Prospectus, and to own, lease and operate its respective properties. Each of the Company and the Subsidiary is duly qualified to do business and is in good standing as a foreign corporation, partnership or limited liability company in each jurisdiction in which the character or location of its properties (owned, leased or licensed) or the nature or conduct of its business makes such qualification necessary, except for those failures to be so qualified or in good standing which (individually and in the aggregate) could not reasonably be expected to have a material adverse effect on (i) the business, condition (financial or otherwise), results of operations, stockholders' equity, properties or prospects of the Company and the Subsidiary, taken as a whole; (ii) the long-term debt or capital stock of the Company or the Subsidiary; or (iii) the Offering or consummation of any of the other transactions contemplated by this Agreement, the Registration Statement or the Prospectus (any such effect being a "Material Adverse Effect").

(i) Each of the Company and the Subsidiary has all necessary consents, approvals, authorizations, orders, registrations, qualifications, licenses, filings and permits of, with and from all judicial, regulatory and other legal or governmental agencies and bodies and all third parties, foreign and domestic (collectively, the "Consents"), to own, lease and operate its properties and conduct its business as it is now being conducted and as disclosed in the Registration Statement and the Prospectus, and each such Consent is valid and in full force and effect, and neither the Company nor the Subsidiary has received notice of any investigation or proceedings which results in or, if decided adversely to the Company or the Subsidiary, could reasonably be expected to result in, the revocation of, or imposition of a materially burdensome restriction on, any Consent. Each of the Company and the Subsidiary is in compliance with all applicable laws, rules, regulations, ordinances, directives, judgments, decrees and orders, foreign and domestic, except where failure to be in compliance could not reasonably be expected to have a Material Adverse Effect. No Consent contains a materially burdensome restriction not adequately disclosed in the Registration Statement and the Prospectus.

(j) The Company has full right, power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated by this Agreement, the Registration Statement and the Prospectus. This Agreement and the transactions contemplated by this Agreement, the Registration Statement and the Prospectus have been duly and validly authorized by the Company. This Agreement has been duly and validly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' 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).

(k) The execution, delivery, and performance of this Agreement and consummation of the transactions contemplated by this Agreement, the Registration Statement and the Prospectus do not and will not (i) conflict with, require consent under or result in a breach of any of the terms and provisions of, or constitute a default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or the Subsidiary pursuant to, any indenture, mortgage, deed of trust, loan agreement or other agreement, instrument, franchise, license or permit to which the Company or the Subsidiary is a party or by which the Company or the Subsidiary or their respective properties, operations or assets may be bound or (ii) violate or conflict with any provision of the certificate or articles of incorporation, by-laws or other organizational documents of the Company or the Subsidiary, or (iii) violate or conflict with any law, rule, regulation, ordinance, directive, judgment, decree or order of any judicial, regulatory or other legal or governmental agency or body, domestic or foreign, except (in the case of clauses (i) and (iii) above) as could not reasonably be expected to have a Material Adverse Effect.

(l) No Consent of, with or from any judicial, regulatory or other legal or governmental agency or body or any third party, foreign or domestic, is required for the execution, delivery and performance of this Agreement or consummation of the transactions contemplated by this Agreement, the Registration Statement and the Prospectus, including the issuance, sale and delivery of the Shares to be issued, sold and delivered hereunder, except the registration under the Securities Act of the Shares, which has become effective, and such Consents as may be required under state securities or blue sky laws or the by-laws and rules of the National Association of Securities Dealers, Inc. (the "NASD") in connection with the purchase and distribution of the Shares by the Underwriters, each of which has been obtained and is in full force and effect.

(m) Except as disclosed in the Registration Statement and the Prospectus, there is no judicial, regulatory, arbitral or other legal or governmental proceeding or other litigation or arbitration, domestic or foreign, pending to which the Company or the Subsidiary is a party or of which any property, operations or assets of the Company or the Subsidiary is the subject which, individually or in the aggregate, if determined adversely to the Company or the Subsidiary, could reasonably be expected to have a Material Adverse Effect; to the Company's knowledge, no such proceeding, litigation or arbitration is threatened or contemplated; and the defense of all such proceedings, litigation and arbitration against or

involving the Company or the Subsidiary could not reasonably be expected to have a Material Adverse Effect.

(n) The financial statements and pro forma data, including the notes thereto, and the supporting schedules included in the Registration Statement and the Prospectus present fairly in all material respects the financial position as of the dates indicated and the cash flows and results of operations for the periods specified of the Company in the Registration Statement and the Prospectus; except as otherwise stated in the Registration Statement and the Prospectus, said financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis throughout the periods involved; and the supporting schedules included in the Registration Statement and the Prospectus present fairly in all material respects the information required to be stated therein. No other financial statements or supporting schedules are required to be included in the Registration Statement. The other financial and statistical information included in the Registration Statement and the Prospectus present fairly in all material respects the information included therein and have been prepared on a basis consistent with that of the financial statements that are included in the Registration Statement and the Prospectus and the books and records of the respective entities presented therein.

(o) There are no pro forma or as adjusted financial statements which are required to be included in the Registration Statement and the Prospectus in accordance with Regulation S-X which have not been included as so required.

(p) The statistical, industry-related and market-related data included in the Registration Statement and the Prospectus are based on or derived from sources which the Company reasonably and in good faith believes are reliable and accurate, and such data agree with the sources from which they are derived.

(q) The Common Stock is registered pursuant to Section 12(g) of the Exchange Act, the Shares have been approved for quotation on the NASDAQ (as defined in Section 11(b) below), subject to notice of issuance, 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 the quotation of the Shares on the NASDAQ, nor has the Company received any notification that the Commission or the NASDAQ is contemplating terminating such registration or quotation.

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

(s) Neither the Company nor any of its affiliates (within the meaning of Rule 144 under the Securities Act and including Dynavax Asia) (each, an "Affiliate" and

collectively, the "Affiliates") has taken, directly or indirectly, any action which constitutes or is designed to cause or result in, or which could reasonably be expected to constitute, cause or result in, the stabilization or manipulation of the price of any security to facilitate the sale or resale of the Shares.

(t) Neither the Company nor any of its Affiliates has, prior to the date hereof, made any offer or sale of any securities which could be "integrated" for purposes of the Securities Act or the Rules and Regulations with the offer and sale of the Shares pursuant to the Registration Statement. Except as disclosed in the Registration Statement and the Prospectus, neither the Company nor any Affiliate has sold or issued any Relevant Security during the six-month period preceding the date of the Prospectus, including but not limited to any sales pursuant to Rule 144A or Regulation D or S under the Securities Act, other than shares of Common Stock issued pursuant to employee benefit plans, qualified stock option plans or the employee compensation plans or pursuant to outstanding options, rights or warrants as described in the Registration Statement and the Prospectus.

(u) Except as disclosed in the Registration Statement and the Prospectus, no holder of any Relevant Security has any rights to require registration of any Relevant Security as part or on account of, or otherwise in connection with, the offer and sale of the Shares contemplated hereby, and any such rights so disclosed have either been fully complied with by the Company or effectively waived by the holders thereof, and any such waivers remain in full force and effect.

(v) The Company is not and, at all times up to and including consummation of the transactions contemplated by this Agreement, the Registration Statement and the Prospectus, and after giving effect to application of the net proceeds of the Offering, will not be, subject to registration as an "investment company" under the Investment Company Act of 1940, as amended (the "1940 Act"), and is not and will not be an entity "controlled" by an "investment company" within the meaning of the 1940 Act.

(w) There are no contracts or other documents (including, without limitation, any voting agreement), which are required to be described in the Registration Statement and the Prospectus or filed as exhibits to the Registration Statement by the Securities Act or the Rules and Regulations and which have not been so described or filed.

(x) No relationship, direct or indirect, exists between or among any of the Company or any Affiliate, on the one hand, and any director, officer, stockholder, customer or supplier of the Company or any Affiliate, on the other hand, which is required by the Securities Act or the Rules and Regulations to be described in the Registration Statement or the Prospectus which is not so described and described as required. There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of their respective family members, except as disclosed in the Registration Statement and the Prospectus. The Company has not, in violation of the Sarbanes-Oxley Act, directly or indirectly, including through a Subsidiary, extended or maintained credit, arranged for the extension of credit, or renewed an extension of credit, in the form of a personal loan to or for any director or executive officer of the Company.

(y) Except as disclosed in the Registration Statement and the Prospectus, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with the transactions contemplated by this Agreement, the Registration Statement and the Prospectus or, to the Company's knowledge, any arrangements, agreements, understandings, payments or issuance with respect to the Company or any of its officers, directors, stockholders, partners, employees, Subsidiary or Affiliates that may affect the Underwriters' compensation as determined by the NASD. No affiliation or association between any NASD member and any of the Company's officers, directors or 5% or greater securityholders exists except as set forth in the Registration Statement or the Prospectus.

(z) Each of the Company and the Subsidiary owns or leases all such properties as are necessary to the conduct of its business as presently operated and as proposed to be operated as described in the Registration Statement and the Prospectus. The Company and the Subsidiary have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all Liens except such as are described in the Registration Statement and the Prospectus or such as do not (individually or in the aggregate) materially affect the value of such property or materially interfere with the use made or proposed to be made of such property by the Company and the Subsidiary; and any real property and buildings held under lease or sublease by the Company and the Subsidiary are held by them under valid, subsisting and enforceable leases with such exceptions as are not material to, and do not materially interfere with, the use made and proposed to be made of such property and buildings by the Company and the Subsidiary. Neither the Company nor the Subsidiary has received any notice of any claim adverse to its ownership of any real or personal property or of any claim against the continued possession of any real property, whether owned or held under lease or sublease by the Company or the Subsidiary.

(aa) Each of the Company and the Subsidiary (i) owns or possesses adequate right to use all patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights, licenses, formulae, customer lists, and know-how and other intellectual property (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures, "Intellectual Property") necessary for the conduct of their respective businesses as being conducted and as described in the Registration Statement and Prospectus, and (ii) except as disclosed in [Section _____, paragraph ___ of the Prospectus], have no reason to believe that the conduct of their respective businesses does or will conflict with, and have not received any notice of any claim of conflict with, any such right of others. All material technical information developed by and belonging to the Company or the Subsidiary which has not been patented has been kept confidential. Except as disclosed in [Section ___, paragraph ___ of the Prospectus], there is no infringement by third parties of any such Intellectual Property; there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the Company's or the Subsidiary's rights in or to any such Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such claim; and there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or the Subsidiary infringes or otherwise violates any patent, trademark,

copyright, trade secret or other proprietary rights of others, and the Company is unaware of any other fact which would form a reasonable basis for any such claim.

(bb) The Company and the Subsidiary maintain or are covered by insurance in such amounts and covering such risks as the Company reasonably considers adequate for the conduct of its business and the value of its properties and as is customary for companies engaged in similar businesses in similar industries, all of which insurance is in full force and effect, except where the failure to maintain such insurance could not reasonably be expected to have a Material Adverse Effect. There are no material claims by the Company or the Subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause. The Company has no reason to believe that it will not be able to renew its existing insurance as and when such coverage expires or will be able to obtain replacement insurance adequate for the conduct of the business and the value of its properties at a cost that could not reasonably be expected to have a Material Adverse Effect.

(cc) The Company has in effect insurance covering the Company, its directors, officers and the Underwriters for liabilities or losses arising in connection with this Offering, including, without limitation, liabilities or losses arising under the Securities Act, the Exchange Act, the Rules and Regulations and applicable foreign securities laws, which the Company reasonably considers adequate for such purposes.

(dd) Each of the Company and the Subsidiary has accurately prepared and timely filed all federal, state, foreign and other tax returns that are required to be filed by it and has paid or made provision for the payment of all taxes, assessments, governmental or other similar charges, including without limitation, all sales and use taxes and all taxes which the Company or the Subsidiary is obligated to withhold from amounts owing to employees, creditors and third parties, with respect to the periods covered by such tax returns (whether or not such amounts are shown as due on any tax return). No deficiency assessment with respect to a proposed adjustment of the Company's or the Subsidiary' federal, state, local or foreign taxes is pending or, to the Company's knowledge, threatened. The accruals and reserves on the books and records of the Company and the Subsidiary in respect of tax liabilities for any taxable period not finally determined have been made in compliance with U.S. generally accepted accounting principles for any such period and, since December 31, 2002, the Company and the Subsidiary have not incurred any liability for taxes other than in the ordinary course of its business. There is no tax lien (other than for current taxes not yet due and payable), whether imposed by any federal, state, foreign or other taxing authority, outstanding against the assets, properties or business of the Company or the Subsidiary.

(ee) No labor disturbance by the employees of the Company or the Subsidiary exists or, to the Company's knowledge, is imminent and the Company is not aware of any existing or imminent labor disturbances by the employees of any of its or the Subsidiary's principal suppliers, manufacturers', customers or contractors, which, in either case (individually or in the aggregate), could reasonably be expected to have a Material Adverse Effect.

(ff) No "prohibited transaction" (as defined in either Section 406 of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and

published interpretations thereunder ("ERISA") or Section 4975 of the Internal Revenue Code of 1986, as amended from time to time (the "Code")), "accumulated funding deficiency" (as defined in Section 302 of ERISA) or other event of the kind described in Section 4043(b) of ERISA (other than events with respect to which the 30-day notice requirement under Section 4043 of ERISA has been waived) has occurred with respect to any employee benefit plan for which the Company or the Subsidiary would have any liability which could (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect; each employee benefit plan for which the Company or the Subsidiary would have any liability is in compliance in all material respects with applicable law, including (without limitation) ERISA and the Code; the Company has not incurred and does not expect to incur liability under Title IV of ERISA with respect to the termination of, or withdrawal from any "pension plan"; and each plan for which the Company would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or by failure to act, which could cause the loss of such qualification.

(gg) There has been no storage, generation, transportation, handling, treatment, disposal, discharge, emission or other release of any kind of toxic or other wastes or other hazardous substances by, due to, or caused by the Company or the Subsidiary (or, to the Company's knowledge, any other entity for whose acts or omissions the Company is or may be liable) upon any other property now or previously owned or leased by the Company or the Subsidiary, or upon any other property, which would be a violation of or give rise to any liability under any applicable law, rule, regulation, order, judgment, decree or permit relating to pollution or protection of human health and the environment ("Environmental Law"), except for violations and liabilities that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There has been no disposal discharge, emission or other release of any kind onto such property or into the environment surrounding such property of any toxic or other wastes or other hazardous substances with respect to which the Company or the Subsidiary has knowledge. Neither the Company nor the Subsidiary has agreed to assume, undertake or provide indemnification for any liability of any other person under any Environmental Law, including any obligation for cleanup or remedial action, except as would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect. There is no pending or, to the Company's knowledge, threatened administrative, regulatory or judicial action, claim or notice of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or the Subsidiary.

(hh) Neither the Company, the Subsidiary nor, to the Company's knowledge, any of its employees or agents has at any time during the last five years (i) made any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law, or (ii) made any payment to any federal or state governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or permitted by the laws of the United States of any jurisdiction thereof.

(ii) Neither the Company nor the Subsidiary (i) is in violation of its certificate or articles of incorporation, by-laws or other organizational documents, (ii) is in default under, and no event has occurred which, with notice or lapse of time or both, would constitute a default under or result in the creation or imposition of any lien, charge or encumbrance upon any of its property or assets pursuant to, any indenture, mortgage, deed of

trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets is subject or (iii) is in violation in any respect of any law, rule, regulation, ordinance, directive, judgment, decree or order of any judicial, regulatory or other legal or governmental agency or body, foreign or domestic, except (in the case clauses (ii) and (iii) above) violations or defaults that could not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect and except (in the case of clause (ii) alone) for any lien, charge or encumbrance disclosed in the Registration Statement and the Prospectus.

(jj) The Registration Statement, the Prospectus and any Preliminary Prospectus comply in all material respects, and any further amendments or supplements thereto will comply in all material respects, with all applicable laws, rules, regulations, ordinances, directives, judgments, decrees and orders of foreign jurisdictions in which Directed Shares are offered or the Prospectus or any Preliminary Prospectus, as amended or supplemented, if applicable, may be distributed in connection with therewith; and no Consent of, from or with any judicial, regulatory or other legal or governmental agency or body, other than such as have been obtained, is necessary under the any such law, rule, regulation, ordinance, directive, judgment, decree or order.

(kk) The Company has not offered, or caused the Underwriters to offer, Directed Shares to any person with the intention of unlawfully influencing (i) a customer or supplier of the Company or the Subsidiary to alter the customer's or supplier's level or type of business with the Company or the Subsidiary or (ii) a trade journalist or publication to write or publish favorable information about the Company, the Subsidiary or its products.

(ll) The Company's board of directors has validly appointed an audit committee whose composition satisfies the requirements of the Rules and Regulations and current Rule 4350(d)(2) of the NASD Rules. The audit committee has adopted a charter that satisfies the requirements of the Rules and Regulations, and current Rule 4350(d)(1) of the rules of the NASD.

(mm) The Company's auditors and the audit committee of the board of directors of the Company (or persons fulfilling the equivalent function) are not aware of (i) any significant deficiency in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data nor any material weaknesses in internal controls; (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls.

(nn) The Company is in compliance with applicable provisions of the Sarbanes-Oxley Act that are effective and is actively taking steps to ensure that it will be in compliance with other applicable provisions of the Sarbanes-Oxley Act upon the effectiveness of such provisions.

(oo) Except as disclosed in the Registration and the Prospectus, there are no material outstanding guarantees of the Company or the Subsidiary.

Any certificate signed by or on behalf of the Company and delivered to the Representatives or to counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

2. Purchase, Sale and Delivery of the Shares.

(a) On the basis of the representations, warranties, covenants and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to sell to each Underwriter and each Underwriter, severally and not jointly, agrees to purchase from the Company, at a purchase price per share of $_____, the number of Firm Shares set forth opposite the respective name on Schedule I hereto together with any additional number of Shares which such Underwriter may become obligated to purchase pursuant to the provisions of Section 9 hereof.

(b) Payment of the purchase price for, and delivery of certificates representing, the Firm Shares shall be made at the office of Latham & Watkins LLP ("Underwriters' Counsel"), 135 Commonwealth Drive, Menlo Park, California, or at such other place as shall be agreed upon by the Lead Managers and the Company, at 10:00 A.M., New York City time, on the third or (as permitted under Rule 15c6-1 under the Exchange Act) fourth business day (unless postponed in accordance with the provisions of Section 9 hereof) following the date of the effectiveness of the Registration Statement (or, if the Company has elected to rely upon Rule 430A under the Securities Act, the third or (as permitted under Rule 15c6-1 under the Exchange Act) fourth business day after the determination of the public offering price of the Shares), or such other time not later than ten business days after such date as shall be agreed upon by the Lead Managers and the Company (such time and date of payment and delivery being herein called the "Closing Date").

Payment of the purchase price for the Firm Shares shall be made by wire transfer in same day funds to the Company upon delivery of certificates for the Firm Shares to the Representatives through the facilities of The Depository Trust Company for the respective accounts of the several Underwriters. Certificates for the Firm Shares shall be registered in such name or names and shall be in such denominations as the Lead Managers may request at least two business days before the Closing Date. The Company will permit the Lead Managers to examine and package such certificates for delivery at least one full business day prior to the Closing Date.

(c) In addition, on the basis of the representations, warranties, covenants and agreements herein contained, but subject to the terms and conditions herein set forth, the Company hereby grants to the Underwriters, acting severally and not jointly, the option to purchase up to _____ Additional Shares at the same purchase price per share to be paid by the Underwriters for the Firm Shares as set forth in Section 2(a) above, for the sole purpose of covering over-allotments in the sale of Firm Shares by the Underwriters. This option may be exercised at any time and from time to time, in whole or in part on one or more occasions, on or before the thirtieth day following the date of the Prospectus, by written notice from the Lead Managers to the Company. Such notice shall set forth the aggregate number of Additional Shares as to which the option is being exercised and the date and time, as reasonably determined by Bear Stearns, when the Additional Shares are to be delivered (any such date and time being

herein sometimes referred to as the "Additional Closing Date"); provided, however, that no Additional Closing Date shall occur earlier than the Closing Date or earlier than the second full business day after the date on which the option shall have been exercised nor later than the eighth full business day after the date on which the option shall have been exercised (unless such time and date are postponed in accordance with the provisions of Section 9 hereof). Upon any exercise of the option as to all or any portion of the Additional Shares, each Underwriter, acting severally and not jointly, agrees to purchase from the Company the number of Additional Shares that bears the same proportion of the total number of Additional Shares then being purchased as the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto (or such number increased as set forth in Section 9 hereof) bears to the total number of Firm Shares that the Underwriters have agreed to purchased hereunder, subject, however, to such adjustments to eliminate fractional shares as Bear Stearns in its sole discretion shall make.

(d) Payment of the purchase price for, and delivery of certificates representing, the Additional Shares shall be made at the office of Underwriters' Counsel, or at such other place as shall be agreed upon by the Lead Managers and the Company, at 10:00 A.M., New York City time, on the Additional Closing Date (unless postponed in accordance with the provisions of Section 9 hereof), or such other time as shall be agreed upon by Bear Stearns and the Company.

Payment of the purchase price for the Additional Shares shall be made by wire transfer in same day funds to the Company upon delivery of certificates for the Additional Shares to the Representatives through the facilities of The Depository Trust Company for the respective accounts of the several Underwriters. Certificates for the Additional Shares shall be registered in such name or names and shall be in such denominations as the Lead Managers may request at least two business days before the Additional Closing Date. The Company will permit the Lead Managers to examine and package such certificates for delivery at least one full business day prior to the Additional Closing Date.

3. Offering. Upon authorization of the release of the Firm Shares by the Lead Managers, the Underwriters propose to offer the Shares for sale to the public upon the terms and conditions set forth in the Prospectus.

4. Covenants of the Company. The Company covenants and agrees with the Underwriters that:

(a) The Registration Statement and any amendments thereto have been declared effective, and if Rule 430A is used or the filing of the Prospectus is otherwise required under Rule 424(b) or Rule 434, the Company will file the Prospectus (properly completed if Rule 430A has been used) pursuant to Rule 424(b) within the prescribed time period and will provide evidence satisfactory to the Lead Managers of such timely filing. If the Company elects to rely on Rule 434, the Company will prepare and file a term sheet that complies with the requirements of Rule 434, and the Prospectus shall not be "materially different" (as such term is used in Rule 434) from the Prospectus included in the Registration Statement at the time it became effective.

The Company will notify the Lead Managers immediately (and, if requested by the Lead Managers, will confirm such notice in writing) (i) when the Registration Statement and

any amendments thereto become effective, (ii) of any request by the Commission for any amendment of or supplement to the Registration Statement or the Prospectus or for any additional information, (iii) of the Company's intention to file or prepare any supplement or amendment to the Registration Statement or the Prospectus, (iv) of the mailing or the delivery to the Commission for filing of any amendment of or supplement to the Registration Statement or the Prospectus, including but not limited to a filing under Rule 462(b) under the Securities Act, (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of the initiation, or the threatening, of any proceedings therefor, it being understood that the Company shall make every reasonable effort to avoid the issuance of any such stop order, (vi) of the receipt of any comments from the Commission, and (vii) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for that purpose. If the Commission shall propose or enter a stop order at any time, the Company will make every reasonable effort to prevent the issuance of any such stop order and, if issued, to obtain the lifting of such order as soon as possible. The Company will not file any amendment to the Registration Statement or any amendment of or supplement to the Prospectus (including the prospectus required to be filed pursuant to Rule 424(b) or Rule 434) that differs from the prospectus on file at the time of the effectiveness of the Registration Statement to which the Lead Managers shall object in writing after being timely furnished in advance a copy thereof. The Company will provide the Lead Managers with copies of all such amendments, filings and other documents a sufficient time prior to any filing or other publication thereof to permit the Lead Managers a reasonable opportunity to review and comment thereon.

(b) The Company shall comply with the Securities Act to permit completion of the distribution as contemplated in this Agreement, the Registration Statement and the Prospectus. If at any time when a prospectus relating to the Shares is required to be delivered under the Securities Act in connection with the sales of Shares, any event shall have occurred as a result of which the Prospectus as then amended or supplemented would, in the judgment of the Underwriters or the Company, include an 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 existing at the time of delivery to the purchaser, not misleading, or if to comply with the Securities Act or the Rules and Regulations it shall be necessary at any time to amend or supplement the Prospectus or Registration Statement, the Company will notify the Lead Managers promptly and prepare and file with the Commission, subject to Section 4(a) hereof, an appropriate amendment or supplement (in form and substance satisfactory to the Lead Managers) which will correct such statement or omission and will use all reasonable efforts to have any amendment to the Registration Statement declared effective as soon as possible.

(c) The Company will promptly deliver to each of the Representatives and Underwriters' Counsel a signed copy of the Registration Statement, as initially filed and all amendments thereto, including all consents and exhibits filed therewith, and will maintain in the Company's files manually signed copies of such documents for at least five years after the date of filing. The Company will promptly deliver to each of the Underwriters such number of copies of any Preliminary Prospectus, the Prospectus, the Registration Statement, and all amendments of and supplements to such documents, if any, as the Representatives may reasonably request. On the business day immediately following the date of this Agreement and from time to time

thereafter, the Company will furnish the Underwriters with copies of the Prospectus in New York City in such quantities as the Representatives may reasonably request.

(d) The Company consents to the use and delivery of the Preliminary Prospectus by the Underwriters in accordance with Rule 430 and Section 5(b) of the Securities Act.

(e) The Company will use all reasonable efforts, in cooperation with the Lead Managers, at or prior to the time of effectiveness of the Registration Statement, to qualify the Shares for offering and sale under the securities laws relating to the offering or sale of the Shares of such jurisdictions, domestic or foreign, as the Lead Managers may designate and to maintain such qualification in effect for so long as required for the distribution thereof; except that in no event shall the Company be obligated in connection therewith to qualify as a foreign corporation or to execute a general consent to service of process.

(f) Prior to the Closing Date, the Company will furnish the Underwriters as soon as they have been prepared by or are available to the Company a copy of any unaudited quarterly financial statements of the Company for any period subsequent to the period covered by the most recent financial statements in the Registration Statement and the Prospectus.

(g) The Company will make generally available to its security holders and to the Underwriters as soon as practicable, but in any event not later than twelve months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Securities Act), an earnings statement of the Company and the Subsidiary (which need not be audited) complying with Section 11(a) of the Securities Act and the Rules and Regulations (including, at the option of the Company, Rule 158).

(h) During the period of 180 days from the date of the Prospectus, without the prior written consent of the Lead Managers the Company (i) will not, directly or indirectly, issue, offer, sell, agree to issue, offer or sell short, solicit offers to purchase, grant any call option, warrant or other right to purchase, purchase any put option or other right to sell, pledge, borrow or otherwise dispose of any Relevant Security, or make any announcement of any of the foregoing, (ii) will not establish or increase any "put equivalent position" or liquidate or decrease any "call equivalent position" (in each case within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder) with respect to any Relevant Security, and (iii) will not otherwise enter into any swap, derivative or other transaction or arrangement that transfers to another, in whole or in part, any economic consequence of ownership of a Relevant Security, whether or not such transaction is to be settled by delivery of Relevant Securities, other securities, cash or other consideration; and the Company will obtain an undertaking in substantially the form of Annex II hereto from each of its stockholders (including each stockholder receiving shares of capital stock of the Company in the Dynavax Asia Conversion) not to engage in any of the aforementioned transactions on their own behalf, other than the sale of Shares as contemplated by this Agreement and the Company's issuance of Common Stock upon (i) the conversion or exchange of convertible or exchangeable securities outstanding on the date hereof; (ii) the exercise of currently outstanding options; (iii) the exercise of currently outstanding warrants; and (iv) the grant and exercise of options under, or the

issuance and sale of shares pursuant to, employee stock option plans in effect on the date hereof, each as described in the Registration Statement and the Prospectus. The Company will not file a registration statement under the Securities Act in connection with any transaction by the Company or any person that is prohibited pursuant to the foregoing, except for registration statements on Form S-8 relating to employee benefit plans or Form S-4 relating to corporate reorganizations or other transactions under Rule 145.

(i) To the extent not otherwise available on EDGAR, during the period of five years from the effective date of the Registration Statement, the Company will furnish to the Representatives copies of all reports or other communications (financial or other) furnished to its security holders or from time to time published or publicly disseminated by the Company, and will deliver to the Representatives (i) as soon as they are available, copies of any reports, financial statements and proxy or information statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed; and (ii) such additional information concerning the business and financial condition of the Company as the Representatives may from time to time reasonably request (such financial information to be on a consolidated basis to the extent the accounts of the Company and the Subsidiary are consolidated in reports furnished to its security holders generally or to the Commission); provided that, prior to its public dissemination by the Company, the Representatives agree to keep such information confidential (provided the Company has identified such information as such) (and to cause their employees and agents to do the same).

(j) The Company will apply the net proceeds from the sale of the Shares as set forth under the caption "Use of Proceeds" in the Prospectus and shall not, during the three-year period beginning on the date of the Prospectus, invest or otherwise use the proceeds in such a manner that would require the Company or the Subsidiary to register as an "investment company" under the 1940 Act.

(j) The Company will use all reasonable efforts to list the Shares for quotation on the NASDAQ.

(k) The Company, during the period when the Prospectus is required to be delivered under the Securities Act, will file all documents required to be filed with the Commission pursuant to the Securities Act and the Rules and Regulations within the time periods required thereby.

(l) The Company will use all reasonable efforts to do and perform all things required to be done or performed under this Agreement by the Company prior to the Closing Date or the Additional Date, as the case may be, and to satisfy all conditions precedent to the delivery of the Firm Shares and the Additional Shares.

(m) The Company will comply with all applicable securities and other applicable laws, rules and regulations in each foreign jurisdiction in which the Directed Shares are offered.

(n) The Company hereby agrees that it will ensure that the Directed Shares will be restricted as required by the NASD or NASD rules from sale, transfer,

assignment, pledge or hypothecation for a period of three months following the date of this Agreement. At the request of the Lead Managers, the Company will direct the transfer agent to place a stop transfer restriction upon such securities for such period of time.

(o) The Company will not take, and will cause its Affiliates not to take, directly or indirectly, any action which constitutes or is designed to cause or result in, or which could reasonably be expected to constitute, cause or result in, the stabilization or manipulation of the price of any security to facilitate the sale or resale of the Shares.

(p) The Company will establish and comply with the "disclosure controls and procedures" (as defined in Rule 13a-15 of the Exchange Act) at the time the Company becomes subject to such requirements.

(q) The Company will comply with any changes to audit committee composition requirements under the Rules and Regulations and the NASD Rules at the time the Company becomes subject to such requirements.

5. Payment of Expenses. Whether or not the transactions contemplated by this Agreement, the Registration Statement and the Prospectus are consummated or this Agreement is terminated, the Company hereby agrees to pay all costs and expenses incident to the performance of its obligations hereunder, including the following: (i) all expenses in connection with the preparation, printing and filing of the Registration Statement, any Preliminary Prospectus and the Prospectus and any and all amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Shares under the Securities Act and the Offering; (iii) the cost of producing this Agreement and any agreement among Underwriters, blue sky survey, closing documents and other instruments, agreements or documents (including any compilations thereof) in connection with the Offering; (iv) all expenses in connection with the qualification of the Shares for offering and sale under state or foreign securities or blue sky laws as provided in Section 4(e) hereof and any offering of Directed Shares in outside the United States), including the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification or offering and in connection with any blue sky survey; (v) the filing fees incident to, and the reasonable fees and disbursements of counsel for the Underwriters in connection with, securing any required review by the NASD of the terms of the Offering; (vi) all fees and expenses in connection with listing the Shares on the NASDAQ; (vii) all travel expenses of the Company's officers and employees and any other expense of the Company incurred in connection with attending or hosting meetings with prospective purchasers of the Shares; (viii) any stock transfer taxes incurred in connection with this Agreement or the Offering; and (ix) any reasonable expenses (including, without limitation, legal expenses) incurred by the Underwriters in connection with any release, or any effort by the Company or any Directed Share Purchaser to seek the release, of any of the Directed Shares from the restrictions referred to in Section 4(n) above. The Company also will pay or cause to be paid: (x) the cost of preparing stock certificates representing the Shares; (y) the cost and charges of any transfer agent or registrar for the Shares; and (z) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section 5. It is understood, however, that except as provided in this Section, and Sections 7, 8 and 11 hereof, the Underwriters will pay all of their

own costs and expenses, including the fees of their counsel and stock transfer taxes on resale of any of the Shares by them. Notwithstanding anything to the contrary in this Section 5, in the event that this Agreement is terminated pursuant to Section 6 or 11(b) hereof, or subsequent to a Material Adverse Change, the Company will pay all reasonable out-of-pocket expenses of the Underwriters (including but not limited to reasonable fees and disbursements of counsel to the Underwriters) incurred in connection herewith.

6. Conditions of Underwriters' Obligations. The obligations of the Underwriters to purchase and pay for the Firm Shares and the Additional Shares, as provided herein, shall be subject to the accuracy of the representations and warranties of the Company herein contained, as of the date hereof and as of the Closing Date (for purposes of this Section 6 "Closing Date" shall refer to the Closing Date for the Firm Shares and any Additional Closing Date, if different, for the Additional Shares), to the absence from any certificates, opinions, written statements or letters furnished to the Representatives or to Underwriters' Counsel pursuant to this Section 6 of any misstatement or omission, to the performance by the Company of its obligations hereunder, and to each of the following additional conditions:

(a) The Registration Statement shall have become effective and all necessary regulatory or stock exchange approvals shall have been received not later than [if pricing pursuant to Rule 430A: 5:30 P.M., New York time, on the date of this Agreement] [if pricing pursuant to a pricing amendment: 12:00 P.M., New York time on the date an amendment to the Registration Statement containing the public offering price has been filed with the Commission], or at such later time and date as shall have been consented to in writing by the Lead Managers; if the Company shall have elected to rely upon Rule 430A or Rule 434 under the Securities Act, the Prospectus shall have been filed with the Commission in a timely fashion in accordance with Section 4(a) hereof and a form of the Prospectus containing information relating to the description of the Shares and the method of distribution and similar matters shall have been filed with the Commission pursuant to Rule 424(b) within the applicable time period; and, at or prior to the Closing Date no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereof shall have been issued and no proceedings therefor shall have been initiated or threatened by the Commission.

(b) At the Closing Date, the Representatives shall have received the written opinion of Morrison & Foerster, counsel for the Company, dated the Closing Date addressed to the Underwriters in the form attached hereto as Annex I and the written opinion of counsel in Singapore for the Company and its Subsidiary in form and substance reasonably satisfactory to the Representatives.

(c) All proceedings taken in connection with the sale of the Firm Shares and the Additional Shares as herein contemplated shall be satisfactory in form and substance to the Lead Managers and to Underwriters' Counsel, and the Underwriters shall have received from Underwriters' Counsel a written opinion, dated as of the Closing Date, with respect to the issuance and sale of the Shares, the Registration Statement and the Prospectus and such other related matters as the Lead Managers may require, and the Company shall have furnished to Underwriters' Counsel such documents as they may reasonably request for the purpose of enabling them to pass upon such matters.

(d) At the Closing Date, the Representatives shall have received a certificate of the Chief Executive Officer and Chief Financial Officer of the Company, dated the Closing Date to the effect that (i) the condition set forth in subsection (a) of this Section 6 has been satisfied, (ii) as of the date hereof and as of the Closing Date, the representations and warranties of the Company set forth in Section 1 hereof are accurate, (iii) as of the Closing Date all agreements, conditions and obligations of the Company to be performed or complied with hereunder on or prior thereto have been performed or complied with, (iv) the Company and the Subsidiary have not sustained any material loss or interference with their respective businesses or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding, (v) no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereof has been issued and no proceedings therefor have been initiated or threatened by the Commission, (vi) there are no pro forma or as adjusted financial statements that are required to be included in the Registration Statement and the Prospectus pursuant to the Rules and Regulations that have not been included as required and (vii) subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus there has not been any Material Adverse Change.

(e) At the time this Agreement is executed and at the Closing Date, the Representatives shall have received comfort letters from each of Ernst & Young LLP and PricewaterhouseCoopers and dated, respectively, as of the date of this Agreement and as of the Closing Date addressed to the Underwriters and in form and substance satisfactory to the Underwriters and Underwriters' Counsel.

(f) Subsequent to the execution and delivery of this Agreement or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Prospectus (exclusive of any supplement thereto), there shall not have been any change in the capital stock or long-term debt of the Company or the Subsidiary or any change or development involving a change, whether or not arising from transactions in the ordinary course of business, in the business, condition (financial or otherwise), results of operations, stockholders' equity, properties or prospects of the Company and the Subsidiary, taken as a whole, including but not limited to the occurrence of any fire, flood, storm, explosion, accident or other calamity at any of the properties owned or leased by the Company or the Subsidiary, the effect of which, in any such case described above, is, in the judgment of the Lead Managers, so material and adverse as to make it impracticable or inadvisable to proceed with the Offering on the terms and in the manner contemplated in the Prospectus (exclusive of any supplement).

(g) You shall have received a duly executed lock-up agreement from each stockholder of the Company (including each stockholder receiving shares of capital stock of the Company in the Dynavax Asia Conversion), in each case substantially in the form attached hereto as Annex II.

(h) At the Closing Date, the Shares shall have been approved for quotation on the NASDAQ.

(i) At the Closing Date, the NASD shall have confirmed that it has not raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

(j) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date, prevent the issuance or sale of the Shares; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date, prevent the issuance or sale of the Shares.

(k) The Underwriters shall have received from Underwriters' Counsel a blue sky memorandum, dated as of the Closing Date.

(l) The Company shall have furnished the Underwriters and Underwriters' Counsel with such other certificates, opinions or other documents as they may have reasonably requested, including certificates of the Chief Executive Officer and Chief Financial officer of the Company with respect to certain financial matters.

If any of the conditions specified in this Section 6 shall not have been fulfilled when and as required by this Agreement, or if any of the certificates, opinions, written statements or letters furnished to the Representatives or to Underwriters' Counsel pursuant to this Section 6 shall not be satisfactory in form and substance to the Lead Managers and to Underwriters' Counsel, all obligations of the Underwriters hereunder may be cancelled by the Lead Managers at, or at any time prior to, the Closing Date and the obligations of the Underwriters to purchase the Additional Shares may be cancelled by the Lead Managers at, or at any time prior to, the Additional Closing Date. Notice of such cancellation shall be given to the Company in writing, or by telephone. Any such telephone notice shall be confirmed promptly thereafter in writing.

7. Indemnification.

(a) The Company shall indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all losses, liabilities, claims, damages and expenses whatsoever as incurred (including but not limited to reasonable attorneys' fees and any and all expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of a material fact contained in (A) the Registration Statement, as originally filed or any amendment thereof, or any related Preliminary

Prospectus or the Prospectus, or in any supplement thereto or amendment thereof, or (B) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Shares, including any road show or investor presentations made to investors by the Company (whether in person electronically) ("Marketing Materials"), (ii) the omission or alleged omission to state in the Registration Statement, as originally filed or any amendment thereof, or any related Preliminary Prospectus or the Prospectus, or in any supplement thereto or amendment thereof, or in any Marketing Materials, a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) (A) the violation of any applicable laws or regulations of any foreign jurisdictions where Directed Shares have been offered or (B) any untrue statement or alleged untrue statement of a material fact included in the supplement or prospectus wrapper material distributed in connection with the reservation and sale of the Directed Shares or the omission or alleged omission therefrom of a material fact necessary to make the statements therein, when considered in conjunction with the Prospectus or Preliminary Prospectus, not misleading; provided, however, that the Company will not be liable in any such case to the extent but only to the extent that any such loss, liability, claim, damage or expense arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, as originally filed or any amendment thereof, or any related Preliminary Prospectus or the Prospectus, or in any supplement thereto or amendment thereof, in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Lead Manger expressly for use therein. The parties agree that such information provided by or on behalf of any Underwriter through the Lead Managers consists solely of the material referred to in the last sentence of Section 1(b) hereof. This indemnity agreement will be in addition to any liability which the Company may otherwise have, including but not limited to other liability under this Agreement. The foregoing indemnity agreement with respect to any Preliminary Prospectus shall not inure to the benefit of any Underwriter who failed to deliver a Prospectus (as then amended or supplemented, provided by the Company to the several Underwriters in the requisite quantity and on a timely basis to permit proper delivery on or prior to the Closing Date) to the person asserting any losses, claims, damages and liabilities and judgments caused by any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Prospectus, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, if such material misstatement or omission or alleged material misstatement or omission was cured, as determined by a court of competent jurisdiction in a decision not subject to further appeal, in such Prospectus and such Prospectus was required by law to be delivered at or prior to the written confirmation of sale to such person.

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Company, each of the directors of the Company, each of the officers of the Company who shall have signed the Registration Statement, and each other person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, liabilities, claims, damages and expenses whatsoever as incurred (including but not limited to reasonable attorneys' fees and any and all expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, as originally filed or any amendment thereof, or any related Preliminary Prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that any

such loss, liability, claim, damage or expense arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Lead Managers specifically for use therein; provided, however, that in no case shall any Underwriter be liable or responsible for any amount in excess of the underwriting discount applicable to the Shares to be purchased by such Underwriter hereunder. The parties agree that such information provided by or on behalf of any Underwriter through the Lead Managers consists solely of the material referred to in the last sentence of Section 1(b) hereof. This indemnity will be in addition to any liability which any Underwriter may otherwise have, including but not limited to other liability under this Agreement.

(c) In connection with the offer and sale of Directed Shares the Company agrees promptly upon written notice, to indemnify and hold harmless the Underwriters and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, liabilities, claims, damages and expenses incurred by them as a result of the failure of any Directed Share Purchaser, who makes an oral agreement, properly confirmed by the Underwriters, to purchase Directed Shares within twenty-four hours of establishing the public offer price, to pay for and accept delivery of the Directed Shares. Under no circumstances will the Lead Managers or any Underwriter be liable to the Company or to any Directed Share Purchaser for any action taken or omitted to be taken in connection with the Directed Shares or any transaction effected with any Directed Share Purchaser, except to the extent found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the gross negligence or willful misconduct of the Lead Managers or such Underwriter, as the case may be.

(d) Promptly after receipt by an indemnified party under subsection (a), (b) or (c) above of notice of any claims or the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the claim or the commencement thereof (but the failure so to notify an indemnifying party shall not relieve the indemnifying party from any liability which it may have under this Section 7 to the extent that it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability that such indemnifying party may have otherwise than on account of the indemnity agreement hereunder). In case any such claim or action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate, at its own expense in the defense of such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel satisfactory to such indemnified party; provided however, that counsel to the indemnifying party shall not (except with the written consent of the indemnified party) also be counsel to the indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by one of the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to have charge of the defense of such action within a reasonable time after notice of commencement of the action, (iii) the indemnifying party does not diligently

defend the action after assumption of the defense, or (iv) such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by the indemnifying parties. No indemnifying party shall, without the prior written consent of the indemnified parties, effect any settlement or compromise of, or consent to the entry of judgment with respect to, any pending or threatened claim, investigation, action or proceeding in respect of which indemnity or contribution may be or could have been sought by an indemnified party under this Section 7 or Section 8 hereof (whether or not the indemnified party is an actual or potential party thereto), unless (x) such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such claim, investigation, action or proceeding and (ii) does not include a statement as to or an admission of fault, culpability or any failure to act, by or on behalf of the indemnified party, and (y) the indemnifying party confirms in writing its indemnification obligations hereunder with respect to such settlement, compromise or judgment.

8. Contribution. In order to provide for contribution in circumstances in which the indemnification provided for in Section 7 hereof is for any reason held to be unavailable from any indemnifying party or is insufficient to hold harmless a party indemnified thereunder, the Company and the Underwriters shall contribute to the aggregate losses, claims, damages, liabilities and expenses of the nature contemplated by such indemnification provision (including any investigation, legal and other expenses incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claims asserted, but after deducting in the case of losses, claims, damages, liabilities and expenses suffered by the Company, any contribution received by the Company from persons, other than the Underwriters, who may also be liable for contribution, including persons who control the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, officers of the Company who signed the Registration Statement and directors of the Company) as incurred to which the Company and one or more of the Underwriters may be subject, in such proportions as is appropriate to reflect the relative benefits received by the Company and the Underwriters from the Offering or, if such allocation is not permitted by applicable law, in such proportions as are appropriate to reflect not only the relative benefits referred to above but also the relative fault of the Company and the Underwriters in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Underwriters shall be deemed to be in the same proportion as (x) the total proceeds from the Offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company bears to (y) the underwriting discount or commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of each of the Company and of the Underwriters shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by

any other method of allocation which does not take account of the equitable considerations referred to above in this Section. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 8 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any judicial, regulatory or other legal or governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission. Notwithstanding the provisions of this Section 8, (i) no Underwriter shall be required to contribute any amount in excess of the amount by which the discounts and commissions applicable to the Shares underwritten by it and distributed to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission and (ii) 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. For purposes of this Section 8, each person, if any, who controls an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as such Underwriter, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to clauses (i) and (ii) of the immediately preceding sentence. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties, notify each party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 8 or otherwise. The obligations of the Underwriters to contribute pursuant to this Section 8 are several in proportion to the respective number of Shares to be purchased by each of the Underwriters hereunder and not joint.

9. Underwriter Default.

(a) If any Underwriter or Underwriters shall default in its or their obligation to purchase Firm Shares or Additional Shares hereunder, and if the Firm Shares or Additional Shares with respect to which such default relates (the "Default Shares") do not (after giving effect to arrangements, if any, made by the Lead Managers pursuant to subsection (b) below) exceed in the aggregate 10% of the number of Firm Shares or Additional Shares, each non-defaulting Underwriter, acting severally and not jointly, agrees to purchase from the Company that number of Default Shares that bears the same proportion of the total number of Default Shares then being purchased as the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto bears to the aggregate number of Firm Shares set forth opposite the names of the non-defaulting Underwriters, subject, however, to such adjustments to eliminate fractional shares as the Lead Managers in its sole discretion shall make.

(b) In the event that the aggregate number of Default Shares exceeds 10% of the number of Firm Shares or Additional Shares, as the case may be, the Lead Managers may in their discretion arrange for themselves or for another party or parties (including any non-

defaulting Underwriter or Underwriters who so agree) to purchase the Default Shares on the terms contained herein. In the event that within five calendar days after such a default the Lead Managers do not arrange for the purchase of the Default Shares as provided in this Section 9, this Agreement or, in the case of a default with respect to the Additional Shares, the obligations of the Underwriters to purchase and of the Company to sell the Additional Shares shall thereupon terminate, without liability on the part of the Company with respect thereto (except in each case as provided in Sections 5, 7, 8, 10 and 11(d)) or the Underwriters, but nothing in this Agreement shall relieve a defaulting Underwriter or Underwriters of its or their liability, if any, to the other Underwriters and the Company for damages occasioned by its or their default hereunder.

(a) In the event that any Default Shares are to be purchased by the non-defaulting Underwriters, or are to be purchased by another party or parties as aforesaid, the Lead Managers or the Company shall have the right to postpone the Closing Date or Additional Closing Date, as the case may be for a period, not exceeding five business days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus or in any other documents and arrangements, and the Company agrees to file promptly any amendment or supplement to the Registration Statement or the Prospectus which, in the opinion of Underwriters' Counsel, may thereby be made necessary or advisable. The term "Underwriter" as used in this Agreement shall include any party substituted under this Section 9 with like effect as if it had originally been a party to this Agreement with respect to such Firm Shares and Additional Shares.

10. Survival of Representations and Agreements. All representations and warranties, covenants and agreements of the Underwriters and the Company contained in this Agreement or in certificates of officers of the Company or the Subsidiary submitted pursuant hereto, including the agreements contained in Section 5, the indemnity agreements contained in Section 7 and the contribution agreements contained in Section 8, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Underwriter or any controlling person thereof or by or on behalf of the Company, any of its officers and directors or any controlling person thereof, and shall survive delivery of and payment for the Shares to and by the Underwriters. The representations contained in Section 1 and the agreements contained in Sections 5, 7, 8, 10 and 11 hereof shall survive any termination of this Agreement, including termination pursuant to Section 9 or 11 hereof.

11. Effective Date of Agreement; Termination.

(a) This Agreement shall become effective upon the later of (i) receipt by the Lead Managers and the Company of notification of the effectiveness of the Registration Statement or (ii) the execution of this Agreement. Notwithstanding any termination of this Agreement, the provisions of this Section 11 and of Sections 1, 5, 7, 8 and 12 through 17, inclusive, shall remain in full force and effect at all times after the execution hereof.

(b) The Lead Managers shall have the right to terminate this Agreement at any time prior to the Closing Date or to terminate the obligations of the Underwriters to purchase the Additional Shares at any time prior to the Additional Closing Date, as the case may be, if (i) any domestic or international event or act or occurrence has materially disrupted, or in the opinion of the Lead Managers will in the immediate future materially disrupt,

the market for the Company's securities or securities in general; or (ii) trading on The New York Stock Exchange ("the NYSE") or the NASDAQ National Market (the "NASDAQ") shall have been suspended or been made subject to material limitations, or minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required, on the NYSE or the NASDAQ or by order of the Commission or any other governmental authority having jurisdiction; or (iii) a banking moratorium has been declared by any state or federal authority or if any material disruption in commercial banking or securities settlement or clearance services shall have occurred; or (iv) (A) there shall have occurred any outbreak or escalation of hostilities or acts of terrorism involving the United States or there is a declaration of a national emergency or war by the United States or (B) there shall have been any other calamity or crisis or any change in political, financial or economic conditions if the effect of any such event in (A) or (B), in the judgment of the Lead Managers, makes it impracticable or inadvisable to proceed with the offering, sale and delivery of the Firm Shares or the Additional Shares, as the case may be, on the terms and in the manner contemplated by the Prospectus.

(c) Any notice of termination pursuant to this Section 11 shall be in writing.

(d) If this Agreement shall be terminated pursuant to any of the provisions hereof (other than pursuant to (i) notification by the Lead Managers as provided in Section 11(a) hereof or (ii) Section 9(b) hereof), or if the sale of the Shares provided for herein is not consummated because any condition to the obligations of the Underwriters set forth herein is not satisfied or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof, the Company will, subject to demand by the Lead Managers, reimburse the Underwriters for all out-of-pocket expenses (including the fees and expenses of their counsel), incurred by the Underwriters in connection herewith.

12. Notices. All communications hereunder, except as may be otherwise specifically provided herein, shall be in writing, and:

(a) if sent to any Underwriter, shall be mailed, delivered, or faxed and confirmed in writing, to such Underwriter c/o Bear, Stearns & Co. Inc., 383 Madison Avenue, New York, New York 10179, Attention: [Stephen Parish, Senior Managing Director, Equity Capital Markets], with a copy to Underwriter's Counsel at 135 Commonwealth Drive, Menlo Park, California, Attention: Patrick Pohlen, Esq.;

(b) if sent to the Company, shall be mailed, delivered, or faxed and confirmed in writing to the Company and its counsel at the addresses, and to the attention of the respective persons, set forth in the Registration Statement;

provided, however, that any notice to an Underwriter pursuant to Section 7 shall be delivered or sent by mail or facsimile transmission to such Underwriter at its address set forth in its acceptance facsimile to Bear Stearns, which address will be supplied to any other party hereto by Bear Stearns upon request. Any such notices and other communications shall take effect at the time of receipt thereof.

13. Parties. This Agreement shall inure solely to the benefit of, and shall be binding upon, the Underwriters and the Company and the controlling persons, directors, officers, employees and agents referred to in Sections 7 and 8 hereof, and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and said controlling persons and their respective successors, officers, directors, heirs and legal representatives, and it is not for the benefit of any other person, firm or corporation. The term "successors and assigns" shall not include a purchaser, in its capacity as such, of Shares from any of the Underwriters.

14. Governing Law and Jurisdiction; Waiver of Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. The Company irrevocably (a) submits to the jurisdiction of any court of the State of New York or the United State District Court for the Southern District of the State of New York for the purpose of any suit, action, or other proceeding arising out of this Agreement, or any of the agreements or transactions contemplated by this Agreement, the Registration Statement and the Prospectus (each, a "Proceeding"), (b) agrees that all claims in respect of any Proceeding may be heard and determined in any such court, (c) waives, to the fullest extent permitted by law, any immunity from jurisdiction of any such court or from any legal process therein, (d) agrees not to commence any Proceeding other than in such courts, and (e) waives, to the fullest extent permitted by law, any claim that such Proceeding is brought in an inconvenient forum. THE COMPANY (ON BEHALF OF ITSELF AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ON BEHALF OF ITS RESPECTIVE EQUITY HOLDERS AND CREDITORS) HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE REGISTRATION STATEMENT AND THE PROSPECTUS.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of a signed counterpart of this Agreement by facsimile transmission shall constitute valid and sufficient delivery thereof.

16. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

17. Time is of the Essence. Time shall be of the essence of this Agreement. As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

[signature page follows]

If the foregoing correctly sets forth your understanding, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among us.

Very truly yours,

DYNAVAX TECHNOLOGIES CORPORATION

By:_____
Name:
Title:

Accepted as of the date first above written

BEAR, STEARNS & CO. INC.
DEUTSCHE BANK SECURITIES INC.
PIPER JAFFRAY & CO.

By: BEAR, STEARNS & CO. INC.

By:_____
Name:
Title:

By: DEUTSCHE BANK SECURITIES INC.

By:_____
Name:
Title:

On behalf of themselves and the other Underwriters named in Schedule I hereto.

SCHEDULE I

Underwriter	Total Number of Firm Shares to be Purchased	Number of Additional Shares to be Purchased if Option is Fully Exercised
Bear, Stearns & Co. Inc.		
Deutsche Bank Securities Inc.		
Piper Jaffray & Co.		
[NAMES OF OTHER UNDERWRITERS]		
Total.....		

ANNEX I

Form of Opinion of Company Counsel

1. Each of the Company and its Subsidiary has been duly organized and validly exists as a corporation in good standing under the laws of its jurisdiction of incorporation, with full power and authority to own its properties and conduct its business as described in the Registration Statement and the Prospectus. Each of the Company and its Subsidiary is duly qualified and in good standing as a foreign corporation in each jurisdiction in which the character or location of its properties (owned, leased or licensed) or the nature or conduct of its business makes such qualification necessary, except for those failures to be so qualified or in good standing which will not in the aggregate have a Material Adverse Effect.

2. The Company has an authorized capitalization as set forth in the Registration Statement and the Prospectus. All of the issued shares of capital stock of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and are not in violation of or subject to any preemptive or, to such counsel's knowledge, similar rights that entitle or will entitle any person to acquire any Shares from the Company upon issuance or sale thereof. The Shares to be delivered on the Closing Date and the Additional Closing Date, if any, have been duly and validly authorized and, when delivered in accordance with the Underwriting Agreement, will be duly and validly issued, fully paid and non-assessable and will not have been issued in violation of or subject to preemptive or, to the such counsel's knowledge, similar rights that entitle or will entitle any person to acquire any Shares from the Company upon issuance or sale thereof. All of the issued shares of capital stock of each of the Subsidiary and the Company have been duly and validly authorized and issued and are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of all Liens. The Common Stock, the Firm Shares and the Additional Shares conform to the descriptions thereof contained in the Registration Statement and the Prospectus.

3. The Shares have been designated for inclusion on the NASDAQ.

4. The Underwriting Agreement has been duly and validly authorized, executed and delivered by the Company.

5. To the such counsel's knowledge and other than as set forth in the Prospectus, there are no judicial, regulatory or other legal or governmental proceedings pending to which the Company or its Subsidiary is a party or of which any property of the Company or its Subsidiary is the subject which, if determined adversely to the Company or any of its Subsidiary, would individually or in the aggregate have a Material Adverse Effect; and, to the such counsel's knowledge, no such proceedings are threatened or contemplated.

6. The execution, delivery, and performance of the Underwriting Agreement and consummation of the transactions contemplated by Underwriting Agreement, do not and will not (A) conflict with or result in a breach of any of the terms and provisions of, or constitute a default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or its Subsidiary pursuant to, any indenture, mortgage, deed of trust, loan agreement or any other agreement, instrument, franchise, license or permit known to

such counsel to which the Company or its Subsidiary is a party or by which any of the Company its Subsidiary or their respective properties or assets may be bound or (B) violate or conflict with any provision of the certificate of incorporation or by-laws of the Company or its Subsidiary, or, to the knowledge of such counsel, any judgment, decree, order, statute, rule or regulation of any court or any judicial, regulatory or other legal or governmental agency or body.

7. No consent, approval, authorization, order, registration, filing, qualification, license or permit of or with any court or any judicial, regulatory or other legal or governmental agency or body is required for the execution, delivery and performance of this Agreement or consummation of the transactions contemplated by the Underwriting Agreement, except for (1) such as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Shares by the Underwriters (as to which such counsel need express no opinion), (2) such as have been made or obtained under the Securities Act and (3) such as are required by the NASD.

8. The Registration Statement and the Prospectus and any amendments thereof or supplements thereto (other than the financial statements and schedules and other financial data included or incorporated by reference therein, as to which no opinion need be rendered) comply as to form in all material respects with the requirements of the Securities Act, the Exchange Act and the Rules and Regulations.

9. The statements under the captions "Shares Eligible for Future Sale," "Description of Capital Stock" and "Underwriting" in the Prospectus and Items 14 and 15 of Part II of the Registration Statement, insofar as such statements constitute a summary of the legal matters, documents or proceedings referred to therein, fairly present the information called for with respect to such legal matters, documents and proceedings.

10. The Company is not and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Registration Statement and the Prospectus, will not be, an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

11. The Registration Statement is effective under the Securities Act, and, to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereof has been issued and no proceedings therefor have been initiated or threatened by the Commission and all filings required by Rule 424(b) and Rule 430A under the Securities Act have been made.

12. The Company has full right, power and authority to execute and deliver the Underwriting Agreement and the Shares and to perform its obligations thereunder, and all corporate action required to be taken for the due and proper authorization, execution and delivery of the Underwriting Agreement and the Shares and consummation of the transactions contemplated by the Underwriting Agreement have been taken.

13. To the knowledge of such counsel, no contract or agreement is required to be filed as an exhibit to the Registration Statement that is not so filed.

14. To the knowledge of such counsel, except as described in [Section ___, paragraph ___] of the Prospectus], there are no legal or governmental proceedings pending relating to patent rights, trade secrets, trademarks, service marks or other proprietary information or materials of the Company, and to the such counsel's knowledge no such proceedings are threatened by governmental authorities or others.

15. Based solely upon a review of matters which such counsel has been engaged to provide direct substantive attention, such counsel has no reason to believe that, other than as described in [Section ___, paragraph ___]of the Prospectus, the Company is infringing or otherwise violating any patents, trade secrets, trademarks, service marks or other proprietary rights of others, and such counsel has no reason to believe that, there are infringements by others of any of the Company's patents, trade secrets, trademarks, service marks or other proprietary information or materials.

16. Based solely upon a review of matters which such counsel has been engaged to provide direct substantive attention, such counsel has no reason to believe that the Company does not own or possess adequate licenses or other rights to use all material patents, patent applications and trademarks described in the Prospectus and necessary to conduct the business now being conducted by the Company as described in the Prospectus except as described in [Section ___, paragraph ___]of the Prospectus.

In addition, we have participated in conferences with your representatives and with representatives of the Company and its accountants concerning the Registration Statement and the Prospectus and have considered the matters required to be stated therein and the statements contained therein, although we have not independently verified the accuracy, completeness or fairness of such statements. Based upon and subject to the foregoing, nothing has come to our attention that leads us to believe that the Registration Statement, at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus, at the time it was filed with the Commission pursuant to Rule 424(b) under the Act or as of the date hereof, contained or contains an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (it being understood that we have not been requested to and do not make any comment in this paragraph with respect to the financial statements and related supporting schedules, footnotes, and other financial data incorporated by reference therein).

ANNEX II

Form of Lock-up Agreement

October __, 2003

Bear, Stearns & Co. Inc.
Deutsche Bank Securities
U.S. Bancorp Piper Jaffray
As Representatives of the several
Underwriters referred to below
c/o Bear, Stearns & Co. Inc.
383 Madison Avenue
New York, New York 10179
Attention: Equity Capital Markets

Dynavax Technologies Corporation Lock-Up Agreement

Ladies and Gentlemen:

This letter agreement (this "Agreement") relates to the proposed public offering (the "Offering") by Dynavax Technologies Corporation, a Delaware corporation (the "Company"), of its common stock, $.001 par value (the "Stock").

In order to induce you and the other underwriters for which you act as representatives (the "Underwriters") to underwrite the Offering, the undersigned hereby agrees that, without the prior written consent of Bear, Stearns & Co. Inc. ("Bear Stearns"), during the period from the date hereof until one hundred eighty (180) days from the date of the final prospectus for the Offering (the "Lock-Up Period"), the undersigned (a) will not, directly or indirectly, offer, sell, agree to offer or sell, solicit offers to purchase, grant any call option or purchase any put option with respect to, pledge, borrow or otherwise dispose of any Relevant Security (as defined below), and (b) will not establish or increase any "put equivalent position" or liquidate or decrease any "call equivalent position" with respect to any Relevant Security (in each case within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder), or otherwise enter into any swap, derivative or other transaction or arrangement that transfers to another, in whole or in part, any economic consequence of ownership of a Relevant Security, whether or not such transaction is to be settled by delivery of Relevant Securities, other securities, cash or other consideration. As used herein "Relevant Security" means the Stock, any other equity security of the Company or any of its subsidiaries and any security convertible into, or exercisable or exchangeable for, any Stock or other such equity security.

Notwithstanding the foregoing, (i) the undersigned may transfer Relevant Securities by (a) bona fide gift or (b) will or intestate succession to his or her immediate family or to a trust the sole beneficiaries of which are one or more of the undersigned and his or her immediate family (the term "immediate family" meaning for these purposes the spouse, domestic partner, lineal descendant, father, mother or sibling of the undersigned) and (ii) if the undersigned is a partnership or limited liability company, the undersigned may make a pro rata distribution of

Relevant Securities to its partners or members, provided as to both (i) and (ii) above, each resulting transferee of Relevant Securities executes and delivers to you an agreement satisfactory to you certifying that such transferee is bound by the terms of this Agreement and has been in compliance with the terms hereof since the date first above written as if it had been an original party hereto.

In addition, this Agreement shall not restrict the sale or other disposition of Relevant Securities that are acquired by the undersigned in the open market after the Offering is priced or pursuant to an issuer directed share program, provided that any such sale or other disposition fully complies with, and is not required to be disclosed or reported under, applicable law (including but not limited to Section 16 under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder).

The undersigned hereby authorizes the Company during the Lock-Up Period to cause any transfer agent for the Relevant Securities to decline to transfer, and to note stop transfer restrictions on the stock register and other records relating to, Relevant Securities for which the undersigned is the record holder and, in the case of Relevant Securities for which the undersigned is the beneficial but not the record holder, agrees during the Lock-Up Period to cause the record holder to cause the relevant transfer agent to decline to transfer, and to note stop transfer restrictions on the stock register and other records relating to, such Relevant Securities.

The undersigned hereby further agrees that, without the prior written consent of Bear Stearns, during the Lock-up Period the undersigned (x) will not file or participate in the filing with the Securities and Exchange Commission of any registration statement, or circulate or participate in the circulation of any preliminary or final prospectus or other disclosure document with respect to any proposed offering or sale of a Relevant Security and (y) will not exercise any rights the undersigned may have to require registration with the Securities and Exchange Commission of any proposed offering or sale of a Relevant Security.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement and that this Agreement constitutes the legal, valid and binding obligation of the undersigned, enforceable in accordance with its terms. Upon request, the undersigned will execute any additional documents necessary in connection with enforcement hereof. Any obligations of the undersigned shall be binding upon the successors and assigns of the undersigned from the date first above written.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Delivery of a signed copy of this letter by facsimile transmission shall be effective as delivery of the original hereof.

This Agreement shall terminate and be of no further force and effect in the event the Company has not consummated the Offering on or prior to March 31, 2004.

Very truly yours,

By: _____
Print Name: _____

COMMON STOCK

ZQ

INCORPORATED UNDER THE LAWS
OF THE STATE OF DELAWARE

DYNAVAX

DYNAVAX TECHNOLOGIES

COMMON STOCK

SEE REVERSE FOR
CERTAIN DEFINITIONS

CUSIP 268158 10 2

This Certifies that

is the record holder of

FULLY PAID AND NONASSESSABLE SHARES OF COMMON STOCK, $0.001 PAR VALUE, OF

DYNAVAX TECHNOLOGIES CORPORATION

transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated:

CHIEF FINANCIAL OFFICER

CHIEF EXECUTIVE OFFICER

COUNTERSIGNED AND REGISTERED:
COMPUTERSHARE TRUST COMPANY, INC.
P.O. BOX 1596, DENVER, CO 80201

Transfer Agent and Registrar Authorized Signature

CONTROL NO.

DYNAVAX TECHNOLOGIES CORPORATION

Keep this Certificate in a safe place. If it is lost, stolen or destroyed, the Corporation will require a bond of indemnity as a condition to the issuance of a replacement certificate.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM-	as tenants in common
TEN ENT-	as tenants by the entireties
JT TEN-	as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT-_____Custodian_____
(Cust) (Minor)
under Uniform Gifts to Minors
Act _____
[State]

UNIF TRF MIN ACT-_____Custodian (until age_____)
(Cust)
_____ under Uniform Transfers
(Minor)
to Minors Act _____
[State]

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sell, assign and transfer unto

_____

PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF ASSIGNEE(S)

_____

_____

_____

_____ Shares

represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

In presence of

_____

_____

_____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

Signature(s) Guaranteed

By_____

THE SIGNATURES MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION, (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM) PURSUANT TO S.E.C. RULE 17Ad-15.

Exhibit 4.3

DYNAVAX TECHNOLOGIES CORPORATION

FOURTH AMENDED INVESTORS' RIGHTS AGREEMENT

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FOURTH AMENDED INVESTORS' RIGHTS AGREEMENT

THIS FOURTH AMENDED INVESTORS' RIGHTS AGREEMENT (this "Agreement") is entered into as of October 20, 2003, by and among Dynavax Technologies Corporation, a Delaware corporation (the "Company"), Dennis Carson and Eyal Raz (the "Founders"), the purchasers of the Company's Series A Preferred Stock ("Series A Stockholders"), the purchasers of the Company's Series B Preferred Stock ("Series B Stockholders"), the purchasers of the Company's Series C Preferred Stock ("Series C Stockholders"), the purchasers of the Company's Series D Preferred Stock ("Series D Stockholders") and the purchasers of Ordinary Shares of Dynavax Asia Pte Ltd, a Singaporean corporation (the "Subsidiary"; and such Ordinary Shares, the "Ordinary Shares")), which Ordinary Shares are exchangeable for shares of the Company's Series E-1 Preferred Stock or other capital stock of the Company pursuant to that certain Put/Call Agreement, dated as of even date herewith, by and among the Company, the Subsidiary and above-described purchasers (the "Put/Call Agreement") (the above-described purchasers are sometimes referred to herein as "Rightsholders" prior to exchange of their Subsidiary Ordinary Shares for the Company's Preferred Stock pursuant to the Put/Call Agreement, and as "Series E-1 Stockholders" thereafter). This Agreement amends, restates and supersedes that certain Third Amended Investors' Rights Agreement dated as of March 27, 2002, by and among the Company, the Founders, the Series A Stockholders, the Series B Stockholders, the Series C Stockholders and the Series D Stockholders (the "Prior Agreement"). The Series A Stockholders, Series B Stockholders, Series C Stockholders, Series D Stockholders, Rightsholders and Series E-1 Stockholders shall be collectively referred to hereinafter as the "Investors" and each individually as an "Investor."

RECITALS

A. WHEREAS, the Founders and certain of the Series A Stockholders, Series B Stockholders, Series C Stockholders and Series D Stockholders hold Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock or Series D Preferred Stock and/or shares of Common Stock issued upon conversion thereof and possess registration rights, information rights and other rights pursuant to the Prior Agreement;

B. WHEREAS, the Founders, Series A Stockholders, Series B Stockholders, Series C Stockholders and Series D Stockholders desire to amend the Prior Agreement and to accept the rights created pursuant hereto in lieu of the rights granted to them under the Prior Agreement;

C. D. WHEREAS, the Company proposes to sell and issue shares of its Preferred Stock pursuant to the Put/Call Agreement; and

E. WHEREAS, as a condition of entering into the Put/Call Agreement, the Rightsholders have requested that the Company extend to them registration rights, information rights and other rights as set forth below.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement and the Put/Call Agreement, as applicable, the Founders, the Series A Stockholders, Series B Stockholders, Series C

Stockholders and Series D Stockholders who are parties to the Prior Agreement hereby agree that the Prior Agreement shall be superseded and replaced in its entirety by this Agreement, and the parties mutually agree as follows:

AGREEMENT

1. GENERAL

1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the following respective meanings:

"AFFILIATE" of a person means a person controlling, controlled by, or under common control with such person.

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

"FORM S-3" means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

"HOLDER" means any person owning of record Shares, Series E-1 Rights or Registrable Securities, that have not been sold to the public or any assignee of record of such Shares, Series E-1 Rights or Registrable Securities in accordance with Section 2.10 hereof.

"INITIAL OFFERING" means the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act.

"MAJOR INVESTOR" shall have the meaning given such term in Section 3.1(c) hereof.

"OTHER PREFERRED" shall mean the shares of Series R, Series S-1 and Series T Preferred Stock of the Company.

"PUT/CALL AGREEMENT" shall have the meaning given such term in the preamble hereof.

"QUALIFIED PUBLIC OFFERING" shall have the meaning given such term in Section 2.2(a) hereof.

"REGISTER," "REGISTERED," and "REGISTRATION" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document.

"REGISTRABLE SECURITIES" means (i) Common Stock of the Company issued or issuable upon conversion of the Shares; (ii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above-described securities and (iii) Common Stock issuable upon exchange of the Series E-1 Rights pursuant to the Put/Call Agreement. Notwithstanding the foregoing, Registrable

Securities shall not include (a) any securities either sold by a person to the public pursuant to a registration statement or Rule 144, (b) sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned, and (c) the Ordinary Shares.

"REGISTRABLE SECURITIES THEN OUTSTANDING" shall be the number of shares determined by calculating the total number of shares of the Company's Common Stock that are Registrable Securities and either (1) are then issued and outstanding (2) are issuable pursuant to then exercisable or convertible securities or (3) or are directly or indirectly issuable pursuant to the then outstanding Series E-1 Rights.

"REGISTRATION EXPENSES" shall mean all expenses incurred by the Company in complying with Sections 2.2, 2.3 and 2.4 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, reasonable fees and disbursements of a single special counsel for the Holders, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding fees and disbursements of additional counsel for any of the Holders, which fees and disbursements shall be the obligations of such Holders, and excluding the compensation of regular employees of the Company, which compensation shall be paid in any event by the Company).

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

"SERIES E-1 RIGHTS" means the rights of the Rightsholders to exchange the Subsidiary's Ordinary Shares held by them for shares of the Company's Series E-1 Preferred Stock or other capital stock of the Company pursuant to the Put/Call Agreement.

"SECURITIES ACT" shall mean the Securities Act of 1933, as amended.

"SELLING EXPENSES" shall mean all underwriting discounts and selling commissions applicable to the sale of Shares pursuant to the Agreement.

"SHARES" shall mean the Company's Series E-1 Preferred Stock (or other capital stock of the Company) issued or issuable upon the exercise of Series E-1 Rights pursuant to the Put/Call Agreement, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock previously issued by the Company.

"THRESHOLD OFFERING" means the Initial Offering at a price per share of at least $4.12, with a total offering price, prior to deductions of underwriter commissions, and offering expenses and the like, of at least thirty million dollars ($30,000,000).

2. REGISTRATION; RESTRICTIONS ON TRANSFER

2.1 RESTRICTIONS ON TRANSFER.

(a) Each Holder agrees not to make any disposition of all or any portion of the Shares, the Series E-1 Rights or Registrable Securities unless and until:

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

(ii) (A) The transferee has agreed in writing to be bound by the terms of this Agreement, (B) such Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (C) if reasonably requested by the Company, such Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such securities under the Securities Act or, in case of the Series E-1 Rights, any other applicable securities laws. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144 except in unusual circumstances.

(iii) Notwithstanding the provisions of paragraphs (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by a Holder which is (A) a partnership to its partners or former partners in accordance with partnership interests, (B) a corporation to its stockholders or affiliates in accordance with their interest in the corporation, (C) a limited liability company to its members or former members in accordance with their interest in the limited liability company, (D) to the Holder's family member or trust for the benefit of an individual Holder or (E) from a Holder to an Affiliate of such Holder provided such Affiliate complies with Section 2.1(a)(ii)(A); provided in each case that the transferee will be subject to the terms of this Agreement to the same extent as if it were an original Holder hereunder.

(b) Each certificate representing Shares or Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws or as provided elsewhere in this Agreement):

"THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED."

(c) The Company shall be obligated to reissue promptly unlegended certificates at the request of any holder thereof if the holder shall have obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend.

(d) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

2.2 DEMAND REGISTRATION.

(a) Subject to the conditions of this Section 2.2, if the Company shall receive a written request from the Holders of more than twenty-five (25%) of the Registrable Securities then outstanding (the "Initiating Holders") that the Company file a registration statement under the Securities Act covering the registration of Registrable Securities having an aggregate offering price to the public in excess of five million dollars ($5,000,000) (a "Qualified Public Offering"), then the Company shall, within thirty (30) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 2.2, use its best efforts to effect, as soon as practicable, the registration under the Securities Act of all Registrable Securities that the Holders request to be registered.

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 2.2 and the Company shall include such information in the written notice referred to in Section 2.2(a). In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company as provided in Section 2.6(e)) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 2.2, if the underwriter advises the Company that marketing factors require a limitation of the number of securities to be underwritten (including Registrable Securities), then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a pro rata basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders); provided, however, that, subject to any existing registration rights granted by the Company, the number of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities proposed to be included in such underwriting are first entirely excluded from such underwriting. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(c) The Company shall not be required to effect a registration pursuant to this Section 2.2:

(i) until the earlier of December 31, 2004 or the date which is six months after the Initial Offering; or

(ii) after the Company has effected three (3) registrations pursuant to this Section 2.2, and such registrations have been declared or ordered effective; or

(iii) during the period starting with the date of filing of, and ending on the date one hundred eighty (180) days following the effective date of, the registration statement

pertaining to the Initial Offering; provided that the Company makes reasonable good-faith efforts to cause such registration statement to become effective; or

(iv) if within thirty (30) days of receipt of a written request from Initiating Holders pursuant to Section 2.2(a), the Company gives notice to the Holders of the Company's intention to make its Initial Offering within ninety (90) days; or

(v) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.2, a certificate signed by the Chairman of the Board or the President of the Company stating that in the good-faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders; provided that such right to delay a request shall be exercised by the Company not more than once in any twelve (12) month period.

2.3 PIGGYBACK REGISTRATIONS.

(a) PIGGYBACK REGISTRATIONS. The Company shall notify all Holders in writing at least thirty (30) days prior to the filing of any registration statement under the Securities Act for purposes of a public offering of securities of the Company (including, but not limited to, registration statements relating to secondary offerings of securities of the Company, but excluding registration statements relating to employee benefit plans or with respect to corporate reorganizations or other transactions under Rule 145 of the Securities Act), either for its own account or for the account of a security holder or security holders, and the Company shall use its reasonable best efforts to cause to be registered (subject to Section 2.3(b) below and the other terms and conditions hereof) the Registrable Securities that such Holder has requested to be registered. Each Holder desiring to include in any such registration statement all or any part of the Registrable Securities held by it shall, within fifteen (15) days after the above-described notice from the Company, so notify the Company in writing. Such notice shall state the intended method of disposition of the Registrable Securities by such Holder. If a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(b) UNDERWRITING. If the registration statement under which the Company gives notice under this Section 2.3 is for an underwritten offering, the Company shall so advise the Holders. In such event, the right of any such Holder to be included in a registration pursuant to this Section 2.3 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Agreement, if the underwriter determines in good faith that marketing factors require a limitation of the number of shares to be underwritten, the number of shares that may be

included in the underwriting shall be allocated, first, to the Company; second, to the Holders and persons holding registration rights with respect to the Other Preferred on a pro rata basis based on the total number of Registrable Securities proposed to be included by each Holder and such other persons in the underwriting; and third, to any other stockholder of the Company (other than a Holder or such other persons) on a pro rata basis; provided, however that no such reduction shall reduce the securities being offered by the Holder to less than 25% of the securities proposed to be sold by them in the offering unless such offering is the Initial Offering. In no event will shares of any other selling stockholder be included in such registration which would reduce the number of shares which may be included by Holders without the written consent of Holders of not less than a majority of the Registrable Securities proposed to be sold in the offering.

(c) RIGHT TO TERMINATE REGISTRATION. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 2.5 hereof.

2.4 FORM S-3 REGISTRATION. In case the Company shall receive from any Holder or Holders a written request or requests that the Company effect a registration on Form S-3 (or any successor to Form S-3) or any similar short-form registration statement and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders; and

(b) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 2.4:

(i) if Form S-3 (or any successor or similar form) is not available for such offering by the Holders, or

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than One Million Dollars ($1,000,000), or

(iii) if the Company shall furnish to the Holders a certificate signed by the Chairman of the Board of Directors or the President of the Company stating that in the good-faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such Form S-3 Registration to be effected at such time, in

which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than ninety (90) days after receipt of the request of the Holder or Holders under this Section 2.4; provided, that such right to delay a request shall be exercised by the Company not more than twice in any twelve (12) month period, or

(iv) if the Company has, within the twelve (12) month period preceding the date of such request, already effected two (2) registrations on Form S-3 for the Holders pursuant to this Section 2.4, or

(v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) Subject to the foregoing, the Company shall file a Form S-3 registration statement covering the Registrable Securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders.

2.5 EXPENSES OF REGISTRATION. All expenses of registration (exclusive of underwriting discounts and commissions) including, without limitation, the fees and expenses of one special counsel for the Holders for the demand, piggyback and S-3 registrations shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by the holders of the securities so registered pro rata on the basis of the number of shares so registered. The Company shall not, however, be required to pay for expenses of any registration proceeding begun pursuant to Section 2.2, the request of which has been subsequently withdrawn by the Initiating Holders, unless (a) the withdrawal is based upon material adverse information concerning the Company of which the Initiating Holders were not aware at the time of such request, or (b) the Holders of a majority of Registrable Securities agree to forfeit their right to one requested registration pursuant to Section 2.2, in which event such right shall be forfeited by all Holders. If the Holders are required to pay the Registration Expenses, such expenses shall be borne by the Holders of securities (including Registrable Securities) requesting such registration in proportion to the number of shares for which registration was requested. If the Company is required to pay the Registration Expenses of a withdrawn offering pursuant to clause (a) above, then the Holders shall not forfeit their rights pursuant to Section 2.2 to a demand registration.

2.6 OBLIGATIONS OF THE COMPANY. Whenever required to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for up to one hundred twenty (120) days or, if earlier, until the Holder or Holders have completed the distribution related thereto; provided, however, that such period shall be extended for a period of time equal to the period of time the Holder refrains from selling any securities in such registration at the request of an underwriter.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) Furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering. Each Holder participating in such underwriting shall also enter into and perform its obligations under such an agreement.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(g) Furnish, at the request of any Holder participating in the registration, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering and reasonably satisfactory to such Holder requesting registration, addressed to the underwriters, if any, and to such Holder requesting registration of Registrable Securities and (ii) a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering and reasonably satisfactory to such Holder requesting registration, addressed to the underwriters, if any, and if permitted by applicable accounting standards, to the Holders requesting registration of Registrable Securities.

(h) Use reasonable best efforts to cause all such Registrable Securities registered hereunder to be listed on each securities exchange or quotation system on which the same securities issued by the Company are then listed.

2.7 TERMINATION OF REGISTRATION RIGHTS. All registration rights granted under this Section 2 shall terminate and be of no further force and effect after the earlier of (i) three (3) years after the date of the Company's Initial Offering, or (ii) the date when the Company has completed its Initial Offering and is subject to the provisions of the Exchange Act and all Registrable Securities held by and issuable to such Holder may be sold during any ninety (90) day period under Rule 144 (or successor rule promulgated by the SEC, other than under Rule 144(k)).

2.8 DELAY OF REGISTRATION; FURNISHING INFORMATION.

(a) No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

(b) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 2.2, 2.3 or 2.4 that the selling Holders shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registration of their Registrable Securities.

(c) The Company shall have no obligation with respect to any registration requested pursuant to Section 2.2 if, due to the operation of subsection 2.2(b), the number of shares or the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the number of shares or the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in Section 2.2, whichever is applicable.

2.9 INDEMNIFICATION. In the event any Registrable Securities are included in a registration statement under Section 2.2, 2.3 or 2.4:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers, directors and legal counsel of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation") by the Company: (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law in connection with the offering covered by such registration statement; and the Company will reimburse each such Holder, partner, officer or director, underwriter or controlling person for any legal or other expenses

reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the indemnity agreement contained in this Section 2.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Holder, partner, officer, director, underwriter or controlling person of such Holder.

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify and hold harmless the Company, each of its directors, each of its officers, and legal counsel and each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter and any other Holder selling securities under such registration statement or any of such other Holder's partners, directors or officers or any person who controls such Holder, against any losses, claims, damages or liabilities (joint or several) to which the Company or any of the foregoing persons may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder under an instrument duly executed by such Holder and stated to be specifically for use in connection with such registration; and each such Holder will reimburse any legal or other expenses reasonably incurred by the Company or any such director, officer, legal counsel, controlling person, underwriter or other Holder, or partner, officer, director or controlling person of such other Holder in connection with investigating or defending any such loss, claim, damage, liability or action if it is judicially determined that there was such a Violation; provided, however, that the indemnity agreement contained in this Section 2.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; provided further, that in no event shall any indemnity under this Section 2.9 exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.9 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.9, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate therein, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its

ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.9, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.9.

(d) If the indemnification provided for in this Section 2.9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage, expense or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder giving rise to such loss, liability, claim, damage or expense.

(e) The obligations of the Company and Holders under this Section 2.9 shall survive completion of any offering of Registrable Securities in a registration statement. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.

2.10 ASSIGNMENT OF REGISTRATION RIGHTS. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to a transferee or assignee of Registrable Securities which (i) is a subsidiary, parent, general partner, limited partner or retired partner of a Holder, (ii) is a Holder's family member or trust for the benefit of an individual Holder, (iii) is an Affiliate of such Holder, or (iv) acquires at least fifty thousand (50,000) shares of Registrable Securities (as adjusted for stock splits and combinations); provided, however, (A) the transferor shall, within ten (10) days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned, and (B) such transferee shall agree in writing to be subject to all restrictions set forth in this Agreement.

2.11 AMENDMENT OF REGISTRATION RIGHTS. Any provision of this Section 2 may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holders of at least two-thirds (66 2/3%) of the Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this Section 2.11 shall be binding upon each Holder and the Company. By acceptance of any benefits under this Section 2, Holders of Registrable Securities hereby agree to be bound by the provisions hereunder.

2.12 LIMITATION ON SUBSEQUENT REGISTRATION RIGHTS. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of two-thirds (66-2/3%) of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company which would grant such holder registration rights equal to or senior to those of the Holders of Registrable Securities.

2.13 "MARKET STAND-OFF" AGREEMENT. If requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, each Holder shall not sell or otherwise transfer or dispose of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) for a period specified by the representative of the underwriters not to exceed one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act; and such Holder shall enter into a reasonable, written lock-up agreement to that effect if requested by the Company or the representative of the underwriters; provided that:

(i) such agreement shall apply only to the Company's Initial Offering; and

(ii) all officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities enter into similar agreements.

The obligations described in this Section 2.13 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said one hundred eighty (180) day period.

2.14 RULE 144 REPORTING. With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

(a) make and keep public information available, as those terms are understood and defined in SEC Rule 144 or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of the first registration filed by the Company for an offering of its securities to the general public;

(b) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and

(c) so long as a Holder owns any Registrable Securities, furnish to such Holder forthwith upon request: (i) a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 of the Securities Act, and of the Exchange Act (at any time after it has become subject to such reporting requirements) or with respect to its status qualifying as a registrant whose securities may be resold pursuant to Form S-3; (ii) a copy of the most recent annual or quarterly report of the Company; and (iii) such other reports and

documents as a Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

3. COVENANTS OF THE COMPANY

3.1 BASIC FINANCIAL INFORMATION AND REPORTING.

(a) The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

(b) As soon as practicable after the end of each fiscal year of the Company, the Company will furnish each Investor a consolidated balance sheet of the Company, as at the end of such fiscal year, and a consolidated statement of income and a consolidated statement of cash flows of the Company, for such year, all prepared in accordance with generally accepted accounting principles consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be audited and accompanied by a report and opinion thereon by independent public accountants of national standing selected by the Company's Board of Directors.

(c) The Company will furnish each Investor, as soon as practicable after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company (and in any event within forty-five (45) days thereafter), a consolidated balance sheet of the Company as of the end of each such quarterly period, and a consolidated statement of income and a consolidated statement of cash flows of the Company for such period and for the current fiscal year to date, prepared in accordance with generally accepted accounting principles, with the exception that such statements may be unaudited, no notes need be attached to such statements and year-end audit adjustments may not have been made.

(d) So long as an Investor (with its Affiliates) shall own at least five hundred thousand (500,000) shares of Registrable Securities (as adjusted for stock splits, combinations and similar events) (a "Major Investor"), the Company will furnish each such Major Investor and each Series D Stockholder (regardless of whether such Series D Stockholder is a Major Investor) (i) at least thirty (30) days prior to the beginning of each fiscal year an annual operating plan for such fiscal year (and as soon as available, any subsequent revisions thereto), (ii) as soon as practicable after the end of each month (and in any event within twenty (20) days thereafter), a consolidated balance sheet of the Company as of the end of each such month, and a consolidated statement of income and a consolidated statement of cash flows of the Company for such month and for the current fiscal year to date, including a comparison to plan figures for such period, prepared in accordance with generally accepted accounting principles consistently applied, with the exception that such statements may be unaudited, no notes need be attached to such statements and year-end audit adjustments may not have been made and (iii) within not more than one hundred twenty (120) days after the end of each fiscal year, audited financial statements of the Company.

(E) The rights granted to the Investors under this Section 3.1 shall terminate upon the effective date of the registration statement pertaining to the Threshold Offering.

3.2 INSPECTION AND OTHER RIGHTS. Each Major Investor and each Series D Stockholder (regardless of whether such Series D Stockholder is a Major Investor) shall have the right to visit and inspect any of the properties of the Company or any of its subsidiaries, and to consult with and advise the officers of the Company with respect to significant business issues, the finances and accounts of the Company or any of its subsidiaries, and to review such information as is reasonably requested, all at such reasonable times and as often as may be reasonably requested; provided, however, that the Company shall not be obligated under this Section 3.2 with respect to a competitor of the Company or with respect to information which the Board of Directors determines in good faith is confidential and should not, therefore, be disclosed. The rights granted to the Major Investors and Series D Stockholders under this Section 3.2 are nonassignable and shall terminate upon the effective date of the registration statement pertaining to the Initial Offering.

3.3 CONFIDENTIALITY OF RECORDS. Each Investor agrees to use, and to use its best commercially reasonable efforts to ensure that its authorized representatives use, the same degree of care as such Investor uses to protect its own confidential information to keep confidential any information furnished to it which the Company identifies as being confidential (so long as such information is not in the public domain), except that such Investor may disclose such confidential information to any partner, officer, subsidiary or parent of such Investor for the purpose of evaluating its investment in the Company as long as such partner, officer, subsidiary or parent is advised of the confidentiality provisions of this Section 3.3. For purposes of this Section 3.3 "confidential information" does not include information, technical data or know-how which (i) is in the Investor's possession at the time of initial disclosure as shown by the Investor's files and records immediately prior to the time of such disclosure; (ii) before or after it has been disclosed to the Investor, is part of the public knowledge or literature, not as a result of any action or inaction of the Investor; or (iii) is approved for release by written authorization of the Company. The provisions of this Section 3.3 shall not apply (i) to the extent that an Investor is required to disclose confidential information pursuant to any law, statute, rule or regulation or any order of any court of competent jurisdiction or pursuant to any requirement (whether or not having the force of law, but if not having the force of law, being of a type with which institutional investors in the relevant jurisdiction are accustomed to comply) of any self-regulating organization or any governmental, fiscal, monetary or other authority; or (ii) to the disclosure of confidential information to an Investor's employees, counsel, accountants or other professional advisors, provided such persons agree to be bound by this Section 3.3.

3.4 BOARD OF DIRECTORS APPROVAL.

(a) The Company shall not without the approval of a majority of the Board of Directors take any of the following actions:

(i) adopt any stock option or purchase plan;

(ii) issue or grant any equity securities of the Company or any options or securities convertible into equity securities of the Company;

(iii) adopt an annual budget, business or financial plan;

(iv) enter into any material real estate lease or real property purchase agreement; or

(v) incur any obligation or enter into any agreement in excess of one hundred thousand dollars ($100,000), not otherwise provided for in the Company's most recent annual budget or business plan as approved by the Board of Directors.

(b) The Company shall not without the approval of at least two-thirds of the Board of Directors enter into any transaction with an affiliate (except for the Subsidiary).

3.5 PREFERRED STOCK APPROVAL. The Company shall not change its line of business without the approval of a majority of the Series A Stockholders, Series B Stockholders, Series C Stockholders, Series D Stockholders and Series E-1 Stockholders (together with the Series E-2 Preferred Stock as applicable in accordance with the Company's Certificate of Incorporation, as it may be amended) voting together as a single class, on an as converted to Common Stock basis.

3.6 RESERVATION OF COMMON STOCK. The Company will at all times reserve and keep available, solely for issuance and delivery upon the conversion of the Preferred Stock, all Common Stock issuable from time to time upon such conversion.

3.7 VESTING. Unless otherwise approved by the Board of Directors, all stock, stock options and other stock equivalents of the Company issued on or after the date of this Agreement to employees, directors, consultants and other service providers shall be subject to vesting as follows: (i) twenty-five percent (25%) of such stock (or underlying stock, as the case may be) shall vest at the end of the first year following the earlier of the date of issuance or such person's services commencement date with the Company, and (ii) seventy-five percent (75%) of such stock (or underlying stock, as the case may be) shall vest monthly in equal portions over the ensuing three (3) years. With respect to any shares of stock purchased by any such person, the Company's repurchase option shall provide that upon such person's termination of employment or service with the Company, with or without cause, the Company or its assignee (to the extent permissible under applicable securities laws and other laws) shall have the option to purchase at cost any unvested shares of stock held by such person.

3.8 PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT. The Company shall require all employees and consultants to execute and deliver a Proprietary Information and Inventions Agreement in the forms attached to the Purchase Agreement.

3.9 REAL PROPERTY HOLDING CORPORATION. The Company covenants that it will operate in a manner such that it will not become a "United States real property holding corporation" ("USRPHC") as that term is defined in Section 897(c)(2) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder ("FIRPTA"). The Company agrees to make determinations as to its status as a USRPHC, and will file statements concerning those determinations with the Internal Revenue Service, in the manner and at the times required under Reg. Section 1.897-2(h), or any supplementary or successor provision thereto. Within 30 days of a request from an Investor or any of its partners, the Company will inform the requesting party, in the manner set forth in Reg. Section 1.897-2(h)(1)(iv) or any supplementary or successor provision

thereto, whether that party's interest in the Company constitutes a United States real property interest (within the meaning of Internal Revenue Code Section 897(c)(1) and the regulations thereunder) and whether the Company has provided to the Internal Revenue Service all required notices as to its USRPHC status.

3.10 REIMBURSEMENT OF EXPENSES. The Company will reimburse the Directors of the Company for reasonable out-of-pocket expenses actually incurred in connection with their services to the Company as Directors, including without limitation, reimbursement for reasonable transportation, lodging and meal expenses incurred in connection with attendance at meetings of the Board of Directors, provided the Company receives receipts and other records of such expenses as reasonably requested by the Company and within sixty (60) days after expenses are incurred.

3.11 INDEMNIFICATION. The Company will use its reasonable efforts to limit the liability, to the fullest extent permissible under the Delaware General Corporation Law, of all of its directors and their affiliated parties, including directors affiliated with a Major Investor.

3.12 DIRECTORS AND OFFICERS INSURANCE. The Company shall maintain directors' and officers' insurance satisfactory to the Board of Directors of the Company.

3.13 SMALL BUSINESS ADMINISTRATION MATTERS.

(i) The proceeds from the purchase of the Series D Preferred Stock pursuant to the Series D Preferred Stock Purchase Agreement, as amended, dated July 24, 2002, by and among the Company and the Series D Stockholders (the "Series D Purchase Agreement") shall be used by the Company for working capital and other general corporate purposes, which may include, without limitation, one or more of the following as determined by the Company in its sole discretion: research, development, administration, manufacturing, marketing, sales and distribution. The Company shall provide to representatives of the Investors and the Small Business Administration (the "SBA") reasonable access to its books and records for the purpose of confirming such use of the proceeds or for other purposes reasonably related to the qualification of the financing provided by the Investors to the Company.

(ii) For a period of one (1) year following the Closing (as defined in the Series D Purchase Agreement), the Company shall not change the nature of its business activity if such change would render the Company ineligible, within the meaning of 13 C.F.R. Section 107.720.

(iii) So long as the Investors hold any securities of the Company, the Company will comply at all times with the non-discrimination requirements of 13 C.F.R. Parts 112, 113 and 117.

(iv) Upon the written request of the Investors, and with the cooperation of such Investors, the Company shall deliver to the Investors a written assessment, in form and substance reasonably satisfactory to the Investors, of the economic impact of the Investors' investment in the Company, specifying (a) the full-time equivalent jobs created or retained in

connection with the investment, and (b) the impact of the investment on the Company's business, in terms of revenue and profits, and on taxes paid by the Company and its employees. Upon request, the Company promptly (and in any event within twenty (20) days of such request) shall furnish to the Investors all information (a) reasonably requested by them in order for the Investors to comply with the requirements of 13 C.F.R. Section 107.620 or to prepare and file SBA Form 468 and (b) reasonably requested or required by any United States governmental agency asserting jurisdiction over the Investors. Any submission of financial information pursuant to this Section 3.13 shall be under cover of a certificate executed by the Company's president, chief executive officer, chief financial officer or treasurer certifying that such information (i) relates to the Company, (ii) to the best of the Company's knowledge is accurate and (iii) if applicable, has been audited by the Company's independent auditors.

(v) In the event that any of the Investors determines that it has a Regulatory Problem (as defined below), it shall have the right, subject to compliance with all applicable federal and state securities laws, (i) to transfer its Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E-1 Preferred Stock without regard to any restrictions on transfer set forth in this Agreement, provided that the transferee agrees to become a party to and to be bound by all of the provisions of each such agreement, and (ii) to require the Company to take all actions as may be reasonably requested by the Investor, as the case may be, in order to (A) effectuate and facilitate any transfer by the Investor of its Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E-1 Preferred Stock then held by it to any person designated by the Investor, (B) permit the Investor (or any of its affiliates) to exchange all or any portion of any voting securities of the Company then held by the Investor (or any affiliate), on a share-for-share basis, for non-voting securities of the Company, which non-voting securities shall be identical in all respects to the voting security exchanged therefor (except for voting rights and that the non-voting securities shall be convertible or exchangeable for voting securities on such terms as may be appropriate in light of regulatory considerations then prevailing), and (iii) amend this Agreement to effectuate and reflect the foregoing exchange described in subclause (ii) above. The parties to this Agreement shall be required under this Section to take any action that would adversely affect in any material economic respect such party's rights under this Agreement or as a stockholder of the Company. For purposes of this Section, a "Regulatory Problem" means any set of facts or circumstances wherein both (i) it has been asserted by any governmental regulatory agency with jurisdiction over an Investor that the Investor is not entitled to hold, or exercise any significant right with respect to, the Series B Preferred Stock, Series C Preferred Stock, the Series D Preferred Stock or Series E-1 Preferred Stock or the currently unissued Common Stock of the Company into which the Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E-1 Preferred Stock is convertible, and (ii) the Investor reasonably determines that such assertion is meritorious and that the solution proposed by the Investor is necessary to cure such regulatory violation by the Investor.

(vi) So long as any Investor that is a licensed Small Business Investment Company (a "SBIC Investor") holds any securities of the Company, the Company shall notify each SBIC Investor (i) at least fifteen (15) days prior to taking any action after which the number of record holders of the Company's voting securities would be increased from fewer than fifty (50) to fifty (50) or more, and (ii) of any other action or occurrence after which the number of record holders of the Company's voting securities was increase (or would increase)

from fewer than fifty (50) to fifty (50) or more, as soon as practicable after the Company becomes aware that such other action or occurrence has occurred or is proposed to occur.

3.14 TERMINATION OF COVENANTS. All covenants of the Company contained in Section 3 of this Agreement, except for that set forth in Sections 3.10, 3.11 and 3.13(iv), shall expire and terminate as to each Investor on the effective date of the registration statement pertaining to the Initial Offering.

4. RIGHTS OF FIRST REFUSAL

4.1 SUBSEQUENT OFFERINGS. Each Investor and each Founder (each of such Investors and Founders, for purposes of this Section 4, an "Owner") shall have a right of first refusal to purchase its pro rata share of all Equity Securities, as defined below, that the Company may, from time to time, propose to sell and issue after the date of this Agreement, other than the Equity Securities excluded by Section 4.6 hereof. Each Owner's pro rata share, for purposes of this right of first refusal, is equal to the ratio of (A) the number of shares of the Company's Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares or exercise of outstanding warrants or options) of which such Owner is deemed to be a holder immediately prior to the issuance of such Equity Securities to (B) the total number of shares of the Company's outstanding Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares or upon the exercise of any outstanding warrants or options) immediately prior to the issuance of the Equity Securities held by all Owners. The term "Equity Securities" shall mean (i) any Common Stock, Preferred Stock or other security of the Company, (ii) any security convertible, with or without consideration, into any Common Stock, Preferred Stock or other security (including any option to purchase such a convertible security), (iii) any security carrying any warrant or right to subscribe to or purchase any Common Stock, Preferred Stock or other security or (iv) any such warrant or right.

4.2 EXERCISE OF RIGHTS. If the Company proposes to issue any Equity Securities, it shall give each Owner written notice of its intention, describing the Equity Securities, the price per share and the terms and conditions upon which the Company proposes to issue the Equity Securities. Each Owner shall have twenty (20) days from the giving of such notice to agree to purchase up to its pro rata share of the Equity Securities for the price per share and upon the terms and conditions specified in the notice by giving written notice to the Company and stating therein the quantity of Equity Securities to be purchased. Notwithstanding the foregoing, the Company shall not be required to offer or sell such Equity Securities to any Owner who would cause the Company to be in violation of applicable federal securities laws by virtue of such offer or sale.

4.3 ISSUANCE OF EQUITY SECURITIES TO OTHER PERSONS. If not all of the Owners elect to purchase their full pro rata share of the Equity Securities, then the Company shall promptly notify in writing the Owners who do so elect and shall offer such Owners the right to acquire such unsubscribed shares. Each Owner shall have ten (10) days after receipt of such notice to notify the Company of its election to purchase all or a portion of the unsubscribed shares. If the Owners fail to exercise in full the rights of first refusal, the Company shall have sixty (60) days thereafter to sell the Equity Securities in respect of which the Owners' rights were not exercised, at a price and upon general terms and conditions materially no more favorable to the purchasers

thereof than specified in the Company's notice to the Owners pursuant to Section 4.2 hereof. If the Company has not sold such Equity Securities within sixty (60) days of the notice provided pursuant to Section 4.2, the Company shall not thereafter issue or sell any Equity Securities, without first offering such securities to the Owners in the manner provided above.

4.4 TERMINATION OF RIGHTS OF FIRST REFUSAL. The rights of first refusal established by this Section 4 shall not apply to Equity Securities offered for sale in the Initial Offering, and such rights shall terminate upon the effective date of the registration statement pertaining to the Threshold Offering.

4.5 TRANSFER OF RIGHTS OF FIRST REFUSAL. The rights of first refusal of each Owner under this Section 4 may be transferred, subject to the same limitations and restrictions as any transfer of registration rights pursuant to Section 2.10 (as necessarily modified to apply to the Founders and/or Common Stock).

4.6 EXCLUDED SECURITIES. The rights of first refusal established by this Section 4 shall have no application to any of the following Equity Securities in a transaction or transactions approved by a majority of the Board of Directors:

(a) shares of Common Stock (and/or options, warrants or other Common Stock purchase rights issued pursuant to such options, warrants or other rights) issued or to be issued to employees, officers or directors of, or consultants or advisors to, the Company or any subsidiary, pursuant to stock purchase or stock option plans or other arrangements;

(b) stock issued pursuant to any rights or agreements outstanding as of the date of this Agreement, options and warrants outstanding as of the date of this Agreement, and stock issued pursuant to any such rights or agreements granted after the date of this Agreement, provided that the rights of first refusal established by this Section 4 applied with respect to the initial sale or grant by the Company of such rights or agreements;

(c) any Equity Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination;

(d) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization by the Company;

(e) the Shares and any shares of Common Stock issued upon conversion of the Shares;

(f) any Equity Securities issued pursuant to any equipment leasing arrangement, or debt financing from a bank or similar financial institution;

(g) any Equity Securities issued by the Company pursuant to a registration statement filed under the Securities Act;

(h) shares of the Company's Common Stock or Preferred Stock issued in connection with strategic transactions involving the Company and other entities, including (A)

joint ventures, manufacturing, marketing or distribution arrangements, or (B) technology transfer or development arrangements; and

(i) The Series E-1 Rights and any capital stock of the Company issued pursuant to the Series E-1 Rights or conversion of such capital stock into Common Stock.

5. VOTING

5.1 BOARD OF DIRECTORS. At each annual or special meeting of the stockholders of the Company, called for purposes of electing directors of the Company, and at any other time at which the stockholders of the Company shall have the right to, or shall, vote for or consent in writing to the election of directors of the Company, then in each such event, the Investors and Founders agree that they shall vote all shares of Company stock owned by them or hereafter acquired or which such stockholder may be empowered to vote directly or indirectly (including with respect to all voting rights provided pursuant to the Series E-1 Preferred Stock or Series E-2 Preferred Stock, and in the case such rights are held in trust to cause the trustee to so vote) for the election of the Board of Directors in the following manner: (i) to elect three (3) representatives nominated by the holders of a majority of the shares of Series A Preferred and Series B Preferred then outstanding on an as-converted to Common Stock basis); (ii) to elect two (2) representatives nominated by the holders of a majority of the shares of Series D Preferred, then outstanding; provided that one of which shall be designated by Care Capital LLC; (iii) to elect a Founder, nominated by the holders of a majority of the then outstanding Common Stock; (iv) to elect the then current chief executive officer; and (v) at the discretion of the Board of Directors, to elect two (2) representatives who are not employees of the Company or any Investor, nominated or appointed by a majority of the Board of Directors. A vacancy in any directorship entitled to be elected by the holders of record of a particular class or series of capital stock of the Company shall be filled only by vote or written consent of the holders of record of such particular class or series of capital stock entitled to elect such director, as set forth in this section. Any director who has been elected as provided for in this section may be removed, with or without cause, only by the holders of record of a majority of the shares of such class or series of capital stock entitled to nominate or elect such director.

5.2 TERMINATION. The provisions of this Section 5 shall continue in full force and effect from the date hereof through the earliest of the following dates, upon which their effectiveness shall terminate in their entirety:

(a) the effective date of the registration statement pertaining to the Initial Offering; or

(b) at such time as the Investors hold Shares having the voting power equivalent to that of a number of shares of Common Stock less than five million (5,000,000) (as adjusted for stock splits, combinations and similar events); or

(c) upon the conversion into shares of Common Stock of all of the outstanding shares of (i) the Series A Preferred Stock, (ii) Series B Preferred Stock, (iii) Series C Preferred Stock, (iv) Series D Preferred Stock and (v) the Series E-1 Preferred Stock or other preferred stock of the Company issued in exchange for the Ordinary Shares pursuant to the

Put/Call Agreement (or the exchange of all Ordinary Shares subject to the Put/Call Agreement for capital stock of the Company if such exchange is not for Series E-1 or other preferred stock of the Company);

(d) ten (10) years from the date of this Agreement;

(e) the date as of which the parties hereto terminate the effectiveness of this Section 5 by written consent of the Founders and a majority in interest of the Investors;

6. MISCELLANEOUS

6.1 GOVERNING LAW. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, except to the extent the General Corporation Law of the State of Delaware applies, without giving effect to principles of conflicts of law.

6.2 ARBITRATION. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement that are not resolved by their mutual agreement shall be submitted to final and binding arbitration before JAMS, or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. Any party may commence the arbitration process called for in this agreement by filing a written demand for arbitration with JAMS, with a copy to the other party. The arbitration will be conducted in accordance with the provisions of JAMS' Streamlined Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The parties will cooperate with JAMS and with one another in selecting an arbitrator from JAMS' panel of neutrals, and in scheduling the arbitration proceedings. The parties covenant that they will participate in the arbitration in good faith, and that they will share equally in its costs. The provisions of this Section 6.2 may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered.

6.3 SURVIVAL. The representations, warranties, covenants, and agreements made herein shall survive any investigation made by any Holder and the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument.

6.4 SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto and shall inure to the benefit of and be enforceable by such persons; provided, however, that prior to the receipt by the Company of adequate written notice of the transfer of any Registrable Securities specifying the full name and address of the transferee, the Company may deem and treat the person listed as the Holder of such Registrable Securities in its records as the absolute owner and Holder of such Registrable Securities for all purposes, including the payment of dividends or any redemption price.

6.5 SEVERABILITY. In case any provision of this Agreement 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.

6.6 AMENDMENT AND WAIVER. Except as otherwise expressly provided, the obligations of the Company and the rights of the parties hereto may be amended, modified or waived only with the written consent of the holders of at least two-thirds (66 2/3%) of the Registrable Securities then outstanding and the Company. Notwithstanding the foregoing, this Agreement may be amended with only the written consent of the Company to include additional purchasers of Shares as "Investors," "Holders" and parties hereto.

6.7 DELAYS OR OMISSIONS. It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any Holder, upon any breach, default or noncompliance of the Company under this Agreement, shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Holder's part of any breach, default or noncompliance under the Agreement or any waiver on such Holder's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to Holders, shall be cumulative and not alternative.

6.8 NOTICES. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the current address of the Investor on the books and records of the Company or at such other address as such party may designate by ten (10) days' advance written notice to the other parties hereto. All notices sent to the Company shall also be sent to: Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105, Attention: John Campbell, Esq. (Telecopier: (415) 268-7522).

6.9 ATTORNEYS' FEES. In the event that any dispute among the parties to this Agreement should result in litigation, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

6.10 TITLES AND SUBTITLES. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

6.11 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this FOURTH AMENDED INVESTORS' RIGHTS AGREEMENT as of the date set forth in the first paragraph hereof.

COMPANY:

DYNAVAX TECHNOLOGIES CORPORATION

By: /s/ Dino Dina

Dino Dina
President & Chief Executive Officer

Address:
Dynavax Technologies Corporation
717 Potter Street, Suite 100
Berkeley, CA 94710
Attn: Chief Financial Officer
Facsimile: 510-450-7740

INVESTOR:

BIOMEDICAL SCIENCES INVESTMENT FUND
PTE LTD

By: /s/ Lily Chan

Lily Chan, PhD
Director

Address:
250 North Bridge Road
#27-04 Raffles City Tower
Singapore 179101
Facsimile: +65-3348478

INVESTOR:

BIOVEDA FUND PTE LTD.

By: BIOVEDA CAPITAL PTE LTD,
its Investment Manager

By: /s/ Damien Lim

Damien Lim
General Partner

Address:
BioVeda Fund Pte Ltd.
50 Cuscaden Road #08-01
HPL House
Singapore 249724
SINGAPORE
Facsimile: 65-6733-3832

INVESTOR:

SANDERLING VENTURE PARTNERS V CO-INVESTMENT FUND, L.P.

By: MIDDLETON, MCNEIL & MILLS ASSOCIATES V, LLC

By: /s/ Robert G. McNeil

Robert G. McNeil
Managing Director

SANDERLING V BIOMEDICAL CO-INVESTMENT FUND, L.P.

By: MIDDLETON, MCNEIL & MILLS ASSOCIATES V, LLC

By: /s/ Robert G. McNeil

Robert G. McNeil
Managing Director

SANDERLING V LIMITED PARTNERSHIP

By: MIDDLETON, MCNEIL & MILLS ASSOCIATES V, LLC

By: /s/ Robert G. McNeil

Robert G. McNeil
Managing Director

SANDERLING V BETEILIGUNGS GMBH & CO. KG

By: MIDDLETON, MCNEIL & MILLS ASSOCIATES V, LLC

By: /s/ Robert G. McNeil

Robert G. McNeil
Managing Director

SANDERLING V VENTURES MANAGEMENT

By: /s/ Robert G. McNeil

Robert G. McNeil
Owner

INVESTOR:

CARE CAPITAL INVESTMENTS II, LP

By: CARE CAPITAL II, LLC,
as general partner of Care Capital
Investments II, LP

By: /s/ David R. Ramsey

Name: David R. Ramsey

Title: Authorized Signatory

Address: 47 Hulfish St.
Suite 310
Princeton, NJ 08542

Attn: David Ramsey
Facsimile: 609-683-5787

INVESTOR:

PIPER JAFFRAY HEALTHCARE FUND III, L.P.

By: PIPER JAFFRAY HEALTHCARE MANAGEMENT
III, L.P., its General Partner

By: /s/ Kenneth E. Higgins

Kenneth E. Higgins, Managing Director of
Piper Ventures Capital, Inc., its
General Partner

Address:
Ken Higgins
U.S. Bancorp Piper Jaffray Ventures Inc.
800 Nicollet Mall, Suite 800
Minneapolis, MN 55402-7020
Phone: (612) 303-6365
Fax: (612) 303-1350
khiggins@pjc.com

INVESTOR:

QFINANCE, INC.

By: /s/ John S. Russell

Name: John S. Russell

Title: Exec. VP - General Counsel

Address: 4709 Creekstone Drive
Durham, NC 27703
Attn: Tom Perkins
Facsimile: 919-998-2542

INVESTOR:

EMERGING TECHNOLOGY PARTNERS, LLC

By: /s/ William F. Snider

Name: William F. Snider

Title: Managing Director

Address: 1901 Research Blvd.
Suite 350
Rockville, MD 20850

Attn:
Facsimile: 301-222-2221

AXIOM VENTURE PARTNERS II, L.P.

By: /s/ Alan Mendelson

Name: Alan Mendelson

Title: General Partner

Address:

Attn:
Facsimile:

EXHIBIT 10.2

DYNAVAX TECHNOLOGIES CORPORATION

1997 EQUITY INCENTIVE PLAN

ADOPTED JANUARY 22, 1997

AMENDED ON DECEMBER 17, 1998

AMENDED ON JANUARY 20, 2000

AMENDED ON MAY 10, 2000

1. PURPOSES.

(a) The purpose of the Plan is to provide a means by which selected Employees and Directors of and Consultants to the Company, and its Affiliates, may be given an opportunity to benefit from increases in value of the stock of the Company through the granting of (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) stock bonuses, and (iv) rights to purchase restricted stock.

(b) The Company, by means of the Plan, seeks to retain the services of persons who are now Employees or Directors of or Consultants to the Company or its Affiliates, to secure and retain the services of new Employees, Directors and Consultants, and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Affiliates.

(c) The Company intends that the Stock Awards issued under the Plan shall, in the discretion of the Board or any Committee to which responsibility for administration of the Plan has been delegated pursuant to subsection 3(c), be either (i) Options granted pursuant to Section 6, including Incentive Stock Options and Nonstatutory Stock Options, or (ii) stock bonuses or rights to purchase restricted stock granted pursuant to Section 7. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and in such form as issued pursuant to Section 6, and a separate certificate or certificates will be issued for shares purchased on exercise of each type of Option. Further the Company intends that Stock Awards issued under the Plan shall comply with the provisions of Rule 701 promulgated by the Securities and Exchange Commission under the Securities Act and are also intended to be exempt from the securities qualification requirements of the California Corporations Code pursuant to Section 25102(o) of that code.

2. DEFINITIONS.

(a) "AFFILIATE" means any parent corporation or subsidiary corporation, whether now or hereafter existing, as those terms are defined in Sections 424(e) and respectively, of the Code.

(b) "BOARD" means the Board of Directors of the Company.

(c) "CAUSE" means, with respect to the termination by the Company or an Affiliate of an individual's Continuous Status as an Employee, Director or Consultant, that such termination is for "Cause" as such term is expressly defined in a then-effective written agreement between the individual and the Company or such Affiliate, or in the absence of such then-effective written agreement and definition, is based on, in the determination of the Administrator, the individual's: (i) refusal or failure to act in accordance with any specific, lawful direction or order of the Company or an Affiliate; (ii) unfitness or unavailability for service or unsatisfactory performance (other than as a result of disability); (iii) performance of any act or failure to perform any act in bad faith and to the detriment of the Company or an Affiliate; (iv) dishonesty, intentional misconduct or material breach of any agreement with the Company or an Affiliate; or (v) commission of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person. At least 30 days prior to the termination of the individual's Continuous Status as an Employee, Director or Consultant pursuant to (i) or (ii) above, the Company shall provide the individual with notice of the Company's or such Affiliate's intent to terminate, the reason therefor, and an opportunity for the individual to cure such defects in his or her service to the Company's or such Affiliate's satisfaction. During this 30 day (or longer) period, no Stock Award issued to the individual under the Plan may be exercised or purchased.

(d) "CODE" means the Internal Revenue Code of 1986, as amended.

(e) "COMMITTEE" means a Committee appointed by the Board in accordance with subsection 3(c) of the Plan.

(f) "COMPANY" means Dynavax Technologies Corporation, a California corporation.

(g) "CONSULTANT" means any person, including an advisor, engaged by the Company or an Affiliate to render consulting services and who is compensated for such services, provided that the term "Consultant" shall not include Directors who are paid only a director's fee by the Company or who are not compensated by the Company for their services as Directors.

(h) "CONTINUOUS STATUS AS AN EMPLOYEE, DIRECTOR OR CONSULTANT" means that the service of an individual to the Company, whether as an Employee, Director or Consultant, is not interrupted or terminated. The Board or the chief executive officer of the Company may determine, in that party's sole discretion, whether Continuous Status as an Employee, Director or Consultant shall be considered interrupted in the case of: (i) any leave of absence approved by the Board or the chief executive officer of the Company, including sick leave, military leave, or any other personal leave; or (ii) transfers between the Company, Affiliates or their successors.

(i) "COVERED EMPLOYEE" means the chief executive officer and the four (4) other highest compensated officers of the Company for whom total compensation is required to be reported to shareholders under the Exchange Act, as determined for purposes of Section 162(m) of the Code.

(j) "DIRECTOR" means a member of the Board.

(k) "EMPLOYEE" means any person, including Officers and Directors, employed by the Company or any Affiliate of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(l) "EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended.

(m) "FAIR MARKET VALUE" means, as of any date, the value of the common stock of the Company determined as follows and in each case in a manner consistent with Section 260.140.50 of Title 10 of the California Code of Regulations:

(i) If the common stock is listed on any established stock exchange or traded on the Nasdaq National Market or the Nasdaq SmallCap Market, the Fair Market Value of a share of common stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Company's common stock) on the last market trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Board deems reliable.

(ii) In the absence of such markets for the common stock, the Fair Market Value shall be determined in good faith by the Board.

(n) "GOOD REASON" means the occurrence after a Corporate Transaction (as defined in Section 12(b)) of any of the following events or conditions unless consented to by an individual:

(i) a change in the individual's status, title, position or responsibilities which represents an adverse change from the individual's status, title, position or responsibilities as in effect at any time within six (6) months preceding the date of a Corporate Transaction or at any time thereafter or (B) the assignment to the individual of any duties or responsibilities which are inconsistent with the individual's status, title, position or responsibilities as in effect at any time within six (6) months preceding the date of a Corporate Transaction or at any time thereafter;

(ii) reduction in the individual's base salary to a level below that in effect at any time within six (6) months preceding the date of a Corporate Transaction or at any time thereafter; or

(iii) requiring the individual to be based at any place outside a forty-mile radius from the individual's job location prior to the Corporate Transaction except

for reasonably required travel on business which is not materially greater than such travel requirements prior to the Corporate Transaction.

(o) "INCENTIVE STOCK OPTION" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(p) "LISTING DATE" means the first date upon which any security of the Company is listed (or approved for listing) upon notice of issuance on any securities exchange, or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system if such securities exchange or interdealer quotation system has been certified in accordance with the provisions of Section 25 1 00(o) of the California Corporate Securities Law of 1968.

(q) "NON-EMPLOYEE DIRECTOR" means a Director who either (i) is not a current Employee or Officer of the Company or its parent or subsidiary, does not receive compensation (directly or indirectly) from the Company or its parent or subsidiary for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("Regulation S-K")), does not possess an interest in any other transaction as to which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship as to which disclosure would be required under Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(r) "NONSTATUTORY STOCK OPTION" means an Option not intended to qualify as an Incentive Stock Option.

(s) "OFFICER" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(t) "OPTION" means a stock option granted pursuant to the Plan.

(u) "OPTION AGREEMENT" means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(v) "OPTIONEE" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(w) "OUTSIDE DIRECTOR" means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of the Treasury regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" receiving compensation for prior services (other than benefits under a tax qualified pension plan), was not an officer of the

Company or an "affiliated corporation" at any time, and is not currently receiving direct or indirect remuneration from the Company or an "affiliated corporation" for services in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(x) "PLAN" means this 1997 Equity Incentive Plan.

(y) "RULE 10-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect with respect to the Company at the time discretion is being exercised regarding the Plan.

(z) "SECURITIES ACT" means the Securities Act of 1933, as amended.

(aa) "STOCK AWARD" means any right granted under the Plan, including any Option, any stock bonus and any right to purchase restricted stock.

(bb) "STOCK AWARD AGREEMENT" means a written agreement between the Company and a holder of a Stock Award evidencing the terms and conditions of an individual Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

3. ADMINISTRATION.

(a) The Plan shall be administered by the Board unless and until the Board delegates administration to a Committee, as provided in subsection 3(c).

(b) The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time which of the persons eligible under the Plan shall be granted Stock Awards; when and how each Stock Award shall be granted; whether a Stock Award will be an Incentive Stock Option, a Nonstatutory Stock Option, a stock bonus, a right to purchase restricted stock, or a combination of the foregoing; the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive stock pursuant to a Stock Award; and the number of shares with respect to which a Stock Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iii) To amend the Plan or a Stock Award as provided in Section 13.

(iv) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company which are not in conflict with the provisions of the Plan.

(c) The Board may delegate administration of the Plan to a committee of the Board composed of not fewer than two (2) members (the "Committee"), all of the members of which Committee may be, in the discretion of the Board, Non-Employee Directors and/or Outside Directors. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee of two (2) or more Outside Directors any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or such a subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan. Additionally, prior to the Listing Date, and notwithstanding anything to the contrary contained herein, the Board may delegate administration of the Plan to any person or persons and the term "Committee" shall apply to any person or persons to whom such authority has been delegated. Notwithstanding anything in this Section 3 to the contrary, the Board or the Committee may delegate to a committee of one or more members of the Board the authority to grant Stock Awards to eligible persons who (1) are not then subject to Section 16 of the Exchange Act and/or (2) are either (i) not then Covered Employees and are not expected to be Covered Employees at the time of recognition of income resulting from such Stock Award, or (ii) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code.

4. SHARES SUBJECT TO THE PLAN.

(a) Subject to the provisions of Section 12 relating to adjustments upon changes in stock, the stock that may be issued pursuant to Stock Awards shall not exceed in the aggregate three million four hundred forty three thousand six hundred thirty (3,443,630) shares of the Company's common stock. If any Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the stock not acquired under such Stock Award shall revert to and again become available for issuance under the Plan.

(b) The stock subject to the Plan may be unissued shares or reacquired shares, bought on the market or otherwise.

5. ELIGIBILITY.

(a) Incentive Stock Options may be granted only to Employees. Stock Awards other than Incentive Stock Options may be granted only to Employees, Directors or Consultants.

(b) No person shall be eligible for the grant of an Option or an award to purchase restricted stock if, at the time of grant, such person owns (or is deemed to own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any of its Affiliates unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value of such stock at the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant, or in the case of a restricted stock purchase award, the purchase price is at least one hundred percent (100%) of the Fair Market Value of such stock at the date of grant.

(c) Subject to the provisions of Section 12 relating to adjustments upon changes in stock, no person shall be eligible to be granted Options covering more than seven hundred thousand (700,000) shares of the Company's common stock in any calendar year. This subsection 5(c) shall not apply prior to the Listing Date and, following the Listing Date, shall not apply until (i) the earliest of-. (A) the first material, modification of the Plan (including any increase to the number of shares reserved for issuance under the Plan in accordance with Section 4); (B) the issuance of all of the shares of common stock reserved for issuance under the Plan; (C) the expiration of the Plan; or (D) the first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which occurred the first registration of an equity security under section 12 of the Exchange Act; or (ii) such other date required by Section 162(m) of the Code and the rules and regulations promulgated thereunder.

6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The provisions of separate Options need not be identical, but each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) TERM. No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

(b) PRICE. The exercise price of each Incentive Stock Option shall be not less than one hundred percent (100%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted; the exercise price of each Nonstatutory Stock Option shall be not less than eighty-five percent (85%) of the Fair Market Value of the stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock Option) may be granted with an exercise price lower than that set forth in the preceding sentence if such Option is granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 424(a) of the Code.

(c) CONSIDERATION. The purchase price of stock acquired pursuant to an Option shall be paid, to the extent permitted by applicable statutes and regulations, either (i) in

cash at the time the Option is exercised, or (ii) at the discretion of the Board or the Committee, at the time of the grant of the Option, (A) by delivery to the Company of other common stock of the Company, (B) according to a deferred payment or other arrangement (which may include, without limiting the generality of the foregoing, the use of other common stock of the Company) with the person to whom the Option is granted or to whom the Option is transferred pursuant to subsection 6(d), or (C) in any other form of legal consideration that may be acceptable to the Board.

In the case of any deferred payment arrangement, interest shall be compounded at least annually and shall be charged at the minimum rate of interest necessary to avoid the treatment as interest, under any applicable provisions of the Code, of any amounts other than amounts stated to be interest under the deferred payment arrangement.

(d) TRANSFERABILITY. An Option shall not be transferable except by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of the person to whom the Option is granted only by such person. The person to whom the Option is granted may, by delivering written notice to the Company, in a form satisfactory to the Company, designate a third party who, in the event of the death of the Optionee, shall thereafter be entitled to exercise the Option.

(e) VESTING. The total number of shares of stock subject to an Option may, but need not, be allotted in periodic installments (which may, but need not, be equal). The Option Agreement may provide that from time to time during each of such installment periods, the Option may become exercisable ("vest") with respect to some or all of the shares allotted to that period, and may be exercised with respect to some or all of the shares allotted to such period and/or any prior period as to which the Option became vested but was not fully exercised. The Option may be subject to such other terms and conditions on the time or times when it may be exercised (which may be based on performance or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options may vary but in each case will provide for vesting of at least twenty percent (20%) per year of the total number of shares subject to the Option; provided, however, that an Option granted to an officer, director or consultant (within the meaning of Section 260.140.41 of Title 10 of the California Code of Regulations) may become fully exercisable, subject to reasonable conditions such as continued employment, at any time or during any period established by the Company or of any of its Affiliates. The provisions of this subsection 6(e) are subject to any Option provisions governing the minimum number of shares as to which an Option may be exercised.

(f) TERMINATION OF EMPLOYMENT OR RELATIONSHIP AS A DIRECTOR OR CONSULTANT. In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates (other than upon the Optionee's death or disability), the Optionee may exercise his or her Option (to the extent that the Optionee was entitled to exercise it as of the date of termination) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionee's Continuous Status as an Employee, Director or Consultant (or such longer or shorter period, which shall not be less than thirty (30) days, unless such termination is for cause, specified in the Option

Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become available for issuance under the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified in the Option Agreement, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

An Optionee's Option Agreement may also provide that if the exercise of the Option following the termination of the Optionee's Continuous Status as an Employee, Director, or Consultant (other than upon the Optionee's death or disability) would result in liability under Section 16(b) of the Exchange Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in the Option Agreement, or (ii) the tenth (10th) day after the last date on which such exercise would result in such liability under Section 16(b) of the Exchange Act. Finally, an Optionee's Option Agreement may also provide that if the exercise of the Option following the termination of the Optionee's Continuous Status as an Employee, Director or Consultant (other than upon the Optionee's death or disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (1) the expiration of the ten-n of the Option set forth in the first paragraph of this subsection 6(t), or (ii) the expiration of a period of three (3) months after the termination of the Optionee's Continuous Status as an Employee, Director or Consultant during which the exercise of the Option would not be in violation of such registration requirements.

(g) DISABILITY OF OPTIONEE. In the event an Optionee's Continuous Status as an Employee, Director or Consultant terminates as a result of the Optionee's disability, the Optionee may exercise his or her Option (to the extent that the Optionee was entitled to exercise it as of the date of termination), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination (or such longer or shorter period, which in no event shall be less than six (6) months, specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become available for issuance under the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

(h) DEATH OF OPTIONEE. In the event of the death of an Optionee during, or within a period specified in the Option Agreement after the termination of, the Optionee's Continuous Status as an Employee, Director or Consultant, the Option may be exercised (to the extent the Optionee was entitled to exercise the Option as of the date of death) by the Optionee's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionee's death pursuant to subsection 6(d), but only within the period ending on the

earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period, which in no event shall be less than six (6) months, specified in the Option Agreement), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, at the time of death, the Optionee was not entitled to exercise his or her entire Option, the shares covered by the unexercisable portion of the Option shall revert to and again become available for issuance under the Plan. If, after death, the Option is not exercised within the time specified herein, the Option shall terminate, and the shares covered by such Option shall revert to and again become available for issuance under the Plan.

(i) EARLY EXERCISE. The Option may, but need not, include a provision whereby the Optionee may elect at any time while an Employee, Director or Consultant to exercise the Option as to any part or all of the shares subject to the Option prior to the full vesting of the Option. Any unvested shares so purchased shall be subject to a repurchase right in favor of the Company, with the repurchase price to be equal to the original purchase price of the stock, or to any other restriction the Board determines to be appropriate; provided, however, that (i) the right to repurchase at the original purchase price shall lapse at a minimum rate of twenty percent (20%) per year over five (5) years from the date the Option was granted, and (ii) such right shall be exercisable only within (A) the ninety (90) day period following the termination of employment or the relationship as a Director or Consultant, or (B) such longer period as may be agreed to by the Company and the Optionee (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code (regarding "qualified small business stock")), and (iii) such right shall be exercisable only for cash or cancellation of purchase money indebtedness for the shares. Should the right of repurchase be assigned by the Company, the assignee shall pay the Company cash equal to the difference between the original purchase price and the stock's Fair Market Value if the original purchase price is less than the stock's Fair Market Value. Notwithstanding the foregoing, shares received on exercise of an Option by an officer, director or consultant (within the meaning of Section 260.140.41 of Title 10 of the California Code of Regulations) may be subject to additional or greater restrictions.

(j) RIGHT OF REPURCHASE. The Option may, but need not, include a provision whereby the Company may elect, prior to the Listing Date, or prior to the occurrence of an event constituting a "Change in Control" as defined in subsection 12(b) of the Plan, to repurchase all or any part of the vested shares exercised pursuant to the Option; provided, however, that (i) such repurchase right shall be exercisable only within (A) the ninety (90) day period following the termination of employment or the relationship as a Director or Consultant (or in the case of post-termination exercise of the Option the ninety (90) day period following such post-termination exercise), or (B) such longer period as may be agreed to by the Company and the Optionee (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code (regarding "qualified small business stock")), (ii) such repurchase right shall be exercisable for less than all of the vested shares only with the Optionee's consent, and (iii) such right shall be exercisable only for cash or cancellation of purchase money indebtedness for the shares at a repurchase price equal to the greater of (A) the stock's Fair Market Value at the time of such termination or (B) the original purchase price paid for such shares by the Optionee. Notwithstanding

the foregoing, shares received on exercise of an Option by an officer, director or consultant (within the meaning of Section 260.140.41 of Title 10 of the California Code of Regulations) may be subject to additional or greater restrictions specified in the Option Agreement.

(k) RIGHT OF FIRST REFUSAL. The Option may, but need not, include a provision whereby the Company may elect, prior to the Listing Date, to exercise a right of first refusal following receipt of notice from the Optionee of the intent to transfer all or any part of the shares exercised pursuant to the Option.

(l) RE-LOAD OPTIONS. Without in any way limiting the authority of the Board or Committee to make or not to make grants of Options hereunder, the Board or Committee shall have the authority (but not an obligation) to include as part of any Option Agreement a provision entitling the Optionee to a further Option (a "Re-Load Option") in the event the Optionee exercises the Option evidenced by the Option agreement, in whole or in part, by surrendering other shares of Common Stock in accordance with this Plan and the terms and conditions of the Option Agreement. Any such Re-Load Option (i) shall be for a number of shares equal to the number of shares surrendered as part or all of the exercise price of such Option; (ii) shall have an expiration date which is the same as the expiration date of the Option the exercise of which gave rise to such Re-Load Option; and (iii) shall have an exercise price which is equal to one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Re-Load Option on the date of exercise of the original Option. Notwithstanding the foregoing, a Re-Load Option which is granted to a 10% shareholder (as described in subsection 5(b)), shall have an exercise price which is equal to one hundred ten percent (110%) of the Fair Market Value of the stock subject to the Re-Load Option on the date of exercise of the original Option and shall have a term which is no longer than five (5) years.

Any such Re-Load Option may be an Incentive Stock Option or a Nonstatutory Stock Option, as the Board or Committee may designate at the time of the grant of the original Option; provided, however, that the designation of any Re-Load Option as an Incentive Stock Option shall be subject to the one hundred thousand dollar ($100,000) annual limitation on exercisability of Incentive Stock Options described in subsection 12(e) of the Plan and in Section 422(d) of the Code. There shall be no Re-Load Options on a Re-Load Option. Any such Re-Load Option shall be subject to the availability of sufficient shares under subsection 4(a) and the limits on the grants of Options under subsection 5(c) and shall be subject to such other terms and conditions as the Board or Committee may determine which are not inconsistent with the express provisions of the Plan regarding the terms of Options.

7. TERMS OF STOCK BONUSES AND PURCHASES OF RESTRICTED STOCK.

Each stock bonus or restricted stock purchase agreement shall be in such form and shall contain such terms and conditions as the Board or the Committee shall deem appropriate. The terms and conditions of stock bonus or restricted stock purchase agreements may change from time to time, and the terms and conditions of separate

agreements need not be identical, but each stock bonus or restricted stock purchase agreement shall include (through incorporation of provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions as appropriate:

(a) PURCHASE PRICE. The purchase price under each restricted stock purchase agreement shall be such amount as the Board or Committee shall determine and designate in such Stock Award Agreement, but in no event shall the purchase price be less than eighty-five percent (85%) of the stock's Fair Market Value on the date such award is made. Notwithstanding the foregoing, the Board or the Committee may determine that eligible participants in the Plan may be awarded stock. pursuant to a stock bonus agreement in consideration for past services actually rendered to the Company or for its benefit.

(b) TRANSFERABILITY. Rights under a stock bonus or restricted stock purchase agreement shall be transferable by the grantee only upon such terms and conditions as are set forth in the applicable Stock Award Agreement, as the Board or the Committee shall determine in its discretion, so long as stock awarded under such Stock Award Agreement remains subject to the terms of the agreement.

(c) CONSIDERATION. The purchase price of stock acquired pursuant to a stock purchase agreement shall be paid either: (i) in cash at the time of purchase; (ii) at the discretion of the Board or the Committee, according to a deferred payment or other arrangement with the person to whom the stock is sold; or (iii) in any other form of legal consideration that may be acceptable to the Board or the Committee in its discretion. Notwithstanding the foregoing, the Board or the Committee to which administration of the Plan has been delegated may award stock pursuant to a stock bonus agreement in consideration for past services actually rendered to the Company or for its benefit.

(d) VESTING. Shares of stock sold or awarded under the Plan may, but need not, be subject to a repurchase option in favor of the Company in accordance with a vesting schedule to be determined by the Board or the Committee. The applicable agreement shall provide (i) that the right to repurchase at the original purchase price (or, in the case of a stock bonus, Fair Market Value on the grant date) shall lapse at a minimum rate of twenty percent (20%) per year over five (5) years from the date the Stock Award was granted (except that a Stock Award granted to an officer, director or consultant (within the meaning of Section 260.140.41 of Title 10 of the California Code of Regulations) may become fully vested, subject to reasonable conditions such as continued employment, at any time or during any period established by the Company or of any of its Affiliates), and (ii) such right shall be exercisable only (A) within the ninety (90) day period following the termination of employment or the relationship as a Director or Consultant, or (B) such longer period as may be agreed to by the Company and the holder of the Stock Award (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code (regarding "qualified small business stock")), and (iii) such right shall be exercisable only for cash or cancellation of purchase money indebtedness for the shares. Should the right of repurchase be assigned by the Company, the assignee shall pay the Company cash equal to the difference between the original purchase price and the stock's

Fair Market Value if the original purchase price is less than the stock's Fair Market Value.

(e) TERMINATION OF EMPLOYMENT OR RELATIONSHIP AS A DIRECTOR OR CONSULTANT. In the event a Participant's Continuous Status as an Employee, Director or Consultant terminates, the Company may repurchase or otherwise reacquire, subject to the limitations described in subsection 7(d), any or all of the shares of stock held by that person which have not vested as of the date of termination under the terms of the stock bonus or restricted stock purchase agreement between the Company and such person.

(f) RIGHT OF REPURCHASE. The stock bonus or restricted stock purchase agreement may, but need not, include a provision whereby the Company may elect, prior to the Listing Date, or prior to the occurrence of an event constituting a "Change in Control" as defined in subsection 12(b) of the Plan, to repurchase all or any part of the vested shares received pursuant to the stock bonus or restricted stock purchase agreement; provided, however, that (i) such repurchase right shall be exercisable only within (A) the ninety (90) day period following the termination of employment or the relationship as a Director or Consultant, or (B) such longer period as may be agreed to by the Company and the grantee (for example, for purposes of satisfying the requirements of Section 1202(c)(3) of the Code (regarding "qualified small business stock")), (ii) such repurchase right shall be exercisable for less than all of the vested shares only with the grantee's consent, and (iii) such right shall be exercisable only for cash or cancellation of purchase money indebtedness for the shares at a repurchase price equal to the greater of (A) the stock's Fair Market Value at the time of such termination or (B) the original purchase price paid for such shares by the grantee (or in the case of a stock bonus, Fair Market Value on the grant date).

8. CANCELLATION AND RE-GRANT OF OPTIONS.

(a) The Board or the Committee shall have the authority to effect, at any time and from time to time, (i) the repricing of any outstanding Options under the Plan and/or (ii) with the consent of the affected holders of Options, the cancellation of any outstanding Options under the Plan and the grant in substitution therefor of new Options under the Plan covering the same or different numbers of shares of stock, but having an exercise price per share not less than eighty-five percent (85%) of the Fair Market Value (one hundred percent (100%) of the Fair Market Value in the case of an Incentive Stock Option) or, in the case of a 10% shareholder (as described in subsection 5(b)), not less than one hundred ten percent (110%) of the Fair Market Value) per share of stock on the new grant date. Notwithstanding the foregoing, the Board or the Committee may grant an Option with an exercise price lower than that set forth above if such Option is granted as part of a transaction to which section 424(a) of the Code applies.

(b) Shares subject to an Option canceled under this Section 8 shall continue to be counted against the maximum award of Options permitted to be granted pursuant to subsection 5(c) of the Plan. The repricing of an Option under this Section 8, resulting in a reduction of the exercise price, shall be deemed to be a cancellation of the original Option

and the grant of a substitute Option; in the event of such repricing, both the original and the substituted Options shall be counted against the maximum awards of Options permitted to be granted pursuant to subsection 5(c) of the Plan. The provisions of this subsection 8(b) shall be applicable only to the extent required by Section 162(m) of the Code.

9. COVENANTS OF THE COMPANY.

(a) During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of stock required to satisfy such Stock Awards.

(b) The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to issue and sell shares of stock upon exercise of the Stock Award; provided, however, that this undertaking shall not require the Company to register under the Securities Act either the Plan, any Stock Award or any stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority which counsel for the Company deems necessary for the lawful issuance and sale of stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell stock upon exercise of such Stock Awards unless and until such authority is obtained.

10. USE OF PROCEEDS FROM STOCK.

Proceeds from the sale of stock pursuant to Stock Awards shall constitute general funds of the Company.

11. MISCELLANEOUS.

(a) Subject to any applicable provisions of the California Corporate Securities Law of 1968 and related regulations relied upon as a condition of issuing securities pursuant to the Plan, the Board shall have the power to accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest pursuant to subsection 6(e) or 7(d), notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

(b) Neither an Employee, Director or Consultant nor any person to whom a Stock Award is transferred under subsection 6(d) or 7(b) shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares subject to such Stock Award unless and until such person has satisfied all requirements for exercise of the Stock Award pursuant to its terms.

(c) Throughout the term of any Stock Award, the Company shall deliver to the holder of such Stock Award, not later than one hundred twenty (120) days after the close of each of the Company's fiscal years during the term of such Stock Award, a balance sheet and an income statement. This subsection shall not apply (i) after the Listing Date,

or (11) when issuance is limited to key employees whose duties in connection with the Company assure them access to equivalent information. The Company shall comply with other information delivery requirements as applicable, including, but not limited to, Rule 428 of the Securities Act.

(d) Nothing in the Plan or any instrument executed or Stock Award granted pursuant thereto shall confer upon any Employee, Director, Consultant or other holder of Stock Awards any right to continue in the employ of the Company or any Affiliate (or to continue acting as a Director or Consultant) or shall affect the right of the Company or any Affiliate to terminate the employment of any Employee with or without cause the right of the Company's Board of Directors and/or the Company's shareholders to remove any Director as provided in the Company's By-Laws and the provisions of the California Corporations Code, or the right to terminate the relationship of any Consultant subject to the terms of such Consultant's agreement with the Company or Affiliate.

(e) To the extent that the aggregate Fair Market Value (determined at the time of grant) of stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year under all plans of the Company and its Affiliates exceeds one hundred thousand dollars ($100,000), the Options or portions thereof which exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options.

(f) The Company may require any person to whom a Stock Award is granted, or any person to whom a Stock Award is transferred pursuant to subsection 6(d) or 7(b), as a condition of exercising or acquiring stock under any Stock Award, (1) to give written assurances satisfactory to the Company as to such person's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters, and that such person is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (2) to give written assurances satisfactory to the Company stating that such person is acquiring the stock subject to the Stock Award for such person's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (i) the issuance of the shares upon the exercise or acquisition of stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (ii) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

(g) To the extent provided by the terms of a Stock Award Agreement, the person to whom a Stock Award is granted may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of stock under a Stock Award by any of

the following means or by a combination of such means: (1) tendering a cash payment; (2) authorizing the Company to withhold shares from the shares of the common stock otherwise issuable to the participant as a result of the exercise or acquisition of stock under the Stock Award; or (3) delivering to the Company owned and unencumbered shares of the common stock of the Company.

12. ADJUSTMENTS UPON CHANGES IN STOCK.

(a) If any change is made in the stock subject to the Plan, or subject to any Stock Award (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company), the Plan will be appropriately adjusted in the type(s) and maximum number of securities subject to the Plan pursuant to subsection 4(a) and the maximum number of securities subject to award to any person during any calendar year pursuant to subsection 5(c), and the outstanding Stock Awards will be appropriately adjusted in the type(s) and number of securities and price per share of stock subject to such outstanding Stock Awards. Such adjustments shall be made by the Board or the Committee, the determination of which shall be final, binding and conclusive. (The conversion of any convertible securities of the Company shall not be treated as a "transaction not involving the receipt of consideration by the Company".)

(b) In the event of: (1) a dissolution, liquidation or sale of all or substantially all of the assets of the Company; (2) a merger or consolidation in which the Company is not the surviving corporation; or (3) a reverse merger in which the Company is the surviving corporation but the shares of the Company's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise (each event, a "Corporate Transaction"); then: (i) any surviving corporation or acquiring corporation shall assume any Stock Awards outstanding under the Plan or shall substitute similar stock awards (including an award to acquire the same consideration paid to the stockholders in the transaction described in this subsection 13(b)) for those outstanding under the Plan, or (ii) in the event any surviving corporation or acquiring corporation refuses to assume such Stock Awards or to substitute similar stock awards for those outstanding under the Plan, (A) with respect to Stock Awards held by persons then performing services as Employees, Directors or Consultants and subject to any applicable provisions of the California Corporate Securities Law of 1968 and related regulations relied upon as a condition of issuing securities pursuant to the Plan, the vesting of such Stock Awards (and, if applicable, the time during which such Stock Awards may be exercised) shall be accelerated prior to such event and the Stock Awards terminated if not exercised (if applicable) after such acceleration and at or prior to such event, and (B) with respect to any other Stock Awards outstanding under the Plan, such Stock Awards shall be terminated if not exercised (if applicable) prior to such event. To the extent that any surviving corporation or successor acquiring corporation assumes any Stock Awards outstanding under the Plan or substitutes similar stock awards for those outstanding under the Plan, then such Stock

Award (if assumed) or replacement stock award (if replaced) automatically shall become fully vested and exercisable and be released from any restrictions on transfer (other than transfer restrictions applicable to Options) and repurchase or forfeiture rights, immediately upon termination of such individual's Continuous Status as an Employee, Director or Consultant (substituting the successor employer corporation for "Company" or "Affiliate" for the definition of "Continuous Status as an Employee, Director or Consultant") if such Continuous Status as an Employee, Director or Consultant is terminated by the successor company without Cause or voluntarily by the Optionee with Good Reason within two (2) years of the Corporate Transaction.

13. AMENDMENT OF THE PLAN AND STOCK AWARDS.

(a) The Board at any time, and from time to time, may amend the Plan. However, except as provided in Section 12 relating to adjustments upon changes in stock, no amendment shall be effective unless approved by the shareholders of the Company within twelve (12) months before or after the adoption of the amendment, where the amendment will:

(1) Increase the number of shares reserved for Stock Awards under the Plan;

(2) Modify the requirements as to eligibility for participation in the Plan (to the extent such modification requires shareholder approval in order for the Plan to satisfy the requirements of Section 422 of the Code); or

(3) Modify the Plan in any other way if such modification requires shareholder approval in order for the Plan to satisfy the requirements of Section 422 of the Code or to comply with the requirements of Rule 16b-3.

(b) The Board may in its sole discretion submit any other amendment to the Plan for shareholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of Section 162(m) of the Code and the regulations promulgated thereunder regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to certain executive officers.

(c) It is expressly contemplated that the Board may amend the Plan in any respect the Board deems necessary or advisable to provide eligible Employees with the maximum benefits provided or to be provided under the provisions of the Code and the regulations promulgated thereunder relating to Incentive Stock Options and/or to bring the Plan and/or Incentive Stock Options granted under it into compliance therewith.

(d) Rights and obligations under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the person to whom the Stock Award was granted and (ii) such person consents in writing.

(e) The Board at any time, and from time to time, may amend the terms of any one or more Stock Award; provided, however, that the rights and obligations under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the person to whom the Stock Award was granted and (ii) such person consents in writing.

14. TERMINATION OR SUSPENSION OF THE PLAN.

(a) The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate ten (10) years from the date the Plan is adopted by the Board or approved by the shareholders of the Company, whichever is earlier. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) Rights and obligations under any Stock Award granted while the Plan is in effect shall not be impaired by suspension or termination of the Plan, except with the written consent of the person to whom the Stock Award was granted.

15. EFFECTIVE DATE OF PLAN.

The Plan shall become effective as determined by the Board, but no Options granted under the Plan shall be exercised and no shares of the Company's common stock subject to other Stock Awards shall be sold, disposed, or otherwise transferred unless and until the Plan has been approved by the shareholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

DYNAVAX TECHNOLOGIES CORPORATION

2004 EMPLOYEE STOCK PURCHASE PLAN

The following constitute the provisions of the 2004 Employee Stock Purchase Plan of Dynavax Technologies Corporation.

1. Purpose. The purpose of the Plan is to provide Employees of the Company and its Designated Parents or Subsidiaries with an opportunity to purchase Common Stock of the Company through accumulated payroll deductions. It is the intention of the Company to have the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Code and the applicable regulations thereunder. The provisions of the Plan, accordingly, shall be construed so as to extend and limit participation in a manner consistent with the requirements of that Section 423 of the Code.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means either the Board or a committee of the Board that is responsible for the administration of the Plan as is designated from time to time by resolution of the Board.

(b) "Applicable Laws" means the legal requirements relating to the administration of employee stock purchase plans, if any, under applicable provisions of federal securities laws, state corporate and securities laws, the Code and the applicable regulations thereunder, the rules of any applicable stock exchange or national market system, and the rules of any foreign jurisdiction applicable to participation in the Plan by residents therein.

(c) "Board" means the Board of Directors of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Common Stock" means the common stock of the Company.

(f) "Company" means Dynavax Technologies Corporation, a Delaware corporation.

(g) "Compensation" means an Employee's base salary from the Company or one or more Designated Parents or Subsidiaries, including such amounts of base salary as are deferred by the Employee (i) under a qualified cash or deferred arrangement described in Section 401(k) of the Code, or (ii) to a plan qualified under Section 125 of the Code. Compensation does not include overtime, bonuses, annual awards, other incentive payments, reimbursements or other expense allowances, fringe benefits (cash or noncash), moving expenses, deferred compensation, contributions (other than contributions described in the first sentence) made on the Employee's behalf by the Company or one or more Designated Parents or Subsidiaries under any employee benefit or welfare plan now or hereafter established, and any other payments not specifically referenced in the first sentence.

(h) "Corporate Transaction" means any of the following transactions:

(1) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated;

(2) the sale, transfer or other disposition of all or substantially all of the assets of the Company (including the capital stock of the Company's subsidiary corporations);

(3) the complete liquidation or dissolution of the Company;

(4) any reverse merger or series of related transactions culminating in a reverse merger (including, but not limited to, a tender offer followed by a reverse merger) in which the Company is the surviving entity but in which securities possessing more than forty percent (40%) of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger or the initial transaction culminating in such merger but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction; or

(5) acquisition in a single or series of related transactions by any person or related group of persons (other than the Company or by a Company-sponsored employee benefit plan) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction.

(i) "Designated Parents or Subsidiaries" means the Parents or Subsidiaries which have been designated by the Administrator from time to time as eligible to participate in the Plan.

(j) "Effective Date" means the effective date of the Registration Statement relating to the Company's initial public offering of its Common Stock. However, should any Parent or Subsidiary become a Designated Parent or Subsidiary after such date, then the Administrator, in its discretion, shall designate a separate Effective Date with respect to the employee-participants of such Designated Parent or Subsidiary.

(k) "Employee" means any individual, including an officer or director, who is an employee of the Company or a Designated Parent or Subsidiary for purposes of Section 423 of the Code. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the individual's employer. Where the period of leave exceeds ninety (90) days and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship will be deemed to have terminated on the ninety-first (91st) day of such leave, for purposes of determining eligibility to participate in the Plan.

(l) "Enrollment Date" means the first day of each Offer Period.

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

(n) "Exercise Date" means the last day of each Purchase Period.

(o) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(1) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation The Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last trading date such closing sales price or closing bid was reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(2) If the Common Stock is regularly quoted on an automated quotation system (including the OTC Bulletin Board) or by a recognized securities dealer, its Fair Market Value shall be the closing sales price for such stock as quoted on such system on the date of determination, but if selling prices are not reported, the Fair Market Value of a share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no such prices were reported on that date, on the last date such prices were reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(3) In the absence of an established market for the Common Stock of the type described in (1) and (2), above, the Fair Market Value thereof shall be determined by the Administrator in good faith.

(4) On the initial Effective Date of the Plan, the Fair Market Value shall be the price at which the Board, or if applicable, the Pricing Committee of the Board, and the underwriters agree to offer the Common Stock to the public in the initial public offering of the Common Stock.

(p) "Offer Period" means an Offer Period established pursuant to Section 4 hereof.

(q) "Parent" means a "parent corporation" of the Company, whether now or hereafter existing, as defined in Section 424(e) of the Code.

(r) "Participant" means an Employee of the Company or Designated Parent or Subsidiary who has completed a subscription agreement as set forth in Section 5(a) and is thereby enrolled in the Plan.

(s) "Plan" means this Employee Stock Purchase Plan.

(t) "Purchase Period" means a period of approximately six months, commencing on February 15 and August 15 of each year and terminating on the next following August 14 or February 14, respectively; provided, however, that the first Purchase Period shall commence on the Effective Date and shall end on August 14, 2004.

(u) "Purchase Price" shall mean an amount equal to 85% of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower.

(v) "Reserves" means, as of any date, the sum of (1) the number of shares of Common Stock covered by each then outstanding option under the Plan which has not yet been exercised and (2) the number of shares of Common Stock which have been authorized for issuance under the Plan but not then subject to an outstanding option.

(w) "Subsidiary" means a "subsidiary corporation" of the Company, whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Eligibility.

(a) General. Any individual who is an Employee on a given Enrollment Date shall be eligible to participate in the Plan for the Offer Period commencing with such Enrollment Date. No individual who is not an Employee shall be eligible to participate in the Plan.

(b) Limitations on Grant and Accrual. Any provisions of the Plan to the contrary notwithstanding, no Employee shall be granted an option under the Plan (i) if, immediately after the grant, such Employee (taking into account stock owned by any other person whose stock would be attributed to such Employee pursuant to Section 424(d) of the Code) would own stock and/or hold outstanding options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or of any Parent or Subsidiary, or (ii) which permits the Employee's rights to purchase stock under all employee stock purchase plans of the Company and its Parents or Subsidiaries to accrue at a rate which exceeds Twenty-Five Thousand Dollars (US$25,000) worth of stock (determined at the Fair Market Value of the shares at the time such option is granted) for each calendar year in which such option is outstanding at any time. The determination of the accrual of the right to purchase stock shall be made in accordance with Section 423(b)(8) of the Code and the regulations thereunder.

(c) Other Limits on Eligibility. Notwithstanding SubSection (a), above, the following Employees shall not be eligible to participate in the Plan for any relevant Offer Period: (i) Employees whose customary employment is 20 hours or less per week; (ii) Employees whose customary employment is for not more than 5 months in any calendar year; and (iii) Employees who are subject to rules or laws of a foreign jurisdiction that prohibit or make impractical the participation of such Employees in the Plan.

4. Offer Periods.

(a) The Plan shall be implemented through overlapping or consecutive Offer Periods until such time as (i) the maximum number of shares of Common Stock available for issuance under the Plan shall have been purchased or (ii) the Plan shall have been sooner terminated in accordance with Section 19 hereof. The maximum duration of an Offer Period shall be twenty-seven (27) months. Initially, the Plan shall be implemented through overlapping Offer Periods of twenty-four (24) months' duration commencing each February 15 and

August 15 following the Effective Date (except that the initial Offer Period shall commence on the Effective Date and shall end on February 14, 2006).

(b) A Participant shall be granted a separate option for each Offer Period in which he or she participates. The option shall be granted on the Enrollment Date and shall be automatically exercised in successive installments on the Exercise Dates ending within the Offer Period.

(c) If on the first day of any Purchase Period in an Offer Period in which an Employee is a Participant, the Fair Market Value of the Common Stock is less than the Fair Market Value of the Common Stock on the Enrollment Date of the Offer Period (after taking into account any adjustment during the Offer Period pursuant to Section 18(a)), the Offer Period shall be terminated automatically and the Participant shall be enrolled automatically in the new Offer Period which has its first Purchase Period commencing on that date, provided the Employee is eligible to participate in the Plan on that date and has not elected to terminate participation in the Plan.

(d) Except as specifically provided herein, the acquisition of Common Stock through participation in the Plan for any Offer Period shall neither limit nor require the acquisition of Common Stock by a Participant in any subsequent Offer Period.

5. Participation.

(a) All Employees eligible to participate in the Plan as of the first Enrollment Date of the Plan shall automatically become a Participant in the initial Offer Period and be eligible to make a direct payment for shares of the Common Stock on the Exercise Date of the first Purchase Period of the initial Offer Period in an amount equal to the lesser of the aggregate Purchase Price for 2,500 shares of the Common Stock or ten percent (10%) of the Compensation that he or she receives during the first Purchase Period of the initial Offer Period, unless a change of status notice in the form of Exhibit C (or such other form or method (including electronic forms) as the Administrator may designate from time to time) is filed to the contrary or the Participant withdraws from the Plan as provided in Section 10. No subscription agreement need be filed by the Participant with the Company in order to participate in the initial Offer Period.

(b) After the initial Offer Period, an eligible Employee may become a Participant in the Plan by completing a subscription agreement authorizing payroll deductions in the form of Exhibit A to this Plan (or such other form or method (including electronic forms) as the Administrator may designate from time to time) and filing it with the designated payroll office of the Company at least five (5) business days prior to the Enrollment Date for the Offer Period in which such participation will commence, unless a later time for filing the subscription agreement is set by the Administrator for all eligible Employees with respect to a given Offer Period.

(c) No payroll deductions shall be made for Participants during the first Purchase Period of the initial Offer Period, unless a change of status notice in the form of Exhibit C to this Plan (or such other form or method (including electronic forms) as the Administrator may designate from time to time) authorizing the commencement of payroll

deductions is filed by the Participant with the Company after a registration statement on Form S-8 has been filed with the Securities Exchange Commission with respect to the shares being offered under the Plan. If so elected, the rate of payroll deductions during the first Purchase Period of the initial Offer Period may exceed the maximum permitted rate under Section 6(a) to make-up for missed payroll deductions that would otherwise have been made prior to the filing of the Form S-8 with respect to the Plan. Payroll deductions for a Participant in the initial Offer Period shall commence at the rate elected by the Participant under Section 6(a) with the first partial or full payroll period beginning on the first day of the second Purchase Period of the initial Offer Period and shall end on the last complete payroll period during the initial Offer Period, unless a change of status notice in the form of Exhibit B (or such other form or method (including electronic forms) as the Administrator may designate from time to time) is filed to the contrary or the Participant withdraws from the Plan as provided in Section 10. No direct payment for shares shall be permitted after the first Purchase Period of the initial Offer Period. Therefore, Participants in the initial Offer Period must file the change of status notice in the form of Exhibit C to this Plan (or such other form or method (including electronic forms) as the Administrator may designate from time to time) prior to the commencement of the second Purchase Period of the initial Offer Period to assure maximum participation rights under the Plan.

(d) For Offer Periods, other than the initial Offer Period, payroll deductions for a Participant shall commence with the first partial or full payroll period beginning on the Enrollment Date and shall end on the last complete payroll period during the Offer Period, unless sooner terminated by the Participant as provided in Section 10.

6. Payroll Deductions.

(a) At the time a Participant files a subscription agreement, the Participant shall elect to have payroll deductions made during the Offer Period in amounts between one percent (1%) and not exceeding ten percent (10%) of the Compensation which the Participant receives during the Offer Period.

(b) All payroll deductions made for a Participant shall be credited to the Participant's account under the Plan and will be withheld in whole percentages only. A Participant may not make any additional payments into such account.

(c) A Participant may discontinue participation in the Plan as provided in Section 10, or may increase or decrease the rate of payroll deductions during the Offer Period by completing and filing with the Company a change of status notice in the form of Exhibit B to this Plan (or such other form or method (including electronic forms) as the Administrator may designate from time to time) authorizing an increase or decrease in the payroll deduction rate. During the first Purchase Period of the initial Offer Period, a Participant may discontinue participation in the Plan as provided in Section 10 or initiate payroll deductions by completing and filing with the Company a change of status notice in the form of Exhibit C to this Plan (or such other form or method (including electronic forms) as the Administrator may designate from time to time). Any increase or decrease in the rate of a Participant's payroll deductions shall be effective with the first full payroll period commencing five (5) business days after the Company's receipt of the change of status notice unless the Company elects to process a given

change in participation more quickly. A Participant's subscription agreement (as modified by any change of status notice) shall remain in effect for successive Offer Periods unless terminated as provided in Section 10. The Administrator shall be authorized to limit the number of payroll deduction rate changes during any Offer Period.

(d) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b) herein, a Participant's payroll deductions shall be decreased to 0%. Payroll deductions shall recommence at the rate provided in such Participant's subscription agreement, as amended, at the time when permitted under Section 423(b)(8) of the Code and Section 3(b) herein, unless such participation is sooner terminated by the Participant as provided in Section 10.

7. Grant of Option. On the Enrollment Date, each Participant shall be granted an option to purchase (at the applicable Purchase Price) 10,000 shares of the Common Stock, subject to adjustment as provided in Section 18 hereof; provided (i) that such option shall be subject to the limitations set forth in Sections 3(b), 6 and 12 hereof, and (ii) the maximum number of shares of Common Stock a Participant shall be permitted to purchase in any Purchase Period shall be 2,500 shares, subject to adjustment as provided in Section 18 hereof.1 Exercise of the option shall occur as provided in Section 8, unless the Participant has withdrawn pursuant to Section 10, and the option, to the extent not exercised, shall expire on the last day of the Offer Period with respect to which such option was granted. Notwithstanding the foregoing, shares subject to the option may only be purchased with accumulated payroll deductions credited to a Participant's account in accordance with Section 6 of the Plan. In addition, to the extent an option is not exercised on each Purchase Date, the option shall lapse and thereafter cease to be exercisable.

8. Exercise of Option. Unless a Participant withdraws from the Plan as provided in Section 10, below, the Participant's option for the purchase of shares of Common Stock will be exercised automatically on each Exercise Date, by applying the accumulated payroll deductions in the Participant's account to purchase the number of full shares subject to the option by dividing such Participant's payroll deductions accumulated prior to such Exercise Date and retained in the Participant's account as of the Exercise Date by the applicable Purchase Price, provided, however, that if a Participant is eligible to purchase any shares on the first Exercise Date of the initial Offer Period by direct payment, the Participant's option for the purchase of shares will be exercised to the extent possible by applying the direct payment amount made by the Participant to purchase the number of full shares subject to the option by dividing such direct payment amount by the applicable Purchase Price and, provided, further, in no event may the accumulated payroll deductions and direct payment amounts applied to the purchase of shares on the first Exercise Date of the initial Offer Period exceed the amount specified in Section 5(a). No fractional shares will be purchased; any payroll deductions accumulated in a Participant's account which are not sufficient to purchase a full share shall be carried over to the next Purchase Period or Offer Period, whichever applies, or returned to the Participant, if the Participant withdraws from the Plan. Any direct payment amounts which are not sufficient to purchase a full share shall be returned to the Participant. Notwithstanding the foregoing, any amount remaining in a Participant's account or any excess direct payment amount following the

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1 All Share numbers in the Plan reflect the one-for-three reverse stock split which occurred on _____, 2004.

purchase of shares on the Exercise Date due to the application of Section 423(b)(8) of the Code or Section 7, above, shall be returned to the Participant and shall not be carried over to the next Offer Period or Purchase Period. During a Participant's lifetime, a Participant's option to purchase shares hereunder is exercisable only by the Participant.

9. Delivery. Upon receipt of a request from a Participant after each Exercise Date on which a purchase of shares occurs, the Company shall arrange the delivery to such Participant, as promptly as practicable, of a certificate representing the shares purchased upon exercise of the Participant's option.

10. Withdrawal; Termination of Employment.

(a) A Participant may either (i) withdraw all but not less than all the payroll deductions credited to the Participant's account and not yet used to exercise the Participant's option under the Plan or (ii) terminate future payroll deductions, but allow accumulated payroll deductions to be used to exercise the Participant's option under the Plan at any time by giving written notice to the Company in the form of Exhibit B to this Plan (or such other form or method (including electronic forms) as the Administrator may designate from time to time). During the first Purchase Period of the initial Offer Period, a Participant may elect to withdraw from the Plan and not purchase shares by direct payment by giving written notice to the Company in the form of Exhibit C to this Plan (or such other form or method (including electronic forms) as the Administrator may designate from time to time). If the Participant elects withdrawal alternative (i) described above, all of the Participant's payroll deductions credited to the Participant's account will be paid to such Participant as promptly as practicable after receipt of notice of withdrawal, such Participant's option for the Offer Period will be automatically terminated, and no further payroll deductions for the purchase of shares will be made during the Offer Period. If the Participant elects withdrawal alternative (ii) described above, no further payroll deductions for the purchase of shares will be made during the Offer Period, all of the Participant's payroll deductions credited to the Participant's account will be applied to the exercise of the Participant's option on the next Exercise Date (subject to Sections 3(b), 6, 7 and 12), and after such Exercise Date, such Participant's option for the Offer Period will be automatically terminated and all remaining accumulated payroll deduction amounts shall be returned to the Participant. If a Participant withdraws from an Offer Period, payroll deductions will not resume at the beginning of the succeeding Offer Period unless the Participant delivers to the Company a new subscription agreement.

(b) Upon termination of a Participant's employment relationship (as described in Section 2(k)) at a time more than three (3) months from the next scheduled Exercise Date, the payroll deductions credited to such Participant's account during the Offer Period but not yet used to exercise the option will be returned to such Participant or, in the case of his/her death, to the person or persons entitled thereto under Section 14, and such Participant's option will be automatically terminated without exercise of any portion of such option. Upon termination of a Participant's employment relationship (as described in Section 2(k)) within three (3) months of the next scheduled Exercise Date, the payroll deductions credited to such Participant's account during the Offer Period but not yet used to exercise the option will be applied to the purchase of Common Stock on the next Exercise Date, unless the Participant (or in the case of the Participant's death, the person or persons entitled to the Participant's account balance under

Section 14) withdraws from the Plan by submitting a change of status notice in accordance with subSection (a) of this Section 10. In such a case, no further payroll deductions will be credited to the Participant's account following the Participant's termination of employment and the Participant's option under the Plan will be automatically terminated after the purchase of Common Stock on the next scheduled Exercise Date.

11. Interest. No interest shall accrue on the payroll deductions credited to a Participant's account under the Plan.

12. Stock.

(a) Subject to adjustment upon changes in capitalization of the Company as provided in Section 18, the maximum number of shares of Common Stock which shall be made available for sale under the Plan shall be 250,000 shares, plus an annual increase to be added on the first business day of each Calendar year beginning in 2005 equal to the lesser of (i) 250,000 shares, (ii) one percent (1%) of the outstanding shares of Common Stock on such date, or (iii) a lesser number of shares determined by the Administrator.2 With respect to any amendment to increase the total number of shares of Common Stock under the Plan, the Administrator shall have discretion to disallow the purchase of any increased shares of Common Stock for Offer Periods in existence prior to such increase. If the Administrator determines that on a given Exercise Date the number of shares with respect to which options are to be exercised may exceed (x) the number of shares then available for sale under the Plan or (y) the number of shares available for sale under the Plan on the Enrollment Date(s) of one or more of the Offer Periods in which such Exercise Date is to occur, the Administrator may make a pro rata allocation of the shares remaining available for purchase on such Enrollment Dates or Exercise Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine to be equitable, and shall either continue all Offer Periods then in effect or terminate any one or more Offer Periods then in effect pursuant to Section 19, below. Any amount remaining in a Participant's payroll account following such pro rata allocation shall be returned to the Participant and shall not be carried over to any future Purchase Period or Offer Period, as determined by the Administrator.

(b) A Participant will have no interest or voting right in shares covered by the Participant's option until such shares are actually purchased on the Participant's behalf in accordance with the applicable provisions of the Plan. No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date of such purchase.

(c) Shares to be delivered to a Participant under the Plan will be registered in the name of the Participant or in the name of the Participant and his or her spouse, as designated in the Participant's subscription agreement.

13. Administration. The Plan shall be administered by the Administrator which shall have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility and to adjudicate all disputed claims filed under the Plan. Every

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2 All Share numbers in the Plan reflect the one-for-three reverse stock split which occurred on _____, 2004.

finding, decision and determination made by the Administrator shall, to the full extent permitted by Applicable Law, be final and binding upon all persons.

14. Designation of Beneficiary.

(a) Each Participant will file a written designation of a beneficiary who is to receive any shares and cash, if any, from the Participant's account under the Plan in the event of such Participant's death. If a Participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the Participant (and the Participant's spouse, if any) at any time by written notice. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living (or in existence) at the time of such Participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Administrator), the Administrator shall deliver such shares and/or cash to the spouse (or domestic partner, as determined by the Administrator) of the Participant, or if no spouse (or domestic partner) is known to the Administrator, then to the issue of the Participant, such distribution to be made per stirpes (by right of representation), or if no issue are known to the Administrator, then to the heirs at law of the Participant determined in accordance with Section 27.

15. Transferability. No payroll deductions credited to a Participant's account, options granted hereunder, or any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution, or as provided in Section 14 hereof) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Administrator may, in its sole discretion, treat such act as an election to withdraw funds from an Offer Period in accordance with Section 10.

16. Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions or hold them exclusively for the benefit of Participants. All payroll deductions received or held by the Company may be subject to the claims of the Company's general creditors. Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974, as amended. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Administrator, the Company or any Designated Parent or Subsidiary and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of the Company or a Designated Parent or Subsidiary. The Participants shall have no claim against the Company or any Designated Parent or Subsidiary for any changes in the value of any assets that may be invested or reinvested by the Company with respect to the Plan.

17. Reports. Individual accounts will be maintained for each Participant in the Plan. Statements of account will be given to Participants at least annually, which statements will set forth the amounts of payroll deductions, the Purchase Price, the number of shares purchased and the remaining cash balance, if any.

18. Adjustments Upon Changes in Capitalization; Corporate Transactions.

(a) Adjustments Upon Changes in Capitalization. Subject to any required action by the stockholders of the Company, the Reserves, the Purchase Price, the maximum number of shares that may be purchased in any Offer Period or Purchase Period, as well as any other terms that the Administrator determines require adjustment shall be proportionately adjusted for (i) any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, (ii) any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company, or (iii) as the Administrator may determine in its discretion, any other transaction with respect to Common Stock including a corporate merger, consolidation, acquisition of property or stock, separation (including a spin-off or other distribution of stock or property), reorganization, liquidation (whether partial or complete) or any similar transaction; provided, however that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator and its determination shall be final, binding and conclusive. Except as the Administrator determines, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason hereof shall be made with respect to, the Reserves and the Purchase Price.

(b) Corporate Transactions. In the event of a proposed Corporate Transaction, each option under the Plan shall be assumed by such successor corporation or a parent or subsidiary of such successor corporation, unless the Administrator, in the exercise of its sole discretion and in lieu of such assumption, determines to shorten the Offer Period then in progress by setting a new Exercise Date (the "New Exercise Date"). If the Administrator shortens the Offer Period then in progress in lieu of assumption in the event of a Corporate Transaction, the Administrator shall notify each Participant in writing at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for the Participant's option has been changed to the New Exercise Date and that either:

(1) the Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offer Period as provided in Section 10; or

(2) the Company shall pay to the Participant on the New Exercise Date an amount in cash, cash equivalents, or property as determined by the Administrator that is equal to the difference in the Fair Market Value of the shares subject to the option and the Purchase Price due had the Participant's option been exercised automatically under SubSection (b)(i) above.

For purposes of this Subsection, an option granted under the Plan shall be deemed to be assumed if, in connection with the Corporate Transaction, the option is replaced with a comparable option with respect to shares of capital stock of the successor corporation or Parent thereof. The determination of option comparability shall be made by the Administrator prior to the Corporate Transaction and its determination shall be final, binding and conclusive on all persons.

19. Amendment or Termination.

(a) The Administrator may at any time and for any reason terminate or amend the Plan. Except as provided in Section 18, no such termination can affect options previously granted, provided that the Plan or any one or more Offer Periods may be terminated by the Administrator on any Exercise Date or by the Administrator establishing a new Exercise Date with respect to any Offer Period and/or any Purchase Period then in progress if the Administrator determines that the termination of the Plan or such one or more Offer Periods is in the best interests of the Company and its stockholders. Except as provided in Section 18 and this Section 19, no amendment may make any change in any option theretofore granted which adversely affects the rights of any Participant without the consent of affected Participants. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision or any other Applicable Law), the Company shall obtain stockholder approval in such a manner and to such a degree as required.

(b) Without stockholder consent and without regard to whether any Participant rights may be considered to have been "adversely affected," the Administrator shall be entitled to limit the frequency and/or number of changes in the amount withheld during Offer Periods, change the length of Purchase Periods within any Offer Period, determine the length of any future Offer Period, determine whether future Offer Periods shall be consecutive or overlapping, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, establish additional terms, conditions, rules or procedures to accommodate the rules or laws of applicable foreign jurisdictions, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable and which are consistent with the Plan.

20. Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Administrator at the location, or by the person, designated by the Administrator for the receipt thereof.

21. Conditions Upon Issuance of Shares. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance. As a condition to the exercise of an option, the Company may require the Participant to represent and warrant at the time of any such

exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned Applicable Laws. In addition, no options shall be exercised or shares issued hereunder before the Plan shall have been approved by stockholders of the Company as provided in Section 23.

22. Term of Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the stockholders of the Company. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 19.

23. Stockholder Approval. Continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the degree and manner required under Applicable Laws.

24. No Employment Rights. The Plan does not, directly or indirectly, create any right for the benefit of any employee or class of employees to purchase any shares under the Plan, or create in any employee or class of employees any right with respect to continuation of employment by the Company or a Designated Parent or Subsidiary, and it shall not be deemed to interfere in any way with such employer's right to terminate, or otherwise modify, an employee's employment at any time.

25. No Effect on Retirement and Other Benefit Plans. Except as specifically provided in a retirement or other benefit plan of the Company or a Designated Parent or Subsidiary, participation in the Plan shall not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or a Designated Parent or Subsidiary, and shall not affect any benefits under any other benefit plan of any kind or any benefit plan subsequently instituted under which the availability or amount of benefits is related to level of compensation. The Plan is not a "Retirement Plan" or "Welfare Plan" under the Employee Retirement Income Security Act of 1974, as amended.

26. Effect of Plan. The provisions of the Plan shall, in accordance with its terms, be binding upon, and inure to the benefit of, all successors of each Participant, including, without limitation, such Participant's estate and the executors, administrators or trustees thereof, heirs and legatees, and any receiver, trustee in bankruptcy or representative of creditors of such Participant.

27. Governing Law. The Plan is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties, except to the extent the internal laws of the State of California are superseded by the laws of the United States. Should any provision of the Plan be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

28. Dispute Resolution. The provisions of this Section 28 (and as restated in the Subscription Agreement) shall be the exclusive means of resolving disputes arising out of or

relating to the Plan. The Company and the Participant, or their respective successors (the "parties"), shall attempt in good faith to resolve any disputes arising out of or relating to the Plan by negotiation between individuals who have authority to settle the controversy. Negotiations shall be commenced by either party by notice of a written statement of the party's position and the name and title of the individual who will represent the party. Within thirty (30) days of the written notification, the parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to resolve the dispute. If the dispute has not been resolved by negotiation, the parties agree that any suit, action, or proceeding arising out of or relating to the Plan shall be brought in the United States District Court for the Northern District of California (or should such court lack jurisdiction to hear such action, suit or proceeding, in a California state court in the County of San Francisco) and that the parties shall submit to the jurisdiction of such court. The parties irrevocably waive, to the fullest extent permitted by law, any objection the party may have to the laying of venue for any such suit, action or proceeding brought in such court. THE PARTIES ALSO EXPRESSLY WAIVE ANY RIGHT THEY HAVE OR MAY HAVE TO A JURY TRIAL OF ANY SUCH SUIT, ACTION OR PROCEEDING. If any one or more provisions of this Section 28 shall for any reason be held invalid or unenforceable, it is the specific intent of the parties that such provisions shall be modified to the minimum extent necessary to make it or its application valid and enforceable.

EXHIBIT A

Dynavax Technologies Corporation 2004 Employee Stock Purchase Plan
SUBSCRIPTION AGREEMENT

Effective with the Offer Period beginning on:

[ ] ESPP Effective Date [ ] August 15, 2004 or [ ] February 15, 2005

1. PERSONAL INFORMATION [MODIFY DATA REQUESTED AS APPROPRIATE]

Legal Name (Please Print)

(Last)	(First)	(MI)	Location	Department

Street Address

	Daytime Telephone

City, State/Country, Zip

	E-Mail Address

Social Security No. - - Employee I.D. No.

Manager	Mgr. Location

2. ELIGIBILITY Any Employee whose customary employment is more than 20 hours per week and more than 5 months per calendar year and who does not hold (directly or indirectly) five percent (5%) or more of the combined voting power of the Company, a parent or a subsidiary, whether in stock or options to acquire stock is eligible to participate in the Dynavax Technologies Corporation 2004 Employee Stock Purchase Plan (the "ESPP"); provided, however, that Employees who are subject to the rules or laws of a foreign jurisdiction that prohibit or make impractical the participation of such Employees in the ESPP are not eligible to participate.

3. DEFINITIONS Each capitalized term in this Subscription Agreement shall have the meaning set forth in the ESPP.

4. SUBSCRIPTION I hereby elect to participate in the ESPP and subscribe to purchase shares of the Company's Common Stock in accordance with this Subscription Agreement and the ESPP. I have received a complete copy of the ESPP and a prospectus describing the ESPP and understand that my participation in the ESPP is in all respects subject to the terms of the ESPP. The effectiveness of this Subscription Agreement is dependent on my eligibility to participate in the ESPP.

5. PAYROLL DEDUCTION AUTHORIZATION I hereby authorize payroll deductions from my Compensation during the Offer Period in the percentage specified below (payroll reductions may not exceed 10% of Compensation nor the limitation under Section 423(b)(8) of the Code and the regulations thereunder):

Percentage to be Deducted (circle one) 1% 2% 3% 4% 5% 6% 7%
8% 9% 10%

6. ESPP ACCOUNTS AND PURCHASE PRICE I understand that all payroll deductions will be credited to my account under the ESPP. No additional payments may be made to my account. No interest will be credited on funds held in the account at any time including any refund of the account caused by withdrawal from the ESPP. All payroll deductions shall be accumulated for the purchase of Company Common Stock at the applicable Purchase Price determined in accordance with the ESPP.

7. WITHDRAWAL AND CHANGES IN PAYROLL DEDUCTION I understand that I may discontinue my participation in the ESPP at any time prior to an Exercise Date as provided in Section 10 of the

ESPP, but if I do not withdraw from the ESPP, any accumulated payroll deductions will be applied automatically to purchase Company Common Stock. I may increase or decrease the rate of my payroll deductions in whole percentage increments to not less than one percent (1%) on one occasion during any Purchase Period by completing and timely filing a Change of Status Notice. Any increase or decrease will be effective for the full payroll period occurring after five (5) business days from the Company's receipt of the Change of Status Notice.

8. PERPETUAL SUBSCRIPTION I understand that this Subscription Agreement shall remain in effect for successive Offer Periods until I withdraw from participation in the ESPP, or termination of the ESPP.

9. TAXES I have reviewed the ESPP prospectus discussion of the federal tax consequences of participation in the ESPP and consulted with tax consultants as I deemed advisable prior to my participation in the ESPP. I hereby agree to notify the Company in writing within thirty (30) days of any disposition (transfer or sale) of any shares purchased under the ESPP if such disposition occurs within two (2) years of the Enrollment Date (the first day of the Offer Period during which the shares were purchased) or within one (1) year of the Exercise Date (the date I purchased such shares), and I will make adequate provision to the Company for foreign, federal, state or other tax withholding obligations, if any, which arise upon the disposition of the shares. In addition, the Company may withhold from my Compensation any amount necessary to meet applicable tax withholding obligations incident to my participation in the ESPP, including any withholding necessary to make available to the Company any tax deductions or benefits contingent on such withholding.

10. DISPUTE RESOLUTION The provisions of this Section 10 and Section 28 of the ESPP shall be the exclusive means of resolving disputes arising out of or relating to the Plan. The Company and I, or our respective successors (the "parties"), shall attempt in good faith to resolve any disputes arising out of or relating to the Plan by negotiation between individuals who have authority to settle the controversy. Negotiations shall be commenced by either party by notice of a written statement of the party's position and the name and title of the individual who will represent the party. Within thirty (30) days of the written notification, the parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to resolve the dispute. If the dispute has not been resolved by negotiation, the Company and I agree that any suit, action, or proceeding arising out of or relating to the Plan shall be brought in the United States District Court for the Northern District of California (or should such court lack jurisdiction to hear such action, suit or proceeding, in a California state court in the County of San Francisco) and that we shall submit to the jurisdiction of such court. The Company and I irrevocably waive, to the fullest extent permitted by law, any objection we may have to the laying of venue for any such suit, action or proceeding brought in such court. THE COMPANY AND I ALSO EXPRESSLY WAIVE ANY RIGHT WE HAVE OR MAY HAVE TO A JURY TRIAL OF ANY SUCH SUIT, ACTION OR PROCEEDING. If any one or more provisions of this Section 10 or Section 28 of the ESPP shall for any reason be held invalid or unenforceable, it is the specific intent of the Company and I that such provisions shall be modified to the minimum extent necessary to make it or its application valid and enforceable.

11. DESIGNATION OF BENEFICIARY In the event of my death, I hereby designate the following person or trust as my beneficiary to receive all payments and shares due to me under the ESPP:

[ ] I am single [ ] I am married

Beneficiary (please print) Relationship to Beneficiary (if any)

(Last) (First) (MI)

Street Address

City, State/Country, Zip
---

12. TERMINATION OF ESPP I understand that the Company has the right, exercisable in its sole discretion, to amend or terminate the ESPP at any time, and a termination may be effective as early as an Exercise Date, including the establishment of an alternative date for an Exercise Date within each outstanding Offer Period.

Date: ---------- Employee Signature: ----------

---
spouse's signature (if beneficiary is other than spouse)

EXHIBIT B

Dynavax Technologies Corporation 2004 Employee Stock Purchase Plan
CHANGE OF STATUS NOTICE

- ---
Participant Name (Please Print)

- ---
Social Security Number

==========

WITHDRAWAL FROM ESPP

I hereby withdraw from the Dynavax Technologies Corporation 2004 Employee Stock Purchase Plan (the "ESPP") and agree that my option under the applicable Offer Period will be automatically terminated and all accumulated payroll deductions credited to my account will be refunded to me or applied to the purchase of Common Stock depending on the alternative indicated below. No further payroll deductions will be made for the purchase of shares in the applicable Offer Period and I shall be eligible to participate in a future Offer Period only by timely delivery to the Company of a new Subscription Agreement.

[ ] WITHDRAWAL AND PURCHASE OF COMMON STOCK

Payroll deductions will terminate, but your account balance will be applied to purchase Common Stock on the next Exercise Date. Any remaining balance will be refunded.

[ ] WITHDRAWAL WITHOUT PURCHASE OF COMMON STOCK

Entire account balance will be refunded to me and no Common Stock will be purchased on the next Exercise Date provided this notice is submitted to the Company ten (10) business days prior to the next Exercise Date.

==========

[ ] CHANGE IN PAYROLL DEDUCTION

I hereby elect to change my rate of payroll deduction under the ESPP as follows (select one):

Percentage to be Deducted (circle one) 1% 2% 3% 4% 5% 6% 7%
8% 9% 10%

An increase or a decrease in payroll deduction will be effective for the first full payroll period commencing no fewer than five (5) business days following the Company's receipt of this notice, unless this change is processed more quickly.

==========

==========

[ ] CHANGE OF BENEFICIARY [ ] I am single [ ] I am married

This change of beneficiary shall terminate my previous beneficiary designation under the ESPP. In the event of my death, I hereby designate the following person or trust as my beneficiary to receive all payments and shares due to me under the ESPP:

Beneficiary (please print) Relationship to Beneficiary (if any)

(Last) (First) (MI)

Street Address

City, State/Country, Zip

==========

Date: Employee Signature:

spouse's signature (if beneficiary is other than spouse)

EXHIBIT C

Dynavax Technologies Corporation 2004 Employee Stock Purchase Plan
CHANGE OF STATUS NOTICE

DURING FIRST PURCHASE PERIOD OF THE INITIAL OFFER PERIOD

- ---
Participant Name (Please Print)

- ---
Social Security Number

==========

WITHDRAWAL FROM ESPP

I hereby withdraw from the Dynavax Technologies Corporation 2004 Employee Stock Purchase Plan (the "ESPP") and agree that my option under the applicable Offer Period will be automatically terminated. No payroll deductions will be made for the purchase of shares in the initial Offer Period and I shall be eligible to participate in a future Offer Period only by timely delivery to the Company of a new Subscription Agreement.

[ ] WITHDRAWAL WITHOUT PURCHASE BY DIRECT PAYMENT

I elect not to purchase shares by direct payment during the first Purchase Period of the initial Offer Period.

==========

[ ] INITIATE PAYROLL DEDUCTION DURING FIRST PURCHASE PERIOD OF INITIAL OFFER PERIOD

I hereby elect to initiate payroll deduction under the ESPP as follows (select one):

Percentage to be Deducted (circle one) 1% 2% 3% 4% 5% 6% 7%
8% 9% 10%

To the extent possible, the rate of payroll deduction will exceed the percentage indicated to yield the correct amount of withholding on the Exercise Date to cover payroll periods during which no withholding for participation in the Plan was made.

I understand that this notice and payroll withholding rate shall remain in effect for successive Offer Periods until I withdraw from participation in the ESPP, change withholding rates, or the ESPP terminates.

An increase or a decrease in payroll deduction or direct payment percentage will be effective for the first full payroll period commencing no fewer than five (5) business days following the Company's receipt of this notice, unless this change is processed more quickly.

==========

DESIGNATION OF BENEFICIARY

In the event of my death, I hereby designate the following person or trust as my beneficiary to receive all payments and shares due to me under the ESPP: [ ] I am single [ ] I am married

Beneficiary (please print) _____ Relationship to Beneficiary (if any)

(Last) (First) (MI)

Street Address _____

City, State/Country, Zip _____

Date: _____ Employee Signature: _____

_____

spouse's signature (if beneficiary is other than spouse)

DYNAVAX TECHNOLOGIES CORPORATION
2004 STOCK INCENTIVE PLAN

1. Purposes of the Plan. The purposes of this Plan are to attract and retain the best available personnel, to provide additional incentives to Employees, Directors and Consultants and to promote the success of the Company's business.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of the Committees appointed to administer the Plan.

(b) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 promulgated under the Exchange Act.

(c) "Applicable Laws" means the legal requirements relating to the Plan and the Awards under applicable provisions of federal securities laws, state corporate and securities laws, the Code, the rules of any applicable stock exchange or national market system, and the rules of any non-U.S. jurisdiction applicable to Awards granted to residents therein.

(d) "Assumed" means that pursuant to a Corporate Transaction either (i) the Award is expressly affirmed by the Company or (ii) the contractual obligations represented by the Award are expressly assumed (and not simply by operation of law) by the successor entity or its Parent in connection with the Corporate Transaction with appropriate adjustments to the number and type of securities of the successor entity or its Parent subject to the Award and the exercise or purchase price thereof which preserves the compensation element of the Award existing at the time of the Corporate Transaction as determined in accordance with the instruments evidencing the agreement to assume the Award.

(e) "Award" means the grant of an Option, SAR, Dividend Equivalent Right, Restricted Stock, Performance Unit, Performance Share, or other right or benefit under the Plan.

(f) "Award Agreement" means the written agreement evidencing the grant of an Award executed by the Company and the Grantee, including any amendments thereto.

(g) "Board" means the Board of Directors of the Company.

(h) "Cause" means, with respect to the termination by the Company or a Related Entity of the Grantee's Continuous Service, that such termination is for "Cause" as such term is expressly defined in a then-effective written agreement between the Grantee and the Company or such Related Entity, or in the absence of such then-effective written agreement and definition, is based on, in the determination of the Administrator, the Grantee's: (i) performance of any act or failure to perform any act in bad faith and to the detriment of the Company or a Related Entity; (ii) dishonesty, intentional misconduct or material breach of any agreement with the Company or a Related Entity; or (iii) commission of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person.

(i) "Change in Control" means a change in ownership or control of the Company effected through either of the following transactions:

(i) the direct or indirect acquisition by any person or related group of persons (other than an acquisition from or by the Company or by a Company-sponsored employee benefit plan or by a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders which a majority of the Continuing Directors who are not Affiliates or Associates of the offeror do not recommend such stockholders accept, or

(ii) a change in the composition of the Board over a period of thirty-six (36) months or less such that a majority of the Board members (rounded up to the next whole number) ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who are Continuing Directors.

(j) "Code" means the Internal Revenue Code of 1986, as amended.

(k) "Committee" means any committee composed of members of the Board appointed by the Board to administer the Plan.

(l) "Common Stock" means the common stock of the Company.

(m) "Company" means Dynavax Technologies Corporation, a Delaware corporation.

(n) "Consultant" means any person (other than an Employee or a Director, solely with respect to rendering services in such person's capacity as a Director) who is engaged by the Company or any Related Entity to render consulting or advisory services to the Company or such Related Entity.

(o) "Continuing Directors" means members of the Board who either (i) have been Board members continuously for a period of at least thirty-six (36) months or (ii) have been Board members for less than thirty-six (36) months and were elected or nominated for election as Board members by at least a majority of the Board members described in clause (i) who were still in office at the time such election or nomination was approved by the Board.

(p) "Continuous Service" means that the provision of services to the Company or a Related Entity in any capacity of Employee, Director or Consultant is not interrupted or terminated. In jurisdictions requiring notice in advance of an effective termination as an Employee, Director or Consultant, Continuous Service shall be deemed terminated upon the actual cessation of providing services to the Company or a Related Entity notwithstanding any required notice period that must be fulfilled before a termination as an Employee, Director or Consultant can be effective under Applicable Laws. Continuous Service shall not be considered interrupted in the case of (i) any approved leave of absence, (ii) transfers among the Company, any Related Entity, or any successor, in any capacity of Employee, Director or Consultant, or

(iii) any change in status as long as the individual remains in the service of the Company or a Related Entity in any capacity of Employee, Director or Consultant (except as otherwise provided in the Award Agreement). An approved leave of absence shall include sick leave, military leave, or any other authorized personal leave. For purposes of each Incentive Stock Option granted under the Plan, if such leave exceeds ninety (90) days, and reemployment upon expiration of such leave is not guaranteed by statute or contract, then the Incentive Stock Option shall be treated as a Non-Qualified Stock Option on the day three (3) months and one (1) day following the expiration of such ninety (90) day period.

(q) "Corporate Transaction" means any of the following transactions:

(i) a merger or consolidation in which the Company is not the surviving entity, except for a transaction the principal purpose of which is to change the state in which the Company is incorporated;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company;

(iii) the complete liquidation or dissolution of the Company;

(iv) any reverse merger or series of related transactions culminating in a reverse merger (including, but not limited to, a tender offer followed by a reverse merger) in which the Company is the surviving entity but in which securities possessing more than forty percent (40%) of the total combined voting power of the Company's outstanding securities are transferred to a person or persons different from those who held such securities immediately prior to such merger or the initial transaction culminating in such merger but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction; or

(v) acquisition in a single or series of related transactions by any person or related group of persons (other than the Company or by a Company-sponsored employee benefit plan) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities but excluding any such transaction or series of related transactions that the Administrator determines shall not be a Corporate Transaction.

(r) "Covered Employee" means an Employee who is a "covered employee" under Section 162(m)(3) of the Code.

(s) "Director" means a member of the Board or the board of directors of any Related Entity.

(t) "Disability" means as defined under the long-term disability policy of the Company or the Related Entity to which the Grantee provides services regardless of whether the Grantee is covered by such policy. If the Company or the Related Entity to which the Grantee provides service does not have a long-term disability plan in place, "Disability" means that a Grantee is unable to carry out the responsibilities and functions of the position held by the

Grantee by reason of any medically determinable physical or mental impairment for a period of not less than ninety (90) consecutive days. A Grantee will not be considered to have incurred a Disability unless he or she furnishes proof of such impairment sufficient to satisfy the Administrator in its discretion.

(u) "Dividend Equivalent Right" means a right entitling the Grantee to compensation measured by dividends paid with respect to Common Stock.

(v) "Employee" means any person, including an Officer or Director, who is in the employ of the Company or any Related Entity, subject to the control and direction of the Company or any Related Entity as to both the work to be performed and the manner and method of performance. The payment of a director's fee by the Company or a Related Entity shall not be sufficient to constitute "employment" by the Company.

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

(x) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation The Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last trading date such closing sales price or closing bid was reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted on an automated quotation system (including the OTC Bulletin Board) or by a recognized securities dealer, its Fair Market Value shall be the closing sales price for such stock as quoted on such system on the date of determination, but if selling prices are not reported, the Fair Market Value of a share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination (or, if no such prices were reported on that date, on the last date such prices were reported), as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock of the type described in (i) and (ii), above, the Fair Market Value thereof shall be determined by the Administrator in good faith.

(y) "Good Reason" means the occurrence after a Corporate Transaction or Change in Control of any of the following events or conditions unless consented to by the Grantee (and the Grantee shall be deemed to have consented to any such event or condition unless the Grantee provides written notice of the Grantee's non-acquiescence within 30 days of the effective time of such event or condition):

(i) a change in the Grantee's responsibilities or duties which represents a material and substantial diminution in the Grantee's responsibilities or duties as in effect immediately preceding the consummation of a Corporate Transaction or Change in Control;

(ii) a reduction in the Grantee's base salary to a level below that in effect at any time within six (6) months preceding the consummation of a Corporate Transaction or Change in Control or at any time thereafter; provided that an across-the-board reduction in the salary level of substantially all other individuals in positions similar to the Grantee's by the same percentage amount shall not constitute such a salary reduction; or

(iii) requiring the Grantee to be based at any place outside a 50-mile radius from the Grantee's job location or residence prior to the Corporate Transaction or Change in Control except for reasonably required travel on business which is not materially greater than such travel requirements prior to the Corporate Transaction or Change in Control.

(z) "Grantee" means an Employee, Director or Consultant who receives an Award under the Plan.

(aa) "Immediate Family" means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Grantee's household (other than a tenant or employee), a trust in which these persons (or the Grantee) have more than fifty percent (50%) of the beneficial interest, a foundation in which these persons (or the Grantee) control the management of assets, and any other entity in which these persons (or the Grantee) own more than fifty percent (50%) of the voting interests.

(bb) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code

(cc) "Non-Qualified Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(dd) "Officer" means a person who is an officer of the Company or a Related Entity within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(ee) "Option" means an option to purchase Shares pursuant to an Award Agreement granted under the Plan.

(ff) "Parent" means a "parent corporation", whether now or hereafter existing, as defined in Section 424(e) of the Code.

(gg) "Performance-Based Compensation" means compensation qualifying as "performance-based compensation" under Section 162(m) of the Code.

(hh) "Performance Shares" means Shares or an Award denominated in Shares which may be earned in whole or in part upon attainment of performance criteria established by the Administrator.

(ii) "Performance Units" means an Award which may be earned in whole or in part upon attainment of performance criteria established by the Administrator and which may be settled for cash, Shares or other securities or a combination of cash, Shares or other securities as established by the Administrator.

(jj) "Plan" means this 2004 Stock Incentive Plan.

(kk) "Related Entity" means any Parent or Subsidiary of the Company and any business, corporation, partnership, limited liability company or other entity in which the Company or a Parent or a Subsidiary of the Company holds a substantial ownership interest, directly or indirectly.

(ll) "Registration Date" means the first to occur of (i) the closing of the first sale to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended, of (A) the Common Stock or (B) the same class of securities of a successor corporation (or its Parent) issued pursuant to a Corporate Transaction in exchange for or in substitution of the Common Stock; and (ii) in the event of a Corporate Transaction, the date of the consummation of the Corporate Transaction if the same class of securities of the successor corporation (or its Parent) issuable in such Corporate Transaction shall have been sold to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended, on or prior to the date of consummation of such Corporate Transaction.

(mm) "Replaced" means that pursuant to a Corporate Transaction the Award is replaced with a comparable stock award or a cash incentive program of the Company, the successor entity (if applicable) or Parent of either of them which preserves the compensation element of such Award existing at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same (or a more favorable) vesting schedule applicable to such Award. The determination of Award comparability shall be made by the Administrator and its determination shall be final, binding and conclusive.

(nn) "Restricted Stock" means Shares issued under the Plan to the Grantee for such consideration, if any, and subject to such restrictions on transfer, rights of first refusal, repurchase provisions, forfeiture provisions, and other terms and conditions as established by the Administrator.

(oo) "Rule 16b-3" means Rule 16b-3 promulgated under the Exchange Act or any successor thereto.

(pp) "SAR" means a stock appreciation right entitling the Grantee to Shares or cash compensation, as established by the Administrator, measured by appreciation in the value of Common Stock.

(qq) "Share" means a share of the Common Stock.

(rr) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan.

(a) Subject to the provisions of Section 10, below, the maximum aggregate number of Shares which may be issued pursuant to all Awards (including Incentive Stock Options) is 3,500,000 Shares, plus an annual increase to be added on the first business day of each calendar year beginning in 2005 equal to the lesser of (x) 400,000 Shares, (y) two percent (2%) of the number of Shares outstanding as of such date, or (z) a lesser number of Shares determined by the Administrator.1 The Shares to be issued pursuant to Awards may be authorized, but unissued, or reacquired Common Stock.

(b) Any Shares covered by an Award (or portion of an Award) which is forfeited, canceled or expires (whether voluntarily or involuntarily) shall be deemed not to have been issued for purposes of determining the maximum aggregate number of Shares which may be issued under the Plan. Shares that actually have been issued under the Plan pursuant to an Award shall not be returned to the Plan and shall not become available for future issuance under the Plan, except that if unvested Shares are forfeited, or repurchased by the Company at the lower of their original purchase price or their Fair Market Value at the time of repurchase, such Shares shall become available for future grant under the Plan.

4. Administration of the Plan.

(a) Plan Administrator.

(i) Administration with Respect to Directors and Officers. With respect to grants of Awards to Directors or Employees who are also Officers or Directors of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws and to permit such grants and related transactions under the Plan to be exempt from Section 16(b) of the Exchange Act in accordance with Rule 16b-3. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board.

(ii) Administration With Respect to Consultants and Other Employees. With respect to grants of Awards to Employees or Consultants who are neither Directors nor Officers of the Company, the Plan shall be administered by (A) the Board or (B) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. The Board may authorize one or more Officers to grant such Awards and may limit such authority as the Board determines from time to time.

- ----------

1 All Share numbers in the Plan reflect the one-for-three reverse stock split which occurred on _____, 2004.

(iii) Administration With Respect to Covered Employees. Notwithstanding the foregoing, as of and after the date that the exemption for the Plan under Section 162(m) of the Code expires, as set forth in Section 18 below, grants of Awards to any Covered Employee intended to qualify as Performance-Based Compensation shall be made only by a Committee (or subcommittee of a Committee) which is comprised solely of two or more Directors eligible to serve on a committee making Awards qualifying as Performance-Based Compensation. In the case of such Awards granted to Covered Employees, references to the "Administrator" or to a "Committee" shall be deemed to be references to such Committee or subcommittee.

(iv) Administration Errors. In the event an Award is granted in a manner inconsistent with the provisions of this subsection (a), such Award shall be presumptively valid as of its grant date to the extent permitted by the Applicable Laws.

(b) Powers of the Administrator. Subject to Applicable Laws and the provisions of the Plan (including any other powers given to the Administrator hereunder), and except as otherwise provided by the Board, the Administrator shall have the authority, in its discretion:

(i) to select the Employees, Directors and Consultants to whom Awards may be granted from time to time hereunder;

(ii) to determine whether and to what extent Awards are granted hereunder;

(iii) to determine the number of Shares or the amount of other consideration to be covered by each Award granted hereunder;

(iv) to approve forms of Award Agreements for use under the Plan;

(v) to determine the terms and conditions of any Award granted hereunder;

(vi) to amend the terms of any outstanding Award granted under the Plan, provided that (A) any amendment that would adversely affect the Grantee's rights under an outstanding Award shall not be made without the Grantee's written consent, (B) the reduction of the exercise price of any Option awarded under the Plan shall be subject to stockholder approval and (C) canceling an Option at a time when its exercise price exceeds the Fair Market Value of the underlying Shares, in exchange for another Option, Restricted Stock, or other Award shall be subject to stockholder approval, unless the cancellation and exchange occurs in connection with a Corporate Transaction;

(vii) to construe and interpret the terms of the Plan and Awards, including without limitation, any notice of award or Award Agreement, granted pursuant to the Plan;

(viii) to grant Awards to Employees, Directors and Consultants employed outside the United States on such terms and conditions different from those specified

in the Plan as may, in the judgment of the Administrator, be necessary or desirable to further the purpose of the Plan; and

(ix) to take such other action, not inconsistent with the terms of the Plan, as the Administrator deems appropriate.

(c) Indemnification. In addition to such other rights of indemnification as they may have as members of the Board or as Officers or Employees of the Company or a Related Entity, members of the Board and any Officers or Employees of the Company or a Related Entity to whom authority to act for the Board, the Administrator or the Company is delegated shall be defended and indemnified by the Company to the extent permitted by law on an after-tax basis against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any claim, investigation, action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any Award granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by the Company) or paid by them in satisfaction of a judgment in any such claim, investigation, action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such claim, investigation, action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct; provided, however, that within thirty (30) days after the institution of such claim, investigation, action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at the Company's expense to defend the same.

5. Eligibility. Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants. Incentive Stock Options may be granted only to Employees of the Company or a Parent or a Subsidiary of the Company. An Employee, Director or Consultant who has been granted an Award may, if otherwise eligible, be granted additional Awards. Awards may be granted to such Employees, Directors or Consultants who are residing in non-U.S. jurisdictions as the Administrator may determine from time to time.

6. Terms and Conditions of Awards.

(a) Types of Awards. The Administrator is authorized under the Plan to award any type of arrangement to an Employee, Director or Consultant that is not inconsistent with the provisions of the Plan and that by its terms involves or might involve the issuance of (i) Shares, (ii) cash or (iii) an Option, a SAR, or similar right with a fixed or variable price related to the Fair Market Value of the Shares and with an exercise or conversion privilege related to the passage of time, the occurrence of one or more events, or the satisfaction of performance criteria or other conditions. Such awards include, without limitation, Options, SARs, sales or bonuses of Restricted Stock, Dividend Equivalent Rights, Performance Units or Performance Shares, and an Award may consist of one such security or benefit, or two (2) or more of them in any combination or alternative.

(b) Designation of Award. Each Award shall be designated in the Award Agreement. In the case of an Option, the Option shall be designated as either an Incentive Stock Option or a Non-Qualified Stock Option. However, notwithstanding such designation, to the

extent that the aggregate Fair Market Value of Shares subject to Options designated as Incentive Stock Options which become exercisable for the first time by a Grantee during any calendar year (under all plans of the Company or any Parent or Subsidiary of the Company) exceeds $100,000, such excess Options, to the extent of the Shares covered thereby in excess of the foregoing limitation, shall be treated as Non-Qualified Stock Options. For this purpose, Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the grant date of the relevant Option.

(c) Conditions of Award. Subject to the terms of the Plan, the Administrator shall determine the provisions, terms, and conditions of each Award including, but not limited to, the Award vesting schedule, repurchase provisions, rights of first refusal, forfeiture provisions, form of payment (cash, Shares, or other consideration) upon settlement of the Award, payment contingencies, and satisfaction of any performance criteria. The performance criteria established by the Administrator may be based on any one of, or combination of, the following: (i) increase in share price, (ii) earnings per share, (iii) total stockholder return, (iv) operating margin, (v) gross margin, (vi) return on equity, (vii) return on assets, (viii) return on investment, (ix) operating income, (x) net operating income, (xi) pre-tax profit, (xii) cash flow, (xiii) revenue, (xiv) expenses, (xv) earnings before interest, taxes and depreciation, (xvi) economic value added, (xvii) market share, (xviii) personal management objectives, and (xix) other measures of performance selected by the Administrator. Partial achievement of the specified criteria may result in a payment or vesting corresponding to the degree of achievement as specified in the Award Agreement.

(d) Acquisitions and Other Transactions. The Administrator may issue Awards under the Plan in settlement, assumption or substitution for, outstanding awards or obligations to grant future awards in connection with the Company or a Related Entity acquiring another entity, an interest in another entity or an additional interest in a Related Entity whether by merger, stock purchase, asset purchase or other form of transaction.

(e) Deferral of Award Payment. The Administrator may establish one or more programs under the Plan to permit selected Grantees the opportunity to elect to defer receipt of consideration upon exercise of an Award, satisfaction of performance criteria, or other event that absent the election would entitle the Grantee to payment or receipt of Shares or other consideration under an Award. The Administrator may establish the election procedures, the timing of such elections, the mechanisms for payments of, and accrual of interest or other earnings, if any, on amounts, Shares or other consideration so deferred, and such other terms, conditions, rules and procedures that the Administrator deems advisable for the administration of any such deferral program.

(f) Separate Programs. The Administrator may establish one or more separate programs under the Plan for the purpose of issuing particular forms of Awards to one or more classes of Grantees on such terms and conditions as determined by the Administrator from time to TIME.

(g) Individual Limitations on Awards. Following the date that the exemption from application of Section 162(m) of the Code described in Section 18 (or any exemption having similar effect) ceases to apply to Awards, the following limitations shall apply.

(i) Individual Limit for Awards. The maximum number of Shares with respect to which Awards may be granted to any Grantee in any fiscal year of the Company shall be 2,000,000 Shares. In connection with a Grantee's commencement of Continuous Active Service, a Grantee may be granted Awards for up to an additional 1,000,000 Shares which shall not count against the limit set forth in the previous sentence. The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10, below.2 To the extent required by Section 162(m) of the Code or the regulations thereunder, in applying the foregoing limitations with respect to a Grantee, if any Awards are canceled, the canceled Awards shall continue to count against the maximum number of Shares with respect to which Awards may be granted to the Grantee. For this purpose, the repricing of an Option (or in the case of a SAR, the base amount on which the stock appreciation is calculated is reduced to reflect a reduction in the Fair Market Value of the Common Stock) shall be treated as the cancellation of the existing Option or SAR and the grant of a new Option or SAR. If the vesting or receipt of Shares under the Award is deferred to a later date, any amount (whether denominated in Shares or cash) paid in addition to the original number of Shares subject to the Award will not be treated as an increase in the number of Shares subject to the Award if the additional amount is based either on a reasonable rate of interest or on one or more predetermined actual investments such that the amount payable by the Company at the later date will be based on the actual rate of return of a specific investment (including any decrease as well as any increase in the value of an investment).

(ii) Individual Limit for Restricted Stock, Performance Shares and Performance Units. Notwithstanding the limitations set forth in Section 6(g)(i), for awards of Restricted Stock, Performance Shares and Performance Units that are intended to be Performance-Based Compensation, the maximum number of Shares with respect to which such Awards may be granted to any Grantee in any fiscal year of the Company shall be 1,500,000 Shares. The foregoing limitation shall be adjusted proportionately in connection with any change in the Company's capitalization pursuant to Section 10, below.

(iii) Individual Limit for Dividend Equivalent Rights and Performance Units. For awards of Dividend Equivalent Rights and Performance Units that are intended to be Performance-Based Compensation, no more than $5,000,000 may be subject to such Awards granted to any one individual in any fiscal year of the Company, calculated based upon the value of the Award assuming the performance goal(s) was met on the grant date of the Award. If the payment of the Award is deferred to a later date, any amount paid in excess of the amount that was originally payable to the Grantee under the Award will not be treated as an increase in the amount of the Award if the additional amount is based either on a reasonable rate of interest or on one or more predetermined actual investments such that the amount payable by the Company at the later date will be based on the actual rate of return of a specific investment (including any decrease as well as any increase in the value of an investment).

(h) Early Exercise. The Award Agreement may, but need not, include a provision whereby the Grantee may elect at any time while an Employee, Director or Consultant to exercise any part or all of the Award prior to full vesting of the Award. Any unvested Shares

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2 All Share numbers in the Plan reflect the one-for-three reverse stock split which occurred on _____, 2004.

received pursuant to such exercise may be subject to a repurchase right in favor of the Company or a Related Entity or to any other restriction the Administrator determines to be appropriate.

(i) Term of Award. The term of each Award shall be the term stated in the Award Agreement, provided, however, that the term of an Incentive Stock Option shall be no more than ten (10) years from the date of grant thereof. However, in the case of an Incentive Stock Option granted to a Grantee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the term of the Incentive Stock Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the Award Agreement.

(j) Transferability of Awards. Incentive Stock Options may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Grantee, only by the Grantee. Other Awards shall be transferable by will and by the laws of descent and distribution, and during the lifetime of the Grantee, by gift or pursuant to a domestic relations order to members of the Grantee's Immediate Family to the extent and in the manner determined by the Administrator. Notwithstanding the foregoing, the Grantee may designate a beneficiary of the Grantee's Award in the event of the Grantee's death on a beneficiary designation form provided by the Administrator.

(k) Time of Granting Awards. The date of grant of an Award shall for all purposes be the date on which the Administrator makes the determination to grant such Award, or such other date as is determined by the Administrator.

7. Award Exercise or Purchase Price, Consideration and Taxes.

(a) Exercise or Purchase Price. The exercise or purchase price, if any, for an Award shall be as follows:

(i) In the case of an Incentive Stock Option:

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary of the Company, the per Share exercise price shall be not less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant; or

(B) granted to any Employee other than an Employee described in the preceding paragraph, the per Share exercise price shall be not less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of Options or SARs intended to qualify as Performance-Based Compensation, the exercise or base appreciation amount shall be not less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iii) In the case of other Awards, such price as is determined by the Administrator.

(iv) Notwithstanding the foregoing provisions of this Section 7(a), in the case of an Award issued pursuant to Section 6(d), above, the exercise or purchase price for the Award shall be determined in accordance with the provisions of the relevant instrument evidencing the agreement to issue such Award.

(b) Consideration. Subject to Applicable Laws, the consideration to be paid for the Shares to be issued upon exercise or purchase of an Award including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). In addition to any other types of consideration the Administrator may determine, the Administrator is authorized to accept as consideration for Shares issued under the Plan the following, provided that the portion of the consideration equal to the par value of the Shares must be paid in cash or other legal consideration permitted by the Delaware General Corporation Law:

(i) cash;

(ii) check;

(iii) if the exercise or purchase occurs on or after the Registration Date, surrender of Shares or delivery of a properly executed form of attestation of ownership of Shares as the Administrator may require which have a Fair Market Value on the date of surrender or attestation equal to the aggregate exercise price of the Shares as to which said Award shall be exercised, provided, however, that Shares acquired under the Plan or any other equity compensation plan or agreement of the Company must have been held by the Grantee for a period of more than six (6) months;

(iv) with respect to Options, if the exercise occurs on or after the Registration Date, payment through a broker-dealer sale and remittance procedure pursuant to which the Grantee (A) shall provide written instructions to a Company designated brokerage firm to effect the immediate sale of some or all of the purchased Shares and remit to the Company sufficient funds to cover the aggregate exercise price payable for the purchased Shares and (B) shall provide written directives to the Company to deliver the certificates for the purchased Shares directly to such brokerage firm in order to complete the sale transaction; or

(v) any combination of the foregoing methods of payment.

(c) Taxes. No Shares shall be delivered under the Plan to any Grantee or other person until such Grantee or other person has made arrangements acceptable to the Administrator for the satisfaction of any non-U.S., federal, state, or local income and employment tax withholding obligations, including, without limitation, obligations incident to the receipt of Shares or the disqualifying disposition of Shares received on exercise of an Incentive Stock Option. Upon exercise of an Award the Company shall withhold or collect from Grantee an amount sufficient to satisfy such tax obligations.

8. Exercise of Award.

(a) Procedure for Exercise; Rights as a Stockholder.

(i) Any Award granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator under the terms of the Plan and specified in the Award Agreement.

(ii) An Award shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Award by the person entitled to exercise the Award and full payment for the Shares with respect to which the Award is exercised, including, to the extent selected, use of the broker-dealer sale and remittance procedure to pay the purchase price as provided in Section 7(b)(iv).

(b) Exercise of Award Following Termination of Continuous Service.

(i) An Award may not be exercised after the termination date of such Award set forth in the Award Agreement and may be exercised following the termination of a Grantee's Continuous Service only to the extent provided in the Award Agreement.

(ii) Where the Award Agreement permits a Grantee to exercise an Award following the termination of the Grantee's Continuous Service for a specified period, the Award shall terminate to the extent not exercised on the last day of the specified period or the last day of the original term of the Award, whichever occurs first.

(iii) Any Award designated as an Incentive Stock Option to the extent not exercised within the time permitted by law for the exercise of Incentive Stock Options following the termination of a Grantee's Continuous Service shall convert automatically to a Non-Qualified Stock Option and thereafter shall be exercisable as such to the extent exercisable by its terms for the period specified in the Award Agreement.

9. Conditions Upon Issuance of Shares.

(a) Shares shall not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares pursuant thereto shall comply with all Applicable Laws, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any Applicable Laws.

10. Adjustments Upon Changes in Capitalization. Subject to any required action by the stockholders of the Company, the number of Shares covered by each outstanding Award, and the number of Shares which have been authorized for issuance under the Plan but as to which no Awards have yet been granted or which have been returned to the Plan, the exercise or purchase

price of each such outstanding Award, the maximum number of Shares with respect to which Awards may be granted to any Grantee in any fiscal year of the Company, as well as any other terms that the Administrator determines require adjustment shall be proportionately adjusted for (i) any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Shares, or similar transaction affecting the Shares, (ii) any other increase or decrease in the number of issued Shares effected without receipt of consideration by the Company, or (iii) as the Administrator may determine in its discretion, any other transaction with respect to Common Stock including a corporate merger, consolidation, acquisition of property or stock, separation (including a spin-off or other distribution of stock or property), reorganization, liquidation (whether partial or complete) or any similar transaction; provided, however that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator and its determination shall be final, binding and conclusive. Except as the Administrator determines, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason hereof shall be made with respect to, the number or price of Shares subject to an Award.

11. Corporate Transactions and Changes in Control.

(a) Termination of Award to Extent Not Assumed in Corporate Transaction. Effective upon the consummation of a Corporate Transaction, all outstanding Awards under the Plan shall terminate. However, all such Awards shall not terminate to the extent they are Assumed in connection with the Corporate Transaction.

(b) Acceleration of Award Upon Corporate Transaction or Change in Control.

(i) Corporate Transaction. Except as provided otherwise in an individual Award Agreement, in the event of a Corporate Transaction and:

(A) for the portion of each Award that is Assumed or Replaced, then such Award (if Assumed), the replacement Award (if Replaced), or the cash incentive (if Replaced) program automatically shall become fully vested, exercisable and payable and be released from any repurchase or forfeiture rights (other than repurchase rights exercisable at fair market value) for all of the Shares at the time represented by such Assumed or Replaced portion of the Award, immediately upon termination of the Grantee's Continuous Service if such Continuous Service is terminated by the successor company or the Company without Cause or voluntarily by the Grantee with Good Reason within twelve (12) months after the Corporate Transaction; and

(B) for the portion of each Award that is neither Assumed nor Replaced, such portion of the Award shall automatically become fully vested and exercisable and be released from any repurchase or forfeiture rights (other than repurchase rights exercisable at fair market value) for all of the Shares at the time represented by such portion of the Award, immediately prior to the specified effective date of such Corporate Transaction.

(ii) Change in Control. Except as provided otherwise in an individual Award Agreement, following a Change in Control (other than a Change in Control which also is a Corporate Transaction) and upon the termination of the Continuous Service of a Grantee if such Continuous Service is terminated by the Company or Related Entity without Cause or voluntarily by the Grantee with Good Reason within twelve (12) months after a Change in Control, each Award of such Grantee which is at the time outstanding under the Plan automatically shall become fully vested and exercisable and be released from any repurchase or forfeiture rights (other than repurchase rights exercisable at fair market value), immediately upon the termination of such Continuous Service.

(c) Effect of Acceleration on Incentive Stock Options. Any Incentive Stock Option accelerated under this Section 11 in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Stock Option under the Code only to the extent the $100,000 dollar limitation of Section 422(d) of the Code is not exceeded. To the extent such dollar limitation is exceeded, the excess Options shall be treated as Non-Qualified Stock Options.

12. Effective Date and Term of Plan. The Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the stockholders of the Company. It shall continue in effect for a term of ten (10) years unless sooner terminated. Subject to Section 17, below, and Applicable Laws, Awards may be granted under the Plan upon its becoming effective.

13. Amendment, Suspension or Termination of the Plan.

(a) The Board may at any time amend, suspend or terminate the Plan; provided, however, that no such amendment shall be made without the approval of the Company's stockholders to the extent such approval is required by Applicable Laws, or if such amendment would change any of the provisions of Section 4(b)(vi) or this Section 13(a).

(b) No Award may be granted during any suspension of the Plan or after termination of the Plan.

(c) No suspension or termination of the Plan (including termination of the Plan under Section 12, above) shall adversely affect any rights under Awards already granted to a Grantee.

14. Reservation of Shares.

(a) The Company, during the term of the Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

(b) The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

15. No Effect on Terms of Employment/Consulting Relationship. The Plan shall not confer upon any Grantee any right with respect to the Grantee's Continuous Service, nor shall it interfere in any way with his or her right or the right of the Company or any Related Entity to terminate the Grantee's Continuous Service at any time, with or without Cause, and with or without notice. The ability of the Company or any Related Entity to terminate the employment of a Grantee who is employed at will is in no way affected by its determination that the Grantee's Continuous Service has been terminated for Cause for the purposes of this Plan.

16. No Effect on Retirement and Other Benefit Plans. Except as specifically provided in a retirement or other benefit plan of the Company or a Related Entity, Awards shall not be deemed compensation for purposes of computing benefits or contributions under any retirement plan of the Company or a Related Entity, and shall not affect any benefits under any other benefit plan of any kind or any benefit plan subsequently instituted under which the availability or amount of benefits is related to level of compensation. The Plan is not a "Retirement Plan" or "Welfare Plan" under the Employee Retirement Income Security Act of 1974, as amended.

17. Stockholder Approval. The grant of Incentive Stock Options under the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted excluding Incentive Stock Options issued in substitution for outstanding Incentive Stock Options pursuant to Section 424(a) of the Code. Such stockholder approval shall be obtained in the degree and manner required under Applicable Laws. The Administrator may grant Incentive Stock Options under the Plan prior to approval by the stockholders, but until such approval is obtained, no such Incentive Stock Option shall be exercisable. In the event that stockholder approval is not obtained within the twelve (12) month period provided above, all Incentive Stock Options previously granted under the Plan shall be exercisable as Non-Qualified Stock Options.

18. Effect of Section 162(m) of the Code. Section 162(m) of the Code does not apply to the Plan prior to the Registration Date. Following the Registration Date, the Plan, and all Awards issued thereunder, are intended to be exempt from the application of Section 162(m) of the Code, which restricts under certain circumstances the Federal income tax deduction for compensation paid by a public company to named executives in excess of $1 million per year. The exemption is based on Treasury Regulation Section 1.162-27(f), in the form existing on the effective date of the Plan, with the understanding that such regulation generally exempts from the application of Section 162(m) of the Code compensation paid pursuant to a plan that existed before a company becomes publicly held. Under such Treasury Regulation, this exemption is available to the Plan for the duration of the period that lasts until the earlier of (i) the expiration of the Plan, (ii) the material modification of the Plan, (iii) the exhaustion of the maximum number of shares of Common Stock available for Awards under the Plan, as set forth in Section 3(a), (iv) the first meeting of shareholders at which directors are to be elected that occurs after the close of the third calendar year following the calendar year in which the Company first becomes subject to the reporting obligations of Section 12 of the Exchange Act, or (v) such other date required by Section 162(m) of the Code and the rules and regulations promulgated thereunder. To the extent that the Administrator determines as of the date of grant of an Award that (i) the Award is intended to qualify as Performance-Based Compensation and (ii) the exemption described above is no longer available with respect to such Award, such Award shall

not be effective until any stockholder approval required under Section 162(m) of the Code has been obtained.

19. Unfunded Obligation. Grantees shall have the status of general unsecured creditors of the Company. Any amounts payable to Grantees pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974, as amended. Neither the Company nor any Related Entity shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Grantee account shall not create or constitute a trust or fiduciary relationship between the Administrator, the Company or any Related Entity and a Grantee, or otherwise create any vested or beneficial interest in any Grantee or the Grantee's creditors in any assets of the Company or a Related Entity. The Grantees shall have no claim against the Company or any Related Entity for any changes in the value of any assets that may be invested or reinvested by the Company with respect to the Plan.

TRIPLE NET LABORATORY LEASE

This Lease is made and entered into as of January 30, 1998 between Fifth & Potter Street Associates, LLC ("Landlord") and Dynavax Technologies Corporation ("Tenant").

1. BASIC LEASE TERMS.

1.1. Commencement of Lease. The term of this Lease shall commence the date Landlord notifies Tenant in writing that the construction to be performed by Landlord pursuant to Paragraph 2.2 hereof has been substantially completed or April 1, 1998 whichever is earlier. Completion shall have occurred when the Premises are in such condition as to permit Landlord to file a Notice of Completion with respect to its work, and all permits and approvals for occupancy and use by Tenant have been issued by the City of Berkeley.

1.2. Lease Term. This Lease shall continue in force for a term of five years.

1.3. Base Monthly Rent.

Months 1 thru 30 - $2.25/rentable sq.ft.(N,N,N)
Months 31 thru 60 - $2.35/rentable sq.ft.(N,N,N)

1.4. Tenant's Pro Rata Share. All references in this Lease to Tenant's pro rata share of any expense shall mean the total expense of any such item multiplied by a fraction, the numerator of which shall be the total floor area of the Premises (as adjusted pursuant to paragraph 2.1 of this Lease) and the denominator of which shall be the total floor area of the property. The "floor area" of the Premises shall be measured from the exterior surface of all exterior walls and from the center of all walls separating the Premises from adjacent Premises and/or common areas. The total floor area of the property shall be measured from the exterior surface of all exterior walls and shall include all common and core areas within the property. Tenant's pro rata share shall be adjusted as necessary if the actual square footage of the Premises is other than as set forth in paragraph 2.1 or the square footage of the property changes. As used in this Lease, the term Premises refers to that portion of the building leased to Tenant for Tenant's exclusive use. The term property refers to the building in which the Premises are located.

1.5. Estimated Payments.

Estimated monthly taxes	$0.146 per square foot
Estimated monthly insurance	$0.023 per square foot
Estimated monthly maintenance	$0.056 per square foot
Estimated monthly management	5% base monthly rent
Estimated monthly security and service	$0.052 per square foot

1.6. Security Deposit. The Tenant shall deposit with Landlord $17,919 as a security deposit for the faithful performance of this Lease.

1.7. Use. The leased Promises will be used exclusively for general research and development laboratories with associated administration, including but not limited to research and administration of DNA-based vaccines to develop treatments for allergic, infectious and oncological diseases, and for no other purpose whatsoever, without Landlord's consent which shall not be unreasonably withheld.

2. Premises.

2.1. Description. Landlord hereby leases to Tenant for its exclusive use and occupancy subject to the provisions of this Lease approximately 7,240 usable square feet, as more particularly identified in Exhibit A annexed (the "Premises"), which constitutes a portion of a larger building owned by Landlord, commonly known as 717 Potter Street, Berkeley, California 94710 (the "property"). In addition to the square

footage described above, Tenant shall be deemed to occupy an additional undivided 10% of such square footage for purposes of the calculation of base monthly rental and pro rata expense payments. Said 10% represents Tenant's share of the rental charges for the common area. For all calculations required under the terms of this Lease respecting proration of expenses, costs or charges, Tenant's Premises shall be deemed to consist of the square footage of the Premises augmented by the portion of the common area attributable to Tenant pursuant to this paragraph. As to such common areas (those outside of the Premises, but allocated to Tenant pursuant to this paragraph), Tenant shall have an undivided interest for nonexclusive use in conjunction with all other tenants of the building.

2.2. WORK OF IMPROVEMENT. The respective obligations of Landlord and Tenant to perform the work and supply material and labor to prepare the Premises for occupancy are set forth in Exhibit B annexed to and incorporated in this Lease. Landlord and Tenant shall expend all funds and do all acts required of them respectively in Exhibit B and shall have the work performed promptly and diligently in a first class, workmanlike manner. Tenant shall not commence any construction of improvements to be undertaken by Tenant until Landlord has approved In writing the final drawings for said improvements.

2.3. POSSESSION. Landlord shall deliver occupancy of the Premises to Tenant on the commencement date as set forth in Paragraph 1.1 of this Lease. Notwithstanding herein to the contrary, Tenant shall have the right to enter the Premises prior to the commencement of the term to take reasonable preparatory measures for its occupancy of the Premises, including, without limitation, the installation of its trade fixtures, furnishings, and telephone and computer equipment. Such entry shall be subject to all of the terms and conditions of this Lease, except that Tenant shall not be required to pay any Base Rent or Additional Rent during such early occupancy period.

2.4 OPTION TO EXPAND. See addendum.

3. TERM.

3.1. TERM. The Lease shall commence on the date specified in Paragraph 1.1 (the "commencement date") and shall continue thereafter for the term specified in Paragraph 1.2 (the "term"), unless sooner terminated or extended pursuant to the provisions of this Lease.

3.2. DELAY IN COMMENCEMENT. If, for any reason, Landlord cannot deliver possession of the Premises to Tenant on the commencement date, such failure shall not affect the validity of this Lease nor shall it extend the term or render Landlord liable to Tenant for any loss or damage resulting therefrom; except that if possession is not delivered to Tenant on the commencement date, Tenant shall not be obligated to pay rent until Landlord tenders possession of the Premises to Tenant in compliance with Paragraph 1.1. After 60 days following the projected commencement date have elapsed, if Landlord still cannot deliver possession to Tenant, Tenant or Landlord shall have the right to terminate this Lease upon written notice delivered to Landlord, whereupon Landlord shall promptly refund any sums deposited by Tenant with Landlord. In such event, Tenant shall have no further recourse against Landlord with respect to the Lease or Landlord's inability to deliver the Premises to Tenant and Landlord shall have no further recourse against Tenant with respect to the Lease. Notwithstanding any other provision of this Lease, Landlord shall have no obligation to pay any damages or adjustment to Tenant as a result of delays caused by matters outside of Landlord's control, including, without limitation, Tenant's conduct, acts of God, acts of war, inclement weather and/or labor strikes (including strikes affecting the supply of labor and/or materials).

3.3. OPTION TO EXTEND TERM. See addendum

4. RENT.

4.1. BASE MONTHLY RENT. Beginning on the commencement date, Tenant shall pay to Landlord as rent for the Premises in advance on the first day of each calendar

month of the term, without deduction, offset, prior notice or demand, except as provided herein, in lawful money of the United States of America, the per square foot rental rate set forth in paragraph 1.3 multiplied by the square footage of the Premises as adjusted pursuant to paragraph 2.1. If the actual square footage of the Premises is determined to be other than the unadjusted amount set forth in Paragraph 2.1, the monthly base rent shall be increased or decreased based upon the actual floor area and the adjustment thereto set forth in Paragraph 2.1. If Tenant makes any alterations or additions that increase the square footage of the Premises, the monthly rent shall be increased in proportion to the resulting increase in floor area. If the date that the obligation to pay monthly rent commences is not the first day of a calendar month, such installment shall be applied on a per diem basis against payment of the rent from the date rent commences until the first day of the next succeeding calendar month. Any unused portion of said amount shall be applied against payment of the rent for the following calendar month, and the balance of the rent for that month shall be due on the first day thereof.

4.2. BASE RENT ADJUSTMENT. See Paragraph 1.3.

4.3. MODE OF PAYMENT. Tenant shall pay all rent due Landlord at Landlord's address set forth on the signature page hereof, or any such other place or places as Landlord may designate from time to time in writing.

4.4. ADDITIONAL RENT. Landlord shall receive the rent set forth herein free and clear of any and all other impositions, taxes, charges, assessments or expenses of any nature whatsoever associated with the operation, maintenance, and management of the Premises, the property and the land on which it is situated, including, without limitation, charges levied by any assessment district now in existence or hereafter created which affects the property, except as provided herein. The foregoing expenses and charges may hereinafter be referred to singly and/or collectively as "Operating Expenses" (Operating Expenses are defined as maintenance, taxes, insurance, management, security and services as delineated in Section 1.5). Tenant's pro rata portion of all such charges, costs and expenses, together with all other sums payable under this Lease, shall be additional rental hereunder, and Tenant's failure to pay any such charge, cost, expense or sum shall entitle Landlord to exercise the rights and remedies as provided in this Lease for failure of Tenant to pay rent. Notwithstanding anything herein to the contrary, Tenant shall not have any obligation to pay Operating Expenses during the initial year of the Lease term which exceed $38,227/year (40 cents per square foot/month), and for each successive year, Tenant's pro-rata share of Operating Expenses shall not increase by more than five percent per year. Tenant shall in no event be entitled to any abatement or reduction of rent or other monetary sums payable hereunder, except as expressly provided herein, notwithstanding any present or future law to the contrary. Tenant expressly waives the provisions of any such law.

4.5. ESTIMATED PAYMENTS. Estimated payments for taxes, insurance maintenance of common areas, management of the property and common area utilities and services are set forth in Paragraph 1.5. Tenant shall pay the estimated payments together with the monthly rent in advance on the first day of each calendar month of the term, without deduction, offset, prior notice or demand, except as provided herein. Landlord may increase or decrease the estimated payments upon 30 days' written notice to Tenant based upon statements received or charges incurred by Landlord, information available to Landlord as to the probable cost of expected charges and expenses, or Landlord's reasonable estimate of the probable amount of expected charges or expenses. In the event that any taxes payable in respect of the property are levied or assessed against the property and other property, or in the event that any property insurance carried by Landlord is carried under a policy or policies covering the property and other properties, the amounts payable by Tenant hereunder in respect of such taxes or such insurance shall be determined by reference to allocations or any such taxes and any such insurance to the property reasonably made by Landlord. Landlord shall be entitled to retain the monies received from such payments in a fund pending payment of all such costs and charges. No more frequently than once each calendar quarter, Landlord shall determine the actual costs of operation and maintenance of the property. Tenant shall remit to Landlord on demand its unpaid pro rata share of the actual expense. In the event Tenant paid more than its pro rata share of the actual expenses for such period of time,

Landlord shall apply such overpayment towards the next estimated payments owing by Tenant. At the termination of this Lease, an accounting for such charges and expenses shall be made to the nearest practical accounting period, and Tenant shall pay to Landlord any balance due or shall be entitled to a prompt refund of any excess amount paid. Landlord shall furnish to Tenant, within sixty (60) days after the end of each calendar year, a statement in reasonable detail, including supportive documentation, setting forth (a) Landlord's actual costs of operation and maintenance with respect to the property (including taxes and insurance) for that year by category and amount; (b) the amount of Tenant's additional rent for that year; and (c) the sum of Tenant's monthly estimated rent payments made during that year.

Tenant shall have the right to audit Landlord's records respecting for each calendar year during the term of this Lease by notifying Landlord within 120 days following the end of each such calendar year. If an audit (performed by a certified public accountant on behalf of Tenant) reveals that Landlord has overcharged Tenant for Operating Expenses, Landlord shall refund the amount overcharged within ten days after such determination has been made. If Landlord has overcharged Tenant by more than 5%, Landlord shall refund the overcharge amount and, in addition, shall pay the reasonable costs of Tenant's audit.

4.6. SECURITY DEPOSIT.

4.7. LATE CHARGES. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such costs include, without limitation, processing, accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Property. Accordingly, if any installment of Base Monthly Rent or any other sum due from Tenant shall not be received by Landlord within five business Days after the amount is due, Tenant shall pay to Landlord a late charge equal to 5% of the overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of Tenant's late payment. Landlord's acceptance of a late charge shall not constitute a waiver of Tenant's default respecting the overdue amount or prevent Landlord from exercising any of the remedies available hereunder.

5. TAXES.

5.1. TAXES ON THE PREMISES AND THE PROPERTY. Tenant agrees to pay to Landlord in addition to the rent and other charges herein, its pro rata share of all taxes pursuant to Paragraph 4.4. As used herein taxes shall include, without limitation, the following: (a) all real estate and personal property taxes, assessments, rates and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessment for public improvements or benefits, which relate to any period falling in whole or in part within the term and which are assessed, levied, confirmed, imposed or become a lien upon or payable in respect to the Premises or the property or any building or other improvements thereon and any taxes on personal property owned by Landlord and used in conjunction with the operation of the property, and (b) any tax or excise on rents or other tax howsoever described, unforeseen as well as foreseen, at any time imposed under the laws of any governmental authority which relates to any period falling in whole or in part within the term and which is levied or assessed directly or indirectly against Landlord or on the rental and charges payable under leases for portions of the property or on any arrangement relating thereto, wholly or partly in the place of, or in lieu of an increase in, or in addition to, taxes assessed or imposed by such authority on land and improvements, including, without limiting the generality of the foregoing, any gross receipts tax to the extent imposed upon a landlord by reason of the receipt of rental, charges or other income from the Premises or the property. Tenant's share of taxes shall be equitably prorated to cover only the period of time within the fiscal tax year during which this Lease is in effect. With respect to any assessments which may be levied against or upon the Premises, and which may be paid in annual installments, only the amount of such annual installments (with appropriate proration for any partial year) and interest due thereon shall be included within the computation of the annual taxes.

Notwithstanding anything herein to the contrary,

(a) Landlord shall be solely responsible for any increases in "taxes" and/or assessments that result from "new construction" or a "change of ownership" of the Building or the property (and for purposes hereof, "new construction" or a "change of ownership" shall have the same meaning as in part 0.5 of division 1 of the California Revenue and Taxation Code or any amendments or successor statutes to those sections);

(b) Tenant's obligation to pay any assessments included within "taxes" shall be calculated on the basis of the amount due if Landlord had allowed assessment to go to bond and the same were to be paid over the longest period available; and

(c) Tenant shall be required to pay any tax based on (1) gross or net rents, (2) the square footage of the Premises or the property, (3) this transaction (or any document relating thereto), (4) the occupancy of Tenant, or (5) any other tax, fee, or excise, however described, including, without limitation, a so called "value added tax" as a direct substitution in whole or part for, or in addition to, any real property tax, only to the extent that any such tax is in substitution of any real property tax it would otherwise be obligated to pay.

5.2. Taxes on Tenant's Property. Tenant shall pay before delinquency all taxes levied or assessed on Tenant's fixtures, improvements, furnishings, merchandise, equipment and personal property in and on the Premises, whether or not affixed to the real property. If at any time after any tax or assessment has become due or payable, Tenant or its legal representative neglects to pay such tax or assessment, and is not contesting such tax or assessment, Landlord shall be entitled, but not obligated, to pay the same at any time thereafter and such amount so paid by Landlord shall be repaid by Tenant to Landlord with Tenant's next rent installment. Tenant shall timely pay all taxes imposed by local, state, and federal law upon Tenant. Notwithstanding the foregoing, Tenant shall have the right to contest personal property taxes assessed against Tenant.

6. INSURANCE.

6.1. Property/Rental Insurance-Property and Premises. During the term Landlord shall keep the property insured against loss or damage by fire and those risks normally included in the term "special perils" including (a) flood coverage, (b) earthquake coverage at the election of Landlord if available at commercially reasonable rates, (c) coverage for loss of rents including Operating Expenses and (d) boiler and machinery coverage if Landlord deems necessary. All such insurance shall be solely for Landlord's benefit and,Tenant shall have no rights respecting any such policy or sums paid pursuant to the terms of such policies. The amount of such insurance shall be not less than 100% of the replacement value of the property. Any recovery received from said insurance policy shall be paid to Landlord. Tenant, in addition to the rent and other charges provided herein, agrees to pay to Landlord its pro rata share of the premiums for all such insurance pursuant to Paragraph 4.4 of this Lease. Tenant shall pay to Landlord Tenant's pro rata share of any deductible within 15 days after Landlord sends Tenant an invoice for the amount owing.

6.2. Property Insurance-Fixtures and Inventory. During the term, Tenant shall, at its sole expense, maintain insurance with "special perils" coverage on any and all fixtures, leasehold improvements installed hereafter, furnishings, merchandise, equipment or personal property in or on the Premises, whether in place as of the date hereof or installed hereafter, for the full replacement value thereof, and Tenant shall also have sole responsibility and cost for maintaining any other types of insurance deemed necessary, appropriate or desirable by Tenant. Any and all deductibles shall be paid by Tenant.

6.3. Landlord's Liability Insurance. During the term, as an expense of the property, Landlord shall maintain a policy or policies of commercial general liability insurance insuring Landlord and naming Tenant as additional insured (and such others as designated by Landlord) against liability for bodily injury, death and property damage on or about the property, with combined single limit coverage of not less than $10 million.

Tenant shall pay its pro rata share of the premium for such insurance pursuant to Paragraph 4.4.

6.4. Tenant's Liability Insurance. Tenant shall, at its sole expense, maintain for the mutual benefit of Landlord and Tenant, commercial general liability and property damage insurance against claims for bodily injury, death or property damage occurring in or about the Premises or arising out of the use or occupancy of the Premises, with combined single limit coverage of not less than $2 million. Such insurance shall include, so-called host liquor liability coverage from liability arising from the consumption of alcoholic beverages consumed at the Premises. Tenant shall furnish to landlord prior to the Commencement Date, and at least 30 days prior to the expiration date of any policy, certificates indicating that the liability insurance required of Tenant is in full force and effect, that Landlord has been named as an additional insured, and that no such policy will be canceled unless 30 days' prior written notice of cancellation has been given to Landlord. Said policies shall provide that Landlord, as an additional insured, may recover for any covered loss suffered by Landlord by reason of Tenant's negligence, and shall include a broad form liability endorsement. All insurance policies obtained by Tenant pursuant to the requirement of this Lease shall be in a form and from a company reasonably satisfactory to Landlord.

6.5. Waiver of Subrogation. Landlord hereby releases Tenant and its officers, agents, employees, and servants, and Tenant hereby releases Landlord and its officers, agents, employees and servants, from any and all claims or demands of damages, loss, expense or injury to the Premises, or to the furnishings and fixtures and equipment or inventory or other property of either Landlord or Tenant in, about or upon the Premises, which is caused by, or results from, or is incident to any perils, events or happenings which are the subject of insurance which is carried or is required to be carried by the respective parties and in force at the time of any such loss, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors or invitees. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

6.6. Indemnification. Except in the case of intentional misconduct by Landlord or Landlord's reckless disregard of its duties or the negligence of Landlord, its employees, agents or contractors, Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Tenant of the Premises or the property or any part thereof, or occasioned wholly or in part by any acts or omissions of Tenant, its agents, contractors, employees, servants, licensees or concessionaires in or about the Premises or by anyone permitted to be on the Premises by Tenant. In case Landlord shall be made a party to any such litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless from all claims, liabilities, costs and expenses, and shall pay all costs, expenses and reasonable legal fees incurred by Landlord in connection with such litigation.

6.7. Plate Glass Replacement. If any glass in and about the Premises is damaged or broken by or as a result of the acts of Tenant and its agents, contractors and employees, Tenant shall pay Landlord's cost of replacement, provided that such amount shall not exceed the deductible then in effect on Landlord's insurance policy, if any, covering the damaged glass. Nothing herein shall be construed to require Landlord or Tenant to carry plate glass insurance.

6.8. Worker's Compensation Insurance. Tenant shall, at its sole expense, maintain and keep in force during the term a policy or policies of workman's compensation insurance and any other employee benefit insurance sufficient to comply with all applicable laws, statutes, ordinances and governmental rules, regulations or requirements.

7.0 PREMISES & PROPERTY MAINTENANCE & REPAIR

7.1. Premises. Throughout the term, Tenant agrees to keep and maintain all improvements and appurtenances upon the Premises, including all plumbing, heating and cooling appliances, wiring and glass, in good order and repair including the replacement of such improvement and appurtenances when necessary provided that Tenant's obligation respecting plumbing, electrical and HVAC systems shall only require Tenant to keep and maintain the exposed portions of such equipment and systems. Landlord shall keep and maintain the unexposed portions of such systems, except to the extent such repair or maintenance arises from Tenant's negligence or willful misconduct. Tenant hereby expressly waives the provisions of any law permitting repairs by a tenant at the expense of a landlord, including, without limitation, all rights of Tenant under California Civil Code Sections 1941 through 1946, inclusive. Tenant agrees to keep the Premises clean and in sanitary condition. Tenant further agrees to keep the interior of the Premises, including, without limitation, the windows, floors, walls, doors, showcases and fixtures clean and neat in appearance and to remove all trash and debris which may be found in or around the Premises. If Landlord reasonably deems any repairs and/or maintenance to be made by Tenant necessary and Tenant refuses or neglects to commence such repairs and/or maintenance and complete the same with reasonable dispatch upon demand, Landlord and its agents may enter the Premises and cause such repairs and/or maintenance to be made and shall not be responsible to Tenant for any loss or damage occasioned thereby. Tenant agrees that, upon demand, it shall pay to Landlord the cost of any such repairs, together with accrued interest from the date of Landlord's payment at the highest rate allowable by law. Notwithstanding anything to the contrary above, Landlord may elect to enter into commercially reasonable maintenance contracts for the provision of all or a part of Tenant's maintenance obligations as set forth in this paragraph. Upon such election, Tenant shall be relieved from its obligations to perform only those maintenance obligations covered by the maintenance contract and only for the duration of the maintenance contract, Tenant shall bear the cost of such maintenance contract (allocate able to the tenant), in accordance with paragraph 4.4 above, which shall be paid in advance on a monthly basis with Tenant's monthly rent payments.

7.2. Common Areas. Subject to Tenant's obligations in paragraph 7.1, Landlord shall keep and maintain the common areas of the property (which shall include, without limitation, the foundation, roof, parking, landscaping, HVAC, electrical, plumbing, exterior walls and structural components of the improvements on the property) in reasonably good order and condition, except that damage occasioned by the negligent acts of Tenant (inclusive of Tenant's employees, agents, guests and invitees) shall be repaired by Landlord at Tenant's sole expense. Tenant shall have the obligation to notify Landlord, in writing, of any repairs or maintenance to the common areas which may be necessary, and Landlord shall make necessary repairs within a reasonable time. The manner and method of maintenance and repair of the common areas shall be at Landlord's sole and absolute discretion. Except in the event that replacement of HVAC components, structural components or the roof is due to the negligent acts of Tenant (inclusive of Tenant's employees, agents, guests and invitees), Tenant shall not be obligated to pay a pro rata portion of the cost of replacement of any of said components and Tenant's obligation for reimbursement shall be limited to maintenance expenses associated with such components in place in the property. Tenant, in addition to the rent and other charges provided herein, agrees to pay to Landlord its pro rata share of costs of maintaining the common areas pursuant to Paragraph 4.4.

7.3. Alterations, Changes and Additions by Tenant. Tenant shall make no changes, alteration, or additions ("Alterations") to any portion of the Property without Landlord's prior written consent which shall not be unreasonably withheld. As a condition to consent, Landlord may require that each Alteration be under the supervision of a competent architect or competent licensed structural engineer and made in accordance with plans and specifications furnished to and approved by Landlord prior to the commencement of work, that Tenant remove such Alterations at the expiration of the Term and restore the Premises and Property to their condition prior to the Alteration. As a further condition to consent, Landlord may require Tenant to provide Landlord, at Tenant's sole expense, with a lien and completion bond in an amount equal to 125% of the estimated cost of the Alteration to insure Landlord against any liability for mechanic's and materialman's liens and to ensure completion of the Alteration. In the event that any Alteration increases the floor area of the Premises, the Base Monthly Rent and

Tenant's Pro Rata Share shall be proportionately increased. Tenant shall provide 14 days' written notice to Landlord of the date on which construction of each Alteration will commence in order to permit Landlord to post a notice of nonresponsibility if appropriate, given the nature and scope of the Alteration. Each Alteration shall be constructed in a good and workmanlike manner in accordance with all Regulations relating to such construction. Every Alteration shall remain for the benefit of and become the property of Landlord, unless Landlord requires its removal by giving Tenant written notice at least 30 Days before the date Tenant is to vacate the Premises, in which case, Tenant shall remove the Alteration(s) and restore the Premises to their pre-Alteration condition. Notwithstanding the above contents of paragraph 7.3, Tenant shall not be obligated to obtain Landlord's consent to any Alterations the cost of which is less than $25,000 in each instance, provided such Alteration does not affect the structural integrity of the Building, or the functional integrity of the utility systems, and is not visible from the exterior of the Premises.

7.4. USE OF PLUMBING, ELECTRICAL AND HVAC SYSTEMS. Tenant shall not use the plumbing facilities for any purpose other than the use specified in paragraph 1.7. The expense of repair of any breakage, stoppage or other damage relating to the plumbing and resulting from the introduction by Tenant, its agents, employees or invitees of foreign substances into the plumbing facilities shall be borne by Tenant. Tenant shall not use the electrical or heating and air-conditioning ("HVAC") systems for any purpose other than the use specified in paragraph 1.7. The expense of repair of any breakage or other damage resulting to the electrical and/or HVAC systems resulting from the use by Tenant, its agents, employees or invitees of those systems for any purpose other than that for which the uses specified in Section 1.7 shall be borne by Tenant.

7.5. LIENS. Tenant shall keep the Premises and the property free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within 20 days following the imposition of any such lien, cause such 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 the same 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 by Landlord in connection therewith, including attorney's fees and costs, shall be payable to Landlord by Tenant on demand with interest from the date paid by Landlord to the date of Tenant's reimbursement to Landlord at the highest rate allowable by law. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the property and any other party having an interest therein, from mechanic's and materialmen's liens, and Tenant shall give to Landlord at least 14 days prior written notice of the expected date of commencement of any work relating to alterations or additions to the Premises.

8. MANAGEMENT. Tenant, as part of the Operating Expenses, will pay no more than 5% of its Base Rent as the management fee. Tenant understands that the Wareham Property Group, Inc., an affiliate of Landlord, or another affiliated or unaffiliated third party will be responsible for the management of the property.

9. UTILITIES AND SERVICES.

9.1. PREMISES. Landlord shall make water, sewer, telephone and utility service available to the property. Tenant shall pay prior to delinquency throughout the term the cost of water, gas, heating, cooling, sewer, telephone, electricity, garbage, air-conditioning and ventilating, janitorial services, landscaping and all other materials and utilities supplied directly to the Premises. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion of all charges which are jointly metered, the determination to be made by Landlord in good faith, and payment to be made by Tenant within 30 days of receipt of the statement for such charges.

9.2. COMMON AREAS. Landlord shall provide utilities, first class landscaping, janitorial, lighting for the common areas and, if Landlord deems it necessary

or appropriate, security services for the common areas of the property. Tenant shall bear its pro rata share of the costs to Landlord in providing such services pursuant to Paragraph 4.4. Security services may, in the Landlord's discretion, include hiring of guards during hours determined by Landlord or requested by Tenant at Tenant's expense. Tenant shall have the right of access to such portions of the property outside the Premises as are necessary to enable Tenant to exercise its rights under this Lease.

9.3. LIMITATION OF LIABILITY. Landlord shall not be in default under the provisions of this Lease or be liable for any damages directly or indirectly resulting from the following conditions: (1) the interruption of use of any equipment in connection with the furnishing of any of the foregoing services; (2) failure to furnish or delay in furnishing any such services where such failure or delay is caused by accident or any condition or event beyond Landlord's reasonable control; (3) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, to the extent such interruption or failure or limitation is beyond Landlord's reasonable control. Landlord shall not be liable under any circumstances for a loss of or injury to Property or business, however occurring, through or in connection with or incidental to failure to furnish any such services, except as to any matters arising out of Landlord's negligence or willful misconduct, or that of its employees, agents, contractors, or invitees. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises.

10. USE OF PREMISES.

10.1. USE. The Premises shall be used and occupied by Tenant for only the purpose specified in Paragraph 1.7 and for no other purposes whatsoever without Landlord's consent which shall not be unreasonably withheld.

10.2. SUITABILITY. This Lease shall be subject to all applicable zoning ordinances and to all municipal, county and state laws and regulations governing and regulating the use of the Premises. Tenant has not entered into this Lease in reliance upon any representation or warranty of Landlord or any of its agents or employees as to the suitability of the Premises for the conduct of Tenant's business. Tenant has made its own analysis respecting the suitability of the Premises for Tenant's intended use.

10.3. USES PROHIBITED.

10.3.1. RATE OF INSURANCE. Tenant shall not do or permit anything to be done in or about the Premises which will cause the existing rate of insurance upon the Premises to increase or cause the cancellation of any insurance policy covering said Premises or any building of which the Premises may be a part, nor shall Tenant sell or permit to be kept, used or sold in or about such Premises any articles which may be prohibited by a standard form policy of fire insurance. Tenant shall pay to Landlord as additional rent hereunder the full amount of any increased premium resulting from Tenant's use of the Premises.

10.3.2. INTERFERENCE WITH OTHER TENANTS. Tenant shall not do or permit anything to be done in or about the Premises which will in any way materially obstruct or unreasonably interfere with the rights of other tenants or occupants of the property or injure or unreasonably annoy them, neither shall Tenant use or allow the Premises to be used for any unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in or about the Premises. Tenant shall not commit or suffer to be committed any illegal waste in or upon the Premises.

10.3.3. APPLICABLE LAWS. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way violate or conflict with any law, statute, zoning restriction, ordinance, governmental rule, regulation or requirement of duly constituted public authorities whether now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, properly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to Tenant's use or occupancy of the Premises. The judgment of any court of

competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Landlord warrants to Tenant that on the commencement of the term hereof, the Premises and any improvements to be constructed by Landlord (a) shall be free from material structural defects, (b) shall comply with all applicable covenants and restrictions of records, statutes, ordinances, codes, rules, regulations, orders, and requirements, including but not limited to the Americans with Disabilities Act, and (c) the Building's elevators, doors, roof, plumbing, electrical and HVAC systems are in good order and condition and operating properly. In the event of a breach of the foregoing warranties, Landlord shall promptly rectify such breach at its sole cost and expense. (Landlord also shall protect, indemnify, defend, and hold harmless from and against any and all liability, loss, suits, claims, actions, costs, and expense (including, without limitation, reasonable attorney's fees) arising from any breach of the foregoing warranties. The provisions of this paragraph shall survive the termination of this Lease.)

10.3.4. SIGNS. Without Landlord's consent which shall not be unreasonably withheld, Tenant shall not place any sign upon the Premises or the property. Landlord shall, to the extent allowed by applicable law and regulations, as an expense of the property, install and maintain directory and entry door signs identifying Tenant and Tenant's space. The directory signs shall be constructed to Landlord's specifications and shall comply with applicable regulations. Landlord agrees to install a monument sign at the Potter Street entrance to the Property which will include Tenant's name and logo.

10.3.5. AUCTIONS. Tenant shall not conduct or allow any auction or similar sale upon the Premises.

11. DEFAULTS AND REMEDIES.

11.1. DEFAULT OF TENANT. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant: (a) Tenant's failure to pay any rent or charges required to be paid by Tenant under this Lease, except as otherwise provided herein, where such failure continues for five (5) business days after notice from Landlord; (b) Tenant's abandonment of the demised Premises; (c) Tenant's failure to promptly and fully perform any other covenant, condition or agreement contained in this Lease where such failure continues for 30 days after written notice from Landlord to Tenant of such default provided that if the nature of the default is such that more than 30 days are reasonably required to cure such default, Tenant shall not be deemed to be in default if within such 30 day period it commences to cure and diligently prosecutes such cure to completion; (d) the levy of a writ of attachment or execution on this Lease or on any of Tenant's property located in the Premises; (e) the making by Tenant of a general assignment for the benefit of its creditors or of an arrangement, composition, extension or adjustment with its creditors, the filing by or against Tenant of a petition for relief or other proceeding under the federal bankruptcy laws or state or other insolvency laws, or the assumption by any court or administrative agency, or by a receiver, trustee or custodian appointed by either, of jurisdiction, custody or control of the Premises or of Tenant or any substantial part of its assets or property; or (f) if the interest of Tenant under this Lease is held by a partnership or by more than one person or entity, the occurrence of any act or event described in part (e) above in respect of any partner of the partnership or any person or entity holding an interest in Tenant of 25% or more. In the event a nonmonetary default occurs which cannot reasonably be cured within the time period specified above and Tenant commences corrective action within said time period, Tenant shall not be subject to penalty under this Lease so long as Tenant prosecutes such corrective action diligently and continuously to completion.

11.2. REMEDIES OF LANDLORD. In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have under this Lease or under law, Landlord may elect either of the remedies set forth in Paragraphs 11.2.1 and 11.2.2. Notwithstanding any other provision of this lease, the Lessor has the remedy

described in California Civil Code Section 1951.4 (lessor (Landlord) may continue lease in effect after lessee's (Tenant's) breach and abandonment and recover rent as it becomes due, if lessee (Tenant) has the right to sublet or assign, subject only to reasonable limitations). For purposes of this Paragraph 11 (inclusive of all sub parts of said paragraph), the "worth at the time of award" of the amounts referred to in parts 11.2.1(i) and 11.2.2(ii) shall be computed by allowing interest at the highest rate allowable by law, and the "worth at time of award" of the amount referred to in part 11.2.1(iii) shall be computed by discounting such amount at the rate specified in California Civil Code Section 1951.2(b) or any successor statute. In such computations, the rent due hereunder shall include monthly rent plus the aggregate amount of all other rentals, charges and other amounts payable by Tenant hereunder.

11.2.1. To immediately terminate this Lease and Tenant's right to possession of the Premises by giving written notice to Tenant and to recover from Tenant an award of damages equal to the sum of (i) the "worth at the time of award" of the unpaid rental which had been earned at the time of termination, (ii) the worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, (iii) the "worth at the time of award" of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, (iv) any other amount necessary to compensate Landlord for all the detriment either proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, and (v) all such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law; or

11.2.2. To have this Lease continue in effect up to its ending under Paragraph 1.2 for so long as Landlord does not terminate this Lease and Tenant's right to possession of the Premises, in which event Landlord shall have the right to enforce all of the rights and remedies provided by this Lease and by law, including the right to recover the rental and other charges payable by Tenant under this Lease as they become due.

11.3. DEFAULT BY LANDLORD. Landlord will be in default if Landlord fails to perform any obligation required of Landlord within 30 days after written notice by Tenant, specifying wherein Landlord has failed to perform such obligation; provided that if the nature of Landlord's obligation is such that more than 30 days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 30 day period and thereafter diligently prosecutes the same to completion. Tenant agrees that any judgment against Landlord resulting from any default or other claim arising under this Lease shall be satisfied only out of the rents, issues, profits and other income actually received on account of Landlord's right, title and interest in the property, and no other real, personal or mixed property of Landlord or any partner of Landlord, wherever situated, shall be subject to levy to satisfy such judgment. Tenant shall not have any right whatsoever to terminate this Lease or to withhold, reduce or offset any amount against any payments of rents or charges due and payable under this Lease, except as provided herein.

12. EXPIRATION OR TERMINATION.

12.1. SURRENDER OF POSSESSION. Tenant agrees to deliver up and surrender to Landlord possession of the Premises and all improvements thereon, subject to the terms of Paragraph 7.3 above, in as good order and condition as when possession was taken by Tenant excepting only ordinary wear and tear and damage due to casualty or condemnation. Upon termination of this Lease, Landlord may reenter the Premises and remove all persons and property therefrom. If Tenant fails to remove any effects that it is required or entitled to remove from the Premises upon the termination of this Lease, for any cause whatsoever, Landlord, at its option, may remove the same and store or dispose of them. Tenant agrees to pay to Landlord on demand any and all expenses incurred in such removal and in making the Premises free from all dirt, litter, debris and obstruction, including all storage and insurance charges. If the Premises are not surrendered at the end of the term, Tenant shall indemnify Landlord against loss or

liability of resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding lessee founded upon such delay.

12.2. HOLDING OVER. If Tenant, with Landlord's consent, remains in possession of the Premises after expiration of the term and if Landlord and Tenant have not executed an express written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a base monthly rental equivalent to 110% of the monthly rental in effect immediately prior to such expiration, such payment to be made as herein provided. In the event of such holding over, all of the terms of this Lease including the obligation for payment of all charges owing hereunder shall remain in force and effect on said month to month basis.

12.3. VOLUNTARY SURRENDER. The voluntary or other surrender of this Lease by Tenant if accepted by Landlord, or a mutual cancellation thereof, shall not work a merger, but shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or operate as an assignment to Landlord of any or all such subleases or subtenancies.

13. CONDEMNATION OF PREMISES.

13.1. TOTAL CONDEMNATION. If the entire Premises, whether by exercise of governmental power or the sale or transfer by Landlord to any condemnor under threat of condemnation or while proceedings for condemnation are pending, at any time during the term, shall be taken by condemnation such that there does not remain a portion suitable for occupation, this Lease shall then terminate as of the date transfer of possession is required. Upon such condemnation, all rent shall be paid up to the date transfer of possession is required, and Tenant shall have no claim against Landlord for the value of the unexpired term of this Lease.

13.2. PARTIAL CONDEMNATION. If any portion of the Premises is taken by condemnation during the term, whether by exercise of governmental power or the sale or transfer by Landlord to any condemnor under threat of condemnation or while proceedings for condemnation are pending, this Lease shall remain in full force and effect; except that in the event a partial taking leaves the Premises unsuitable for occupation, then Tenant shall have the right to terminate this Lease effective upon the date transfer of possession is required unless Landlord makes other comparable arrangements for Tenant's space. Landlord shall have the right to terminate this Lease effective on the date transfer of possession is required if more than 33% of the total square footage of the Premises allocated to Tenant is taken by condemnation. Tenant and Landlord may elect to exercise their respective rights to terminate this Lease pursuant to this paragraph by serving written notice to the other within 30 calendar days of their receipt of notice of condemnation, except that Tenant's notice shall be ineffective if Landlord serves notice upon Tenant of Landlord's election to provide alternate space equivalent to that condemned within ten calendar days of Tenant's delivery of notice to Landlord pursuant to this paragraph. All rent and other obligations of Tenant under this Lease shall be paid up to the date of termination, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease. If this Lease shall not be canceled, the rent after such partial taking shall be that percentage of the adjusted base rent provided for by this Lease, equal to the percentage which the square footage of the untaken part of the Premises immediately after the taking plus such replacement square footage as Landlord may make available to Tenant bears to the square footage of the entire Premises immediately before the taking. Any sums owing hereunder which are calculated on the basis of Tenant's pro rata share (as set forth in paragraph 1.4) shall also be adjusted to reflect any decrease in square footage of the Premises due to the condemnation. If Tenant's continued use of the Premises requires alterations and repairs by reason of a partial taking, all such alterations and repairs shall be made by Tenant at Tenant's expense.

13.3. AWARD TO TENANT. In the event of any condemnation, whether total or partial, Tenant shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Tenant for loss of business, fixtures or equipment belonging to Tenant immediately prior to the condemnation. The balance of any condemnation award shall belong to Landlord, and

Tenant shall have no further right to recover from Landlord or the condemning authority for any additional claims arising out of such taking.

13.4. WAIVER OF PARTIAL TERMINATION RIGHTS. Tenant hereby waives the provisions of California Code of Civil Procedure Section 1265.130.

14. ENTRY BY LANDLORD. Tenant shall permit Landlord and its agents to enter the Premises at all reasonable times for any of the following purposes: to inspect the Premises; to maintain the Property; to make such repairs to the Premises as Landlord is obligated or may elect to make; to make repairs, alterations or additions to any other portion of the property; to show the Premises and post "To Lease" signs for the purposes of reletting during the last 120 days of the term or any optional extension term; to show the Premises as part of a prospective sale by Landlord and/or to post notices of nonresponsibility. Landlord shall have such right of entry without any rebate of rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises thereby occasioned. Notwithstanding the foregoing, Landlord shall provide 24 hours advance notice to Tenant of such intended entry except in the event of circumstances which Landlord deems to constitute an emergency. when entering or performing any repair or other work on the Premises, Landlord, its agents, employees and/or contractors (a) shall identify themselves to Tenant's personnel immediately upon entering the Premises, and (b) shall not, in any way, materially or unreasonably affect, interrupt or interfere with Tenant's use, business or operations on the Premises or obstruct the visibility of or access to the Premises.

15. LIABILITY LIMITATION AND INDEMNIFICATION.
The provisions of this section 15 supersede every other provision of this Lease to the extent that they are inconsistent with such other provisions.

15.1. LIMITATION OF LANDLORD'S LIABILITY. TENANT SHALL NOT HOLD LANDLORD LIABLE FOR ANY AMOUNT IN EXCESS OF INSURANCE COVERAGE MAINTAINED BY LANDLORD PURSUANT TO PARAGRAPH 6.3 OF THIS LEASE ("EXISTING COVERAGE") WITH RESPECT TO ANY INJURY OR DAMAGE, EITHER PROXIMATE OR REMOTE, OCCURRING THROUGH OR CAUSED BY ANY REPAIRS OR ALTERATIONS TO THE PROPERTY, UNLESS SUCH INJURY OR DAMAGE ARISES FROM LANDLORD'S NEGLIGENCE, WILLFUL MISCONDUCT, RECKLESS DISREGARD OF LANDLORD'S DUTIES OR BREACH OF THIS LEASE. LANDLORD SHALL NOT BE LIABLE IN EXCESS OF EXISTING COVERAGE FOR ANY INJURY OR DAMAGE OCCASIONED BY DEFECTIVE ELECTRIC WIRING, OR THE BREAKING, BURSTING, STOPPAGE OR LEAKING OF ANY PART OF THE PLUMBING, AIR-CONDITIONING, HEATING, FIRE CONTROL SPRINKLER SYSTEMS OR GAS, SEWER OR STEAM PIPES, UNLESS SUCH INJURY OR DAMAGE ARISES FROM LANDLORD'S NEGLIGENCE, WILLFUL MISCONDUCT OR RECKLESS DISREGARD OF LANDLORD'S DUTIES OR BREACH OF THIS LEASE.

15.2. LIMITATION ON ENFORCEMENT OF JUDGMENTS. NOTWITHSTANDING ANY OTHER PROVISION OF THIS LEASE, TENANT AND ITS AGENTS SHALL, UNDER ALL CIRCUMSTANCES, BE ABSOLUTELY LIMITED TO LANDLORD'S ESTATE IN THE PROPERTY FOR SATISFACTION OF TENANT AND ITS AGENTS' REMEDIES, AND/OR FOR THE COLLECTION OF A JUDGMENT, COURT ORDER OR ARBITRATION AWARD REQUIRING THE PAYMENT OF MONEY BY LANDLORD AS THE RESULT OF ANY AND ALL JUDGMENTS, ORDERS AND AWARDS RELATING TO OR ARISING OUT OF TENANT AND ITS AGENTS' OCCUPANCY AND USE OF THE PROPERTY AND/OR IN THE EVENT OF ANY DEFAULT BY LANDLORD HEREUNDER. NO OTHER PROPERTY OR ASSETS OF LANDLORD OR ITS PARTNERS OR PRINCIPALS, DISCLOSED OR UNDISCLOSED, SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER ENFORCEMENT PROCEDURE FOR THE SATISFACTION OF TENANT AND ITS AGENTS' REMEDIES UNDER OR WITH RESPECT TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT HEREUNDER, OR THE USE AND OCCUPANCY OF THE PROPERTY AND THE PREMISES BY TENANT AND ITS AGENTS. TENANT, ON BEHALF OF ITSELF AND ITS AGENTS, EXPRESSLY WAIVES ANY AND ALL RIGHT TO COLLECT OR ENFORCE ANY AND ALL ORDERS, AWARDS AND/OR JUDGMENTS AGAINST LANDLORD IN EXCESS OF THE LIMITATIONS IMPOSED BY THIS PARAGRAPH. TENANT SHALL REQUIRE THAT EACH SUBTENANT OF TENANT AND EACH ASSIGNEE OF TENANT AGREE TO BE BOUND BY THE WAIVER SET FORTH IN THIS PARAGRAPH. THE LANDLORD'S MAXIMUM EXPOSURE AS SET FORTH IN THIS PARAGRAPH IS CUMULATIVE (AS TO JUDGMENTS, AWARDS AND ORDERS AGAINST LANDLORD IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT HEREUNDER, OR THE USE AND OCCUPANCY OF THE PROPERTY BY TENANT AND ITS AGENTS). THE LIMITS IMPOSED BY THIS PARAGRAPH ALSO APPLY TO ANY AND ALL DUTIES OF INDEMNITY (EXPRESS AND/OR IMPLIED) OWED BY LANDLORD TO TENANT. AS USED IN THIS PARAGRAPH, REFERENCES TO "LANDLORD" INCLUDE ALL PERSONS AND ENTITIES WHO NOW OR HEREAFTER OWN OR MAY OWN AN INTEREST IN LANDLORD.

16. ASSIGNMENT AND SUBLETTING.

16.1. GENERALLY. Tenant shall not directly or indirectly assign this Lease in whole or in part, or sublet the Premises or any part thereof, or license the use of all or any portion of the Premises or business conducted thereon, or encumber or hypothecate this Lease, without first obtaining Landlord's written consent, which consent Landlord will not unreasonably withhold. The sale or other transfer of shares of stock, partnership interests or other ownership interests in Tenant resulting in a change in the effective control of Tenant, or any merger, consolidation or other reorganization of Tenant shall be regarded as an indirect assignment of Tenant's interest in this Lease. Tenant's request for consent to any assignment, sublease or other transfer shall be in writing and shall include the following: (a) the name and legal composition of the proposed transferee; (b) the nature of the proposed transferee's business to be carried on in the Premises; (c) the terms and provisions of the proposed assignment or sublease; and (d) such financial and other reasonable information as Landlord may request concerning the proposed transferee or concerning the proposed assignment or sublease and any transaction contemplated to occur in connection therewith. Any assignment, subletting, licensing, encumbering or hypothecating of this Lease without Landlord's prior written consent shall constitute a breach of this Lease entitling Landlord to exercise all its rights and remedies herein provided. Landlord's consent to any assignment or sublease shall not constitute a waiver of the necessity for such consent to any subsequent assignment or sublease. The prohibition against assignment and subletting contained in this paragraph shall be construed to include a prohibition against assignment or subletting by operation of law. Notwithstanding any assignment or subletting with Landlord's consent, unless agreed to in writing, Tenant shall remain fully liable on this Lease and shall not be released from its obligations hereunder. Without limiting other reasons or circumstances, Landlord and Tenant agree that it is reasonable for Landlord to withhold consent to an assignment or sublease, if (i) the financial strength of the proposed assignee is not, in Landlord's reasonable judgment, commensurate with the obligations of the Lease; (ii) the proposed assignee's use would, in Landlord's reasonable judgment, be incompatible with the then current tenants, or use of the rest of the property.

Notwithstanding anything in the above Paragraph 16.1, Tenant may, without Landlord's prior written consent sublet the Premises or assign the Lease to (i) a subsidiary, affiliate, division or corporation or entity controlling, controlled by or under common control with Tenant; (ii) a successor corporation or entity resulting from or related to Tenant by merger, consolidation, nonbankruptcy reorganization, or government action; or fill) a purchaser of substantially all of Tenant's assets or stock located in the Premises. A sale or transfer of Tenant's capital stock shall not be deemed an assignment, subletting or any other transfer of the Lease or the Premises.

16.2. TENANT'S PAYMENTS. In the event Landlord shall consent to a sublease or assignment under this paragraph 16, Tenant shall pay Landlord's reasonable attorney's fees incurred in connection with giving such consent. Tenant shall also pay to Landlord an amount equal to 50% of all excess rent received by Tenant directly or indirectly in respect of an assignment of this Lease or sublease of the Premises. For this purpose, "excess rent" shall mean, in the case of an assignment, all monies so received and, in the case of a sublease, all monies so received in excess of the rents and charges reserved under this Lease, provided however, that Tenant shall first be entitled to deduct therefrom all reasonable costs associated with effecting the assignment or sublease, including without limitation, brokerage fees, tenant improvements and rent concessions. The assignee or subleasee shall, upon assuming the obligations of Tenant under this Lease, become jointly and severally liable to Landlord for the payment of Landlord's share of excess rent.

17. DAMAGE OR DESTRUCTION.

17.1. RIGHT TO TERMINATE ON DESTRUCTION OF PREMISES. Landlord and Tenant shall each have the right to terminate this Lease if, during the term, the Premises or the improvements on the property are damaged to an extent exceeding 33% of the then reconstruction cost of the Premises as a whole, or such improvements as a whole, as the case may be. Landlord or Tenant shall also have the right to terminate this Lease if 33% of the Premises are damaged by an uninsured peril. In either case, Landlord or Tenant

may elect to terminate by written notice delivered within 30 calendar days of the happening of such damage. Such notice shall provide Tenant with a minimum of 60 days to vacate the Premises unless they are unsafe for occupancy, in which case, Tenant shall immediately vacate the Premises.

17.2. REPAIRS BY LANDLORD. If Landlord shall not elect to terminate this Lease pursuant to paragraph 17.1, Landlord shall immediately upon receipt of insurance proceeds paid in connection with such casualty, but in no event later than 180 calendar days after such damage has occurred, proceed to repair or rebuild the Premises, on the same plan and design and of equal quality and condition as existed immediately before such damage or destruction occurred, subject to such delays as may be reasonably attributable to governmental restrictions or failure to obtain materials or labor, or other causes beyond the control of Landlord. Tenant shall be liable for the repair and replacement of all fixtures, leasehold improvements installed hereafter, furnishings, merchandise, equipment and personal property not covered by the property insurance obtained pursuant to the provisions of this Lease.

17.3. REDUCTION OF RENT AND OPERATING EXPENSES DURING REPAIRS. Except with respect to damage caused in whole or in part by Tenant, its agents, servants, employees, invitees and guests, in the event Tenant is able to continue to conduct its business during the making of repairs, the rent then prevailing will be equitably reduced in the proportion that the unusable part of the Premises bears to the whole thereof for the period that repairs are being made. No rent or Operating Expenses shall be payable while the Premises are wholly unusable due to casualty damage except for casualty damage caused In whole or in part by Tenant, its employees, agents, servants, invitees and guests, in which event Tenant shall remain liable for rental payments.

17.4. WAIVER. Tenant hereby waives the provisions of Sections 1932, subdivision 2, and 1933, subdivision 4, of the Civil Code of California.

18. HAZARDOUS MATERIALS.

18.1. TENANT'S WARRANTIES. Tenant hereby represents, warrants and covenants that Tenant will comply with each of the following requirements:

18.1.1. RESTRICTIONS ON BRINGING HAZARDOUS MATERIALS ONTO THE PROPERTY. Except for normal quantities of office supplies and cleaning products and those Hazardous materials and quantities noted in the Tenant's Hazardous Material Management Plan filed with the city of Berkeley, for which no prior consent shall be required, during the term of this Lease, Tenant shall not cause or permit any Hazardous Material (as defined below) to be brought upon, used, kept or stored in, on, about or under the Property by Tenant, its agents, representatives, employees, contractors, invitees or subtenants, without the prior written consent of Landlord (which Landlord shall not unreasonably withhold). Tenant's use of any Hazardous Materials shall comply with all Environmental Health and Safety Requirements (as defined below) regulating such Hazardous Material and with the highest standards prevailing in the Tenant's industry for the use, keeping and storage of such Hazardous Material).

18.1.2. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS. If any Hazardous Material is brought upon, used, kept or stored in, on, about or under the Property by Tenant, its agents, representatives, employees, contractors, invitees or subtenants, then Tenant shall bear all financial and other responsibility for ensuring that such material shall be used, kept and stored in a manner which complies with all Environmental, Health and Safety Requirements regulating such Hazardous Material and with the highest standards prevailing in the Tenant's industry for the use, keeping and storage of such Hazardous Material. Without limiting any of the other obligations of Tenant set forth in this Lease, Tenant shall, at its own cost and expense, procure, maintain in effect and comply with all conditions and requirements of any and all permits, licenses and other governmental and regulatory approvals or authorizations required under any Environmental, Health or Safety Requirement In connection with the use, keeping and storage of such Hazardous Material in, on, about or under the Property.

Tenant shall submit to Landlord copies of all such permits, licenses, or other governmental or regulatory approvals or authorizations within five business days of its receipt thereof.

18.1.3. TENANT'S OBLIGATION TO EFFECT RESTORATION. If, as a result of actions caused or permitted by Tenant (and/or Tenant's agents, representatives, employees, contractors, invitees or subtenants), the presence of any Hazardous Material in, on, about or under the Property or any adjoining property, existing during the term of this Lease results in any contamination of the Property or the surrounding environment, Tenant shall promptly take all actions at its sole cost and expense as are necessary to return the Property and/or the surrounding environment to the condition required by Environmental Health and Safety requirements and governmental authorities ("Restoration"); provided, however, that tenant shall not undertake any Restoration without first providing Landlord with written notice thereof and obtaining Landlord's approval therefor, which approval shall be granted or denied in Landlord's sole and absolute discretion. Tenant shall carry out any approved restoration in a manner which complies with all Environmental, Health and Safety Requirements. Further, Tenant shall not undertake any Restoration, nor enter into any settlement agreement, consent decree or other compromise with respect to any claims, relating to any Hazardous Material in any way connected with the Property without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

18.1.4. REMOVAL FROM PROPERTY. Upon the expiration or early termination of the term of this Lease, Tenant shall cause to be removed from the Property all Hazardous Materials existing in, on, about or under the Property brought upon, used kept or stored by Tenant (and/or Tenant's agents, representatives, employees, contractors, invitees or subtenants) as well as all receptacles or containers therefor, and shall cause such Hazardous Materials and such receptacles or containers to be stored, treated, transported and/or disposed of in compliance with all applicable Environmental, Health and Safety Requirements. Any Hazardous Materials, or receptacles or containers therefor, which Tenant causes to be removed from the Property shall be removed solely by duly licensed haulers and transported to and disposed of at duly licensed facilities for the final disposal of such Hazardous Materials and receptacles or containers therefor. Tenant shall deliver to Landlord copies of any and all manifests and other documentation relating to the removal, storage, treatment, transportation and/or disposal of any Hazardous Materials, or receptacles or containers therefor, reflecting the legal and proper removal, storage, treatment, transportation and/or disposal thereof. Tenant shall, at its sole cost and expense, repair any damage to the Property resulting from Tenant's removal of such Hazardous Materials and receptacles or containers therefor. Tenant's obligation to pay rent shall continue until Tenant completes such removal and effects such repairs.

18.1.6. TENANT'S WRITTEN CONFIRMATION. Tenant shall, from time to time throughout the term of this Lease, execute such affidavits, certificates or other documents as may be reasonably requested by Landlord concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials in, on, about or under the Property.

18.1.6. TENANT'S DUTY TO NOTIFY LANDLORD. Tenant shall notify Landlord in writing immediately upon becoming aware of: (1) any enforcement, cleanup, remediation or other action threatened, instituted or completed by any governmental or regulatory agency or private person with respect to the Property or any adjoining property relating to Hazardous Materials; (2) any claim threatened or made by any person against Tenant, the Landlord, the Property or any adjoining landowner, tenant or property for personal injury, compensation or any other matter relating to Hazardous Materials; and (3) any reports made by or to any governmental or regulatory agency with respect to the Property or any adjoining property relating to Hazardous Materials, including without limitation, any complaints, notices or asserted violations in connection therewith. Further, Tenant shall also supply to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, asserted violations or other documents relating in any way to the foregoing.

18.2. LANDLORD'S RIGHTS. Landlord and its agents and representatives shall have the right to communicate, verbally or in writing, with any governmental or regulatory agency or any environmental consultant on any matter with respect to the Property relating to Hazardous Materials. Landlord shall be entitled to copies of any and all notices, inspection reports or other documents issued by or to any such governmental or regulatory agency or consultant with respect to the Property relating to Hazardous Materials, excluding information and data that is proprietary or business confidential to Tenant.

18.3. TENANT'S DUTY TO INDEMNIFY. If the presence of Hazardous Materials on the Property is caused by the Tenant, then Tenant shall indemnify, defend and hold Landlord any partner or other affiliate of Landlord, and any director, officer, shareholder, employee, agent, attorney or partner of any of the foregoing, harmless from and against any and all claims, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rental or usable space or of any other amenity of the Property, damages arising from any adverse impact on marketing of space in the Property, other consequential damages and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees) which arise during or after the term of this Lease as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with removal or restoration work required by any governmental or regulatory agency or pursuant to any settlement agreement or judgement because of the presence of Hazardous Materials in the soil or groundwater in, on, about or under the Property or any adjoining Property caused by Tenant and any and all legal fees and expenses incurred by Landlord with respect to such claims, demands, investigation and response.

Landlord shall defend, indemnify, and hold harmless from and against any and all liability, loss, suits, claims, actions, costs and expense, including without limitation, any attorney's fees, arising from any contamination of the Premises or property (including the underlying land and ground water) by any Hazardous Materials, where such contamination was not caused by Tenant. The provisions of this paragraph shall survive the termination or expiration of this Lease.

18.4. LANDLORD'S RIGHT OF ENTRY. If contamination of the Property by Hazardous Materials occurs or if any lender or governmental agency requires an investigation to determine whether there has been any contamination of the Property or any adjoining property, then Landlord and its agents and representatives shall have the right, at any reasonable time and from time to time during the term of this Lease, with reasonable notice to enter upon the Property to perform monitoring, testing or other analyses (provided Landlord shall promptly restore the Premises), and to review any and all applicable documents, notices, correspondence or other materials. All costs and expenses reasonably incurred by Landlord in connection therewith shall become due and payable by Tenant if such investigation conclusively determines that Tenant has caused such contamination.

18.5. DEFINITIONS. As used herein, the following terms shall have the following meanings:

18.5.1. "HAZARDOUS MATERIAL": shall mean, without limitation, (1) petroleum or petroleum products; (2) hydrocarbon substances of any kind (3) asbestos in any form; (4) formaldehyde; (5) radioactive substances; (6) industrial solvents; (7) flammables; (8) explosives; (9) leakage from underground storage tanks; (10) substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 or as otherwise amended, 42 U.S.C. Section 9601, et seg., (6) Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seg. and any amendments thereto, or (C) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seg. and any amendments thereto; (11) those substances defined as "hazardous wastes", "extremely hazardous wastes" or "restricted hazardous wastes" in Sections 25115, 25117, and 25122.7 or listed pursuant to Section 25140 of the California Health & Safety Code and any amendments thereto; (12) those substances defined as "hazardous substances" in

Section 25316 of the California Health & Safety Code and any amendments thereto; (13) those substances defined as "hazardous materials", "hazardous wastes" or "hazardous substances" in Sections 25501 and 25501.1 of the California Health & Safety Code and any amendments thereto; (14) those substances defined as "hazardous substances" under Section 25281 of the California Health & Safety Code and any amendments thereto; (15) those substances causing "pollution" or "contamination" or constituting hazardous substances" within the meaning of (A) the Clean Water Act, 33 U.S.C. 1251 et seg. and any amendments thereto, (B) the Porter-Cologne Water Quality Control Act, Section 13050 of the California Water Code and any amendments thereto, and (C) the Safe Drinking Water Act, 42 U.S.C. Section 300f et seg.; (16) such chemicals as are identified on the list published from time to time as provided in Chapter 6.6 of the California Health and Safety Code, as amended, as causing cancer or reproductive toxicity; (17) polychlorinated biphenyls (PCBs) set forth in the Federal Toxic Substance Control Act, as amended, 15 U.S.C. Section 2601 et seg.; (18) "toxic air contaminant" as defined in California Health and Safety Code Section 39655; and (19) the wastes, substances, materials, contaminants and pollutants identified pursuant to or set forth in the regulations adopted or judicial or administrative orders, decisions or decrees promulgated pursuant to any of the foregoing laws. The foregoing list of definitions and statutes is intended to be Illustrative and not exhaustive and such list shall be deemed to include all definitions, rules, regulations and laws applicable to the subject matter of this paragraph as such rules, laws, regulations and definitions may be amended, modified, or changes from time to time.

18.5.2. "ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENT" shall mean any law, statute, ordinance, rule, regulation, order, judgment or decree promulgated by any local, regional, state or federal governmental agency, court, judicial or quasi-judicial body or legislative or quasi-legislative body which relates to matters of the environment, health, industrial hygiene or safety.

18.6. ALLOCATION OF RESPONSIBILITIES. ANY AND ALL LIABILITIES ARISING FROM THE MANUFACTURING, GENERATION, HANDLING, USE STORAGE, TREATMENT, TRANSPORTATION, DISPOSAL OR EXISTENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE PROPERTY OR ANY ADJOINING PROPERTY DURING THE TERM OF THIS LEASE BY TENANT (INCLUSIVE OF ALL SUBTENANTS, ASSIGNEES, AGENTS, EMPLOYEES, INVITEES, GUESTS, LICENSEES AND AFFILIATES OF TENANT), SHALL AT ALL TIMES REMAIN THE SOLE RESPONSIBILITY OF TENANT AND TENANT SHALL RETAIN ANY AND ALL LIABILITIES ARISING THEREFROM. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION 18, ANY ACT BY LANDLORD OR ITS AGENTS OR REPRESENTATIVES HEREUNDER SHALL NOT CONSTITUTE AN ASSUMPTION BY LANDLORD OF ANY OBLIGATIONS, DUTIES, RESPONSIBILITIES OR LIABILITIES PERTAINING TO TENANT'S COMPLIANCE WITH ANY ENVIRONMENTAL, HEALTH OR SAFETY REQUIREMENT, WHICH TENANT SHALL RETAIN UNDER ALL CIRCUMSTANCES AND SHALL INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS AS PROVIDED HEREIN. FURTHER, NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION 18 EVEN THOUGH HAZARDOUS MATERIALS REMOVED, TRANSPORTED AND DISPOSED OF BY TENANT MAY ORIGINATE FROM THE PROPERTY, TENANT SHALL REMAIN FULLY LIABLE FOR THEIR REMOVAL, TRANSPORTATION AND DISPOSAL AND SHALL INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS WITH RESPECT TO SUCH HAZARDOUS MATERIALS AS PROVIDED HEREIN.

18.7. INSPECTIONS. Tenant warrants that all governmental inspections of the Property as required under the laws referenced above will be permitted. Tenant shall provide to Landlord a copy of the reports for each such inspection within 15 days of Tenant's receipt of such reports. Except in instances when governmental report of such inspection has been made within the last 12 month period, but no more frequently than every 12 months, at Landlord's request, Tenant shall obtain and deliver to Landlord an inspection by a private engineering firm, resulting in a written report specifying Tenant's compliance, or enumerating the reasons for Tenant's lack of compliance with such laws and regulations. If Tenant is in violation as demonstrated by the report tenant shall pay for the cost of the inspection and report. If Tenant is not in violation as demonstrated by the report, Landlord will pay for the cost of the inspection and report. Landlord may, from time to time, waive the requirements of an inspection by a private engineering firm

if Tenant's use of the Property is limited solely to offices and administrative uses.

18.8. COOPERATION. Tenant shall comply with any reasonable procedures or regulations promulgated by Landlord from time to time in connection with the matters covered by such laws and regulations provided that such procedures and regulations shall not unduly interfere with Tenant's business, and provided that Landlord shall have no duty to establish any procedures or regulations or to supervise in any way Tenant's activities on the Property.

18.9. SURVIVAL. The covenants, agreements and indemnities of Landlord and Tenant set forth in this section 18 shall survive the expiration or earlier termination of this Lease and shall not be affected by any investigation, or information obtained as a result of any investigation, by or on behalf of Landlord or any prospective Tenant.

18.10. STORAGE TANKS. Tenant further covenants and agrees that it shall not install any storage tank (that being one requiring any agency's permit), whether above or below the ground) on the Property without obtaining the prior written consent of the Landlord, which consent may be conditioned upon further requirements imposed by Landlord with respect to, among other things, compliance by Tenant with any applicable laws, rules, regulations or ordinances and safety measures or financial responsibility requirements.

18.11. LIMITATION ON TENANT'S LIABILITY FOR HAZARDOUS MATERIALS. Notwithstanding anything as may exist to the contrary in this paragraph 18 or elsewhere in this lease, Tenant shall not be liable or otherwise responsible for: (i) investigating, removing, remediating, cleaning up or otherwise responding to any hazardous material or associated contamination (a) which was present in, on, above, under or about the Premises, property or surrounding environment prior to Tenant's occupancy of the Premises, or (b) which was not brought onto the Premises, the property or surrounding environment by Tenant or its agents, employees, representatives, contractors, invitees or subtenants; or (ii) any claims, damages, penalties, fines, costs, liabilities, or losses arising from any Hazardous Material or associated contamination (a) which was present in, on, above, under or about the Premises, property or surrounding environment prior to Tenant's occupancy of the Premises, or (b) which was not brought onto the Premises, property or surrounding environment by Tenant or its agents, employees, representatives, contractors, invitees or subtenants.

19. MISCELLANEOUS PROVISIONS.

19.1. WAIVER. No waiver of any breach of any covenants or conditions of this lease shall be construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of the same or other covenant or condition. The acceptance of rent hereunder by Landlord after Tenant's breach shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

19.2. SUCCESSORS AND ASSIGNS. Except as otherwise provided herein, the provisions hereof shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

19.3. NOTICES. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and either personally delivered, sent by commercial delivery service that provides confirmation of delivery, or sent by certified mail, return receipt requested, postage prepaid, properly addressed to the other party at the address set forth next to its signature below, or at such other address or addresses as may, from time to time, be designated in like manner by one party to the other. Any such notice shall be deemed given when personally delivered or on the date indicated on the post office's certified mail receipt of delivery.

19.4. PARTIAL INVALIDITY. If, for any reason, any provision of this Lease shall

be determined to be invalid or inoperative, the validity and effect of the other provisions of this lease shall not be affected.

19.5. NUMBER AND GENDER. All terms of this lease shall be construed to mean either the singular or the plural, masculine, feminine or neuter, as the situation may demand.

19.6. DESCRIPTIVE HEADINGS. The headings used herein and in any of the documents annexed hereto as schedules, lists or exhibits are descriptive only and for the convenience of identifying provisions, and are not determinative of the meaning or effect of any such provision.

19.7. TIME. In all matters, time is of the essence in the performance of all obligations under this lease.

19.8. ENTIRE AGREEMENT. This lease and the documents annexed hereto as schedules, lists or exhibits, constitute the entire agreement and understanding between the parties with respect to the subject matters addressed by this lease and the said attachment, and supersede and replace any prior agreements and understandings, whether oral or written, between and among them with respect to the lease of the premises, rental therefor, use thereof and all other such matters. The provisions of this lease may be waived, altered, amended or repealed in whole or in part only upon the written consent of Landlord and Tenant.

19.9. MEMORANDUM OF LEASE. Landlord and Tenant mutually agree that they will not file or record a copy of this lease, but that in the event either party requests a recording, Landlord and Tenant shall execute and acknowledge a memorandum of this lease in a form approved by the parties setting forth in said memorandum the description of the premises, the date of the lease, the commencement date and the date of termination. Said memorandum of lease may be recorded in the recorder's office of the county in which the premises are located.

19.10. APPLICABLE LAW. This lease shall be construed and interpreted in accordance with the laws of the State of California.

19.11. AUTHORITY. Each individual executing this lease on behalf of a corporation represents and warrants that he is duly authorized to execute and deliver this lease on behalf of the corporation in accordance with a duly adopted resolution of the board of directors of the corporation, and that this lease is binding upon said corporation in accordance with its terms. Each individual executing this lease on behalf of a partnership represents and warrants that he is duly authorized to execute and deliver this lease on behalf of the partnership and that this lease is binding upon said partnership in accordance with its terms.

19.12. LITIGATION EXPENSE. If any party shall bring an action or arbitration proceeding against any other party hereto by reason of the breach of any covenant, warranty, representation or condition hereof, or otherwise arising out of this lease or any schedule, list or exhibit hereto, whether for declaratory or other relief, the prevailing party in such suit shall be entitled to such party's costs of suit and attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

19.13. SUBORDINATION OF LESSEHOLD. This lease is and shall be at all times, subject and subordinate to the lien of any mortgage or other encumbrances which Landlord may create against the Property, including all renewals, replacements and extensions. Tenant shall execute all written instruments which may be required by Landlord to subordinate Tenant's rights to the lien of such mortgage which obligation by Tenant is conditioned upon the holder of such lien providing to Tenant a written subordination, non disturbance, and attornment agreement, in a form reasonably acceptable to Tenant, providing, in essence, that as long as Tenant is not in default under the provisions of this lease (after notice and the expiration of any grace period provided for in the lease), the lender will, in the event of a foreclosure, recognize the interest of Tenant to remain in possession of the premises under the lease for the duration of the unexpired term (and any extensions provided for in this lease). Landlord shall use its best efforts to have all lenders currently secured by the Property to provide Tenant with a non disturbance agreement within 30 days of the date this lease is executed by

Landlord and Tenant.

19.14. TENANT'S CERTIFICATE. Within 15 days following Landlord's request, Tenant shall complete, execute and deliver to Landlord a Tenant's certificate or estoppel certificate, setting forth any information reasonably requested by Landlord, including, but not limited to, (a) certification that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the date to which the rental and other charges are paid in advance, if any, (b) acknowledgment that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any are claimed, and (c) setting forth the date of commencement and expiration of the term. Tenant's failure to deliver such certificate within said 15 days shall be deemed, for all purposes, to be an acknowledgement that Landlord is not in default under the Lease, and that the terms of the Lease have not been modified or supplemented in any way. It is intended that such certificate may be relied upon by any prospective purchaser, lender or assignee of any lender of the Premises.

19.15. ATTORNMENT. In the event of any sale of the Premises or if proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage, installment land contract or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the mortgage or the purchaser upon any such foreclosure or sale and recognize such mortgagee or purchaser as Landlord under this Lease provided such party has assumed in writing Landlord's obligations hereunder.

19.16. LANDLORD'S ESTATE. Tenant shall look only to Landlord's estate in the property of which the Premises are a part and the land on which it is located for the satisfaction of Tenant's remedies, or for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, 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, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

19.17. COMPLIANCE WITH LENDER'S REQUESTS. Tenant agrees to consent to reasonable amendments to this Lease from time to time as may be requested by any current or future mortgagee or holder of other encumbrance which Landlord may create against the Premises from time to time, provided that such amendments do not materially affect Tenant's financial obligations or its occupancy and use under this Lease or Landlord's obligations hereunder. Tenant agrees to timely supply financial information as reasonably requested by Landlord for lender's analysis of Tenant's financial condition as a condition of any encumbrance of the property. Tenant shall not be obligated to deliver financial statements of Tenant pursuant to Paragraph 19.17 more frequently than once every 12 months during the term hereof.

19.18. RESERVED.

19.19. LANDLORD'S LIEN. Notwithstanding anything to the contrary, Landlord waives any and all rights, title and interest Landlord now has, or hereafter may have, whether statutory or otherwise, to Tenant's inventory, equipment, furnishings, trade fixtures, books and records, and personal property paid for by Tenant located at the Premises (singly and/or collectively, the "Collateral"). Landlord acknowledges that Landlord has no lien, right, claim, interest or title in or to the Collateral. Landlord further agrees that Tenant shall have the right, at its discretion, to mortgage, pledge, hypothecate or grant a security interest in the Collateral as security for its obligations under any equipment lease or other financing arrangement related to the conduct of Tenant's business at the Premises. Landlord further agrees to execute and deliver within three (3) business days any UCC filing statement or other documentation required to be executed by Landlord In connection with any such lease or financing arrangement.

Notwithstanding the foregoing, all trade fixtures, signs, equipment, furniture, or other personal property of whatever kind and nature kept or installed on the Premises by Tenant shall not become the Property of Landlord or a part of the realty no matter how

affixed to the Premises and may be removed by Tenant at any time and from time to time during the entire term of this Lease. Upon request of Tenant or its assignees or any subtenant, Landlord shall execute and deliver any real estate consent or waiver forms submitted by any vendors, equipment lessors, chattel mortgagees, or holders or owners of any trade fixtures, signs, equipment, furniture, or other personal property of any kind and description kept or installed on the Premises setting forth that Landlord waives, in favor of the vendor, equipment lessor, chattel mortgagee, or any holder or owner, any superior lien, claim, interest or other right therein. Landlord shall further acknowledge that property covered by the consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto, and that such property may be removed from the Premises by the vendor, equipment lessor, chattel mortgagee, owner, or holder at any time upon default in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord. Tenant shall promptly repair any damage and restore the portion of the Premises caused by the removal of such property, whether effected by Tenant or Tenant's vendors, chattel mortgagees, or equipment lessors.

19.20. SUBMISSION OF LEASE. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease nor does it create any obligation on Landlord's part until execution and delivery by both Landlord and Tenant.

19.21. ARBITRATION OF DISPUTES. IF ANY CONTROVERSY OR CLAIM BETWEEN THE PARTIES HERETO ARISES OUT OF THIS AGREEMENT, SUCH CONTROVERSY OR CLAIM SHALL BE SUBMITTED TO BINDING ARBITRATION. SUCH ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT UPON THE AWARD ENTERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1283.05 SHALL APPLY TO SUCH ARBITRATION. PUNITIVE DAMAGES SHALL NOT BE CLAIMED, CONSIDERED OR AWARDED.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISIONS DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OF JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

[SIG]	[MPB]
Initial	Initial

19.22. VENUE. Any action or arbitration brought to enforce or interpret the provisions of this Agreement shall be venued in Alameda County, California.

19.23. BROKERAGE. Tenant and Landlord represent that both sides have been represented by CB Commercial, whose commission shall be paid by Landlord.

19.24. PARKING. Tenant shall have nonexclusive rights to the use of three (3) parking spaces per thousand usable square feet of Tenant's Premises (defined as that portion of the Premises allocated to Tenant's exclusive use and exclusive of any common area allocated to Tenant), at no additional charge.

19.25. USE OF AMENITIES. Tenant shall have the right to an undivided use of, and access to, all common area amenities associated with the property on the same basis as provided to all tenants of the property.

19.26. DAYS. All references in this Lease to days shall refer to calendar days.

19.27. STRUCTURAL AND ADA COMPLIANCE. As of the commencement date, the construction to be performed by Landlord pursuant to paragraph 2.2 hereof and all structural parts of the Premises and the property including, without limitation, the foundation, roof, exterior walls, plumbing, electrical and other mechanical systems (a) will meet and comply with all federal, state, and local laws, ordinances and regulations and all handicapped accessibility standards, including, without limitation, those promulgated under the Americans With Disabilities Act, and (b) will be in good, workable and sanitary order, condition, and repair.

IN WITNESS WHEREOF, the parties have executed this Lease on the date and year first above written.

LANDLORD:	TENANT:
By: [ILLEGIBLE SIGNATURE]	By: /s/ M. P. Becket
Authorized Officer	Authorized Officer - CFO
	/s/ Michael P. Becket
Address for Notices:	Address for Notices:
1120 Nye Street, Suite 400 San Rafael, CA 94901	10835 Altman Row #500 San Diego, CA 92121
Date:	Date: 1/30/98

ADDENDUM TO LEASE
DATED JANUARY 30, 1998
BETWEEN
FIFTH & POTTER STREET ASSOCIATES LLC
AND
DYNAVAX TECHNOLOGIES CORPORATION
FOR PREMISES LOCATED AT
717 POTTER STREET, BERKELEY, CALIFORNIA

This Addendum to lease is attached to and forms a part of that certain Triple Net Laboratory Lease dated January 30, 1998 ("Lease"), by and between Fifth & Potter Street Associates LLC ("Landlord") and Dynavax Technologies Corporation ("Tenant") for premises on the first floor of the building located at 717 Potter Street, Berkeley, California. Words and terms that are defined in the Lease shall have the same meaning in this Addendum as the meaning provided in the Lease. In the event of any inconsistency between the terms of this Addendum and the Lease, the terms of this Addendum shall control.

Section 1. Option to Term

(a) Landlord hereby grants Tenant an option (the "Extension Option") to extend the term of the Lease for one additional period of five (5) years, commencing immediately after the expiration of the initial term, upon the same terms and conditions contained in the Lease, except that (i) the base monthly rent for the Premises shall be equal to ninety-five percent (95 percent) of the fair market rent for the Premises determined in the manner set forth in subparagraph (b) below, (ii) Tenant shall accept the Premises in an "as is" condition without any obligation of landlord to repaint, remodel, repair, improve or alter the Premises; and (iii) there shall be no further options to extend the term of the Lease. The Extension Option shall be exercised, if at all, by notice from Tenant to Landlord in writing given no less than twelve (12) months prior to expiration for the initial term of the Lease. If Tenant properly exercises the Extension Option, references in the Lease to the term shall be deemed to include the option term unless the context clearly provides otherwise. Notwithstanding anything to the contrary contained herein, if Tenant is in default under any of the material terms, covenants or conditions of the lease, at the time Tenant exercises the Extension Option, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in the Lease, the right to terminate the Extension Option upon notice to Tenant, in which event the expiration date of the Lease shall be and remain the expiration date of the initial term.

(b) If Tenant properly exercises the Extension Option, the base monthly rent during the option term shall be determined in the following manner. The base monthly rent shall be increased to an amount equal to ninety-five percent (95 percent) of the fair market rent for the Premises as of the commencement of the option term for a term equal to the option term, as specified by Landlord by notice to Tenant not less than ninety (90) days prior to commencement of the option term, subject to Tenant's right of arbitration as set forth below. If Tenant believes that the fair market rent specified by Landlord exceeds the actual fair market rent for the Premises as of commencement of the option term, then Tenant shall so notify Landlord within thirty (30) days following receipt of Landlord's notice. If Tenant fails to so notify. Landlord within said thirty (30) day period, Landlord's determination of the fair market rent for the premises shall be final and binding upon the parties. If the parties are unable to agree upon the fair market rent for the premises within thirty (30) days after Landlord's receipt of notice of Tenant's objection, the amount of base monthly rent as of commencement of the option term shall be determined as follows:

(1) Within thirty (30) days after receipt of the Landlord's notice

specifying fair market rent, Tenant, at its sole expense, shall obtain and deliver in writing to Landlord a determination of the fair market basic rent for the Premises for a term equal to the option term from a broker ("Tenant's broker") licensed in the State of California and currently active in the market for research laboratory space in the Berkeley/Emeryville area. If Landlord accepts such determination, the base monthly rent for the option term shall be increased to an amount equal to ninety-five percent (95%) of the amount determined by Tenant's broker.

(2) If Landlord does not accept such determination, within ten (10) days after receipt of the determination of Tenant's broker, Landlord shall designate a broker ("Landlord's broker") licensed in the State of California and currently active in the market for research laboratory space in the Berkeley/Emeryville area. Landlord's broker and Tenant's broker shall name a third broker, similarly qualified, within five (5) days after the appointment of Landlord's broker. Each of said three brokers shall determine the fair market rent for the Premises as of the commencement of the option term for a term equal to the option term within twenty (20) days after the appointment of the third broker. The base rent payable by Tenant effective as of the commencement of the option term shall be increased to an amount equal to ninety-five percent of the arithmetic average of such three determinations; provided, however, that if any such broker's determination deviates more than 10% from the median of such determinations, the base monthly rent payable shall be an amount equal to ninety-five percent (95%) of the average of the two closest determinations.

(3) Landlord shall pay the costs and fees of Landlord's broker in connection with any determination hereunder, and Tenant shall pay the costs and fees of Tenant's broker in connection with such determination. The costs and fees of any third broker shall be paid one-half by landlord and one-half by Tenant.

(c) If the amount of the fair market rent is not known as of the commencement of the option term, then Tenant shall continue to pay the base monthly rent in effect at the expiration of the initial term until the amount of the fair market basic rent is determined. When such determination is made, Tenant shall pay any deficiency to Landlord upon demand.

Section 2. Option to Expand

(a) Subject to Tenant's payment of the Expansion Space Holding Cost as provided for hereinbelow, Landlord hereby grants to Tenant an option (the "Expansion Option") to lease the expansion area containing approximately 3,036 rentable square feet (which includes the adjustment provided for in Paragraph 2.1 of the Lease) as shown on Exhibit A to the Lease (the "Expansion Space"). The expansion Option shall be exercised, if at all, by notice from Tenant to Landlord in writing within six (6) months of the commencement date of the term of the Lease; provided, however, that if Tenant is in default under any of the material terms, conditions or covenants of the Lease, either at the time Tenant exercises, the Expansion Option or when Landlord delivers the Expansion Space, Landlord shall have, in addition to the rights and remedies provided in the Lease, the right to terminate the Expansion Option.

(b) If Tenant elects to exercise the Expansion Option, Landlord shall provide Tenant with an improvement allowance equal to $70.00 per usable square foot of space in the Expansion Space, and the Expansion Space shall be built out by landlord in accordance with the terms of Exhibit B to the Lease (with appropriate changes to reflect build-out of the Expansion Space, as opposed to the initial Premises). Landlord shall deliver possession of the Expansion Space to Tenant for occupancy upon completion of the build-out of the Expansion Space; but in no event later than 2 Months from Tenant's exercise of the Expansion Option and, upon such delivery, the Expansion Space shall be deemed to be a part of the Premises and shall be leased upon and subject to all of the terms, covenants and conditions of, and at the base monthly rental rate provided for in, the Lease; and

the square footage of the Premises (which includes the adjustment provided for in Paragraph 2.1 of the Lease) and Tenant's Pro Rata Share shall be appropriately adjusted.

(c) Landlord's grant of the Expansion Option is subject to and conditioned upon Tenant's payment to Landlord of a monthly amount to hold the Expansion Space off the market, said monthly amount being equal to $.83 per rentable square foot of the Expansion Space (which includes the adjustment provided for in Paragraph 2.1 of the Lease) plus Tenant's Pro Rata Share attributable to the Expansion Space (collectively, the "Expansion Space Holding Costs"), for the period from the commencement date of the Lease to the date Tenant exercises its option for the Expansion Space or the date Tenant notifies Landlord that Tenant elects to terminate the Expansion Option. Expansion Space Holding Costs shall be payable monthly, in advance, in accordance with the terms of, and as additional rent owing under, the Lease.

Section 3. Temporary Office Space

From February 1, 1998, through the commencement date of the Lease (the "Pre-Occupancy Period"), Landlord (or an affiliate of Landlord) shall provide Tenant with approximately 300 square feet of space on the first floor of the building located at 800 Heinz Street, Berkeley, California, for use by three (3) employees of Tenant (the "Temporary Space"). Tenant shall take the Temporary Space on an "As-Is" basis. Monthly rent for the Temporary Space shall be $275 per month fully serviced from lease execution through occupancy of the finished spaces, payable on the first day of each month during the Pre-Occupancy Period. Tenant's occupancy of the Temporary Space shall be on all of the terms and conditions as specified in the Lease for Tenant's Occupancy of the Premises; and prior to Tenant's occupancy of the Temporary Space, Tenant shall deliver to Landlord certificates of Tenant's liability insurance coverage for the Temporary space showing Landlord (and the owner of the building, if other than Landlord) as an additional insured thereunder.

Section 4. Accommodation of Tenant's Additional Space Requirement

In the event that Tenant exercises the Expansion Option and occupies the Expansion Space as provided in Section 2 above, Tenant shall thereafter have the following additional expansion right:

(a) On or before the second anniversary of the commencement date of the Lease, Tenant may notify Landlord in writing (the "Additional Expansion Notice") that Tenant desires to lease additional space for its business operations. Tenant shall specify in said Additional Expansion Notice the amount of additional space that Tenant needs (the "Additional Space Requirement"); provided, however, that Tenant must specify an Additional Space Requirement of not less than 5,000 square feet.

(b) If Tenant delivers the Additional Expansion Notice to Landlord, during the six (6) month period from the 25th month to the 30th month of the term of the Lease, Landlord shall attempt to make available to Tenant sufficient space to satisfy the Additional Space Requirement either within the Building or within another generally comparable building in the Emeryville/Berkeley area that is owned or operated by Wareham Property Group, Inc. or an affiliate thereof (collectively, "Wareham").

(c) If the Additional Space Requirement can be satisfied within said six (6) month period, Landlord or Wareham, as the case may be, shall offer such space for lease to Tenant on such terms and conditions as are then currently being quoted by Landlord or Wareham for such space, including, without limitation, rental rates, term and tenant improvement allowance. Tenant shall accept or reject any such offer within five (5) business days after receipt thereof.

(d) If such an offer for the Additional Space Requirement is made to Tenant within said six (6) month period and Tenant does not accept such offer, Tenant's rights under this Section 4 shall terminate, Tenant shall have no further right with respect to the Additional Space Requirement, and the Lease shall remain in full force and effect.

(e) If such an offer for the Additional Space Requirement is not made to Tenant within said six (6) month period, Tenant shall have the right to terminate this Lease upon the following conditions:

(i) Tenant must notify Landlord of such termination within ninety (90) days after the expiration of such six (6) month period.

(ii) In the event Tenant so notifies Landlord of such termination, the Lease shall terminate within ninety (90) days after Landlord's receipt of such notice.

(iii) In the event Tenant fails to so notify Landlord of such termination, Tenant's right to terminate the Lease shall expire and the Lease shall remain in full force and effect.

(f) Notwithstanding anything set forth hereinabove, if Tenant is in default of any of the material terms, conditions or covenants of the Lease at the time Tenant delivers the Additional Expansion Notice, Landlord shall have, in addition to the rights and remedies provided in the Lease, the right to terminate all of Tenants rights under this Section 4 with respect to the Additional Space Requirement, including, without limitation, any right to terminate the lease pursuant to subparagraph (e) above.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Addendum to Lease as of the date set forth above.

TENANT:	LANDLORD:
Dynavax Technologies Corporation, a California Corporation	Fifth & Potter Street Associates LLC, a California Limited Liability Company
By /s/ M.P. Becket	By [ILLEGIBLE]
Its: CFO	Its:

EXHIBIT A

[FLOOR PLAN]

Exhibit B

Work Letter
Initial Improvement of Premises

1. Tenant Improvements

Prior to the Commencement Date, at its sole cost and expense, Landlord, through Its General Contractor, shall furnish and install within the Premises those items of general construction (the "Tenant Improvements") shown on the plans and specifications finally approved by Landlord and Tenant in writing pursuant to Paragraph 5 below. Such construction shall be performed in a good and workmanlike manner and in compliance with all applicable codes and regulations ("Code Requirements").

2. Cost of the Improvements

(a) Based upon a Tenant Improvement build out that is approximately 50% office and 50% laboratory, and substantially the same in function and finish as the Bayer Laboratories build-out on the second floor of the Building, Landlord will construct the Tenant Improvements on a turnkey basis.

(b) If there is a material change to the functions or finish of the Tenant Improvements to be constructed in the Premises from that described in subparagraph (a), based upon the Final Plans and Specifications approved by Tenant, or if Tenant requests any changes after approval of the Final Plans and Specifications, the cost thereof shall be the responsibility of Tenant to the extent the cost exceeds the cost of the initial plans and specs.

3. Plans and Specifications

(a) Landlord, at its cost, through its architects, shall furnish all architectural and engineering plans and specifications (the "Plans and Specifications") required for the construction of the Tenant Improvements. Tenant shall provide instruction to Landlord's architects sufficient to enable landlord's architects to complete Plans and Specifications in accordance with Paragraph 5 below. All Plans and Specifications are subject to Landlord's approval, which Landlord agrees shall not be unreasonably withheld. Tenant reserves the right to review and approve final plans.

(b) Any architectural or engineering services for Tenant's Work referred to in Paragraph 4 below or interior design services in excess of Building standards, such as selection for colors, furnishings or floor coverings shall be at Tenant's sole cost.

4. Tenant's Work

Any items or work not shown in the Final Plans and Specifications approved as provided in Paragraph 5, including, for example, telephone or telecommunications service or furnishings, for which Tenant contracts separately (hereinafter) "Tenant Work"), shall be subject to Landlord's reasonable policies and schedules and shall be conducted in such a way as not to hinder, cause any disharmony with or unreasonable or substantial. delay work of improvement in the Building. Tenant's major suppliers, contractors, workmen and mechanics shall be subject to approval by Landlord not to be unreasonably withheld prior to the commencement of their work and shall be subject to Landlord's administrative control while performing their work. Tenant shall cause its suppliers and

contractors to engage only labor that is harmonious and compatible with other labor working in the Building. In the event of any labor disturbance caused by persons employed by Tenant or Tenant's contractor, Tenant shall immediately take all actions necessary to eliminate such disturbance. At any time any supplier, contractor, workmen or mechanic performing Tenant's work hinders or delays any other work of improvement in the Building or performs any work which may or does substantially impair the quality, integrity or performance or any portion of the Building, Tenant shall cause such supplier, contractor, workman or mechanic to leave the Building and remove all his tools, equipment and materials immediately upon written notice delivered to Tenant and Tenant shall reimburse Landlord for any repairs or corrections of the Tenant Improvements or Tenant's work or of any portion of the Building caused by or resulting from the work of any supplier, contractor, workman or mechanic with whom Tenant contracts.

5. Approval of Plans and Specifications

Landlord's architect, in consultation with Tenant, shall prepare a space plan for the build-out of the Premises consistent with the standard of improvement described in Paragraph 2 (a) above. Such space plan must be finalized and approved by Landlord and Tenant no later than January 30, 1998. Tenant will have at least five (5) business days to approve plans and any subsequent revision. Thereafter, Landlord's architect will prepare working drawings for the Tenant Improvements based upon the approved space plan, and the same shall be submitted to Tenant. Tenant shall approve such Plans and Specifications within five (5) business days of receipt or designate by written notice to Landlord the specific changes required to be made to the Plans and Specifications, which changes, if approved by landlord, shall be made by Landlord as soon as reasonably possible. This procedure shall be repeated until the Plans and Specifications are finally approved by Tenant (the "Final Plans and Specifications");

6. Completion and Commencement Date

The term of the Lease and Tenant's obligation for the payment of rent under the Lease shall commence in accordance with Paragraph 1.1 of the Lease. The parties acknowledge and agree that the anticipated commencement date is March 30, 1998. If Landlord shall be delayed in substantially completing the Tenant Improvements as a result of:

(a) Tenant's failure to timely furnish complete instructions or approvals in accordance with the procedures set forth in Paragraph 5, or

(b) Tenant's changes to Final Plans and Specifications after final approval thereof, or

(c) Tenant's request for materials, finishes, or installations other than as described in Paragraph 2 (a) above, or

(d) Hindrance or disruption of work of Landlord's contractor resulting from Tenant's Work.

then the commencement date of the Lease and Tenant's obligation for the payment of rent shall be advanced by the number of days of such delay offset by the number of days attributable to Landlord Delays.

7. Payment

Tenant shall pay to landlord as additional rent all amounts due under the terms of this Exhibit B within twenty (20) days following delivery of Landlord's invoice, therefore, which invoices shall be rendered monthly or at such other intervals as Landlord shall determine.

8. Tenant's Representative

Mike Becket shall act as Tenant's representative in all matters to be covered by this Work Letter. Such representative shall act on behalf of Tenant in connection with the issuance of any approvals or disapproval$ to be made or given by Tenant under the terms of this Work Letter and the making of any other communications required or permitted under the terms of this Work Letter. Landlord shall be entitled to rely upon any approval or disapproval issued, or other communication made, by Tenant's representative.

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the "Amendment") is made and entered into as of the 7th day of January 2004, by and between Fifth and Potter Street Associates, LLC, a California limited liability company ("Landlord"), and Dynavax Technologies Corporation, a Delaware corporation ("Tenant").

RECITALS

A. Landlord and Tenant are parties to that certain triple net laboratory lease dated January 30, 1998, as amended by instruments dated October 26, 1998, and July 1, 1999 (collectively, the "Lease"). Pursuant to the Lease, Landlord has leased to Tenant premises consisting of approximately 11,539 rentable square feet as more particularly described in the Lease in the building located at 717 Potter Street, Berkeley, California (the "Premises").

B. Tenant and Landlord mutually desire that the Lease be amended on and subject to the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Scope of Amendment and Defined Terms. Except as expressly provided in this Amendment, the Lease shall remain in full force and effect. Except as expressly provided in this Amendment, the term "Lease" shall mean the Lease as modified by this Amendment. Capitalized terms used in this Amendment and not otherwise defined herein shall have the respective meanings set forth in the Lease

2. Option to Terminate Lease Liability. An option to terminate Tenant's liability under the Lease is hereby added to the Lease as follows:

(a) Tenant shall have the option to terminate its liability under the Lease prior to the expiration of the term ("Termination Option"), if Landlord receives notice of termination ("Termination Notice") specifying the accelerated liability termination date of the Lease (the "Accelerated Liability Termination Date") within 15 days of the date Tenant enters into an agreement with 2929 Seventh Street, L.L.C., to lease Suite 100 within the building located at 2929 Seventh Street, Berkeley, California (the "Suite 100 Lease").

(b) If Tenant exercises its Termination Option, Tenant, simultaneously with delivery of the executed version of the Termination Document (as hereinafter defined) shall pay to Landlord the sum of $300,000.00 (the "Termination Fee") as a fee in connection with the Termination Option and not as a penalty. Tenant shall remain liable for all Base Monthly Rent, Additional Rent and other sums due under the Lease up to and including the Accelerated Liability Termination Date even though billings for such may occur subsequent to the Accelerated Liability Termination Date.

(c) Landlord and Tenant shall execute a commercially reasonable document (the "Termination Document") to effect the termination of Tenant's liability under the Lease within 15 days of Tenant receiving such document from Landlord. Tenant acknowledges and agrees that the termination of Tenant's liability shall not be effective until Tenant has executed the Termination Document. At Landlord's option, the Termination Document shall be either in the form of an agreement terminating the Lease as of the Accelerated Liability Termination Date or in the form of an assignment agreement assigning Tenant's interest in the Lease to an entity designated by Landlord as of the Accelerated Liability Termination Date. If Landlord chooses the form of an assignment agreement, the term of the Lease shall continue beyond the Accelerated Liability Termination Date; however, Tenant shall be released from all Rent obligations under the Lease (whether such obligations arise before or after the Accelerated Liability Termination Date) and from all liability accruing under the Lease on and after the Accelerated Liability Termination Date. Tenant acknowledges that, in the event Landlord chooses to use an assignment agreement, all Rent due under the Lease shall be abated after the Accelerated Liability Termination Date.

(d) Notwithstanding anything to the contrary herein, the Termination Option shall automatically terminate without notice and shall be of no further force and effect, whether or not Tenant has timely exercised such option, if Tenant is in default under the Lease (beyond applicable notice and cure periods) at the time of exercise of the Termination Option or on the Accelerated Liability Termination Date.

(e) As of the date Tenant provides Landlord with a Termination Notice, any unexercised rights or options of Tenant to renew the term of the Lease or to expand the Premises (whether expansion options, rights of first or second refusal, rights of first or second offer, or other similar rights), shall immediately be deemed terminated and no longer available or of any further force or effect.

(f) If Landlord enters into an agreement with a third-party tenant to lease the Premises, and such tenant commences paying rent under such agreement (the "New Tenant Rent") prior to the date that is 6 months after the Accelerated Liability Termination Date (the "Rent Reimbursement Date"), Landlord shall reimburse Tenant a portion of the Termination Fee equal to the amount of New Tenant Rent Landlord receives prior to the Rent Reimbursement Date. Landlord shall submit such reimbursement to Tenant within 30 days of the Rent Reimbursement Date.

3. Option to Extend Term. Section 3.3 of the Lease, Option to Extend Term, is hereby deleted and replaced with the following:

(a) If, on or before May 31, 2004, Tenant has not entered into the Suite 100 Lease, then Tenant shall have an option to extend the term of the Lease for one additional period of five (5) years (the "Option Term"), commencing June 1, 2008, upon the same material terms and conditions contained herein, except that (i) the Base Monthly Rent during the then-remaining initial term (as of the date the option is exercised) and the Option Term shall be $2.875 per rentable square foot of the Premises (i.e., $33,174.63 per month), (ii) Tenant shall accept the Premises in an "as is" condition without any obligation of Landlord to repaint, remodel, repair, improve or alter the Premises, (iii) Tenant shall have an option to terminate the term of the Lease

as set forth below, and (iv) there shall be no further options to extend the term of the Lease. Tenant's election to exercise the option granted herein must be given to Landlord in writing on or before December 31, 2004. If Tenant properly exercises the option granted herein, references in the Lease to the term shall be deemed to mean the then-remaining initial term plus the Option Term unless the context clearly provides otherwise. Notwithstanding anything to the contrary contained, herein, all option rights of Tenant pursuant to this Section 3 shall automatically terminate without notice and shall be of no further force and effect, whether or not Tenant has timely exercised the option granted herein, if (i) a default (beyond applicable notice and cure periods) exists at the time of exercise of the option or at the time of commencement of the Option Term, or (ii) Landlord has given Tenant two or more notices respecting a default during the initial term of the Lease, whether or not the default is subsequently cured.

(b) Tenant shall have the option to terminate the Lease during the Option Term on the following terms and conditions:

(i) Tenant shall have the option to terminate the Lease ("Termination Option") as of December 1, 2010 (the "Accelerated Expiration Date"), if:

A. Tenant is not in default (beyond applicable notice and cure periods) under the Lease at the date Tenant provides Landlord with an Acceleration Notice (hereinafter defined); and

B. Landlord receives notice of acceleration ("Acceleration Notice") on or before December 1, 2009.

(ii) Tenant shall remain liable for all Monthly Base Rent, Additional Rent and other sums due under the Lease up to and including the Accelerated Expiration Date even though billings for such may occur subsequent to the Accelerated Expiration Date.

(iii) Notwithstanding anything to the contrary herein, the Termination Option shall automatically terminate without notice and shall be of no further force and effect, whether or not Tenant has timely exercised such option, if a default (beyond applicable notice and cure periods) exists at the time of exercise of the Termination Option or on the Accelerated Expiration Date.

(iv) As of the date Tenant provides Landlord with an Acceleration Notice, any unexercised rights or options of Tenant to renew the Term of the Lease or to expand the Premises (whether expansion options, rights of first or second refusal, rights of first or second offer, or other similar rights), shall immediately be deemed terminated and no longer available or of any further force or effect.

4. Option to Expand. Section 2.4 of the Lease, Option to Expand, is hereby deleted and shall be of no further force or effect.

5. Brokers. Tenant hereby represents to Landlord that Tenant has dealt with no broker in connection with this Amendment. Tenant agrees to indemnify and hold Landlord, its trustees, members, principals, beneficiaries, partners, officers, directors, employees, mortgagee(s) and agents, and the respective principals and members of any such agents (collectively, the

"Landlord Related Parties") harmless from all claims of any brokers claiming to have represented Tenant in connection with this Amendment. Landlord hereby represents to Tenant that Landlord has dealt with no broker in connection with this Amendment. Landlord agrees to indemnify and hold Tenant, its trustees, members, principals, beneficiaries, partners, officers, directors, employees, and agents, and the respective principals and members of any such agents (collectively, the "Tenant Related Parties") harmless from all claims of any brokers, claiming to have represented Landlord in connection with this Amendment.

6. Waiver. No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Amendment, or to exercise any right, power or remedy hereunder shall constitute a waiver of the same or any other term of this Amendment or preclude such party from enforcing or exercising the same or any such other term, conditions, covenant, right, power or remedy at any later time.

7. Full Force and Effect. Except as herein modified or amended, the provisions, conditions and terms of the Lease shall remain unchanged and in full force and effect. In the case of any inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment shall govern and control.

8. California Law. This Amendment shall be construed and governed by the laws of the State of California.

9. Authority. This Amendment shall be binding upon and inure to the benefit of the parties, their respective heirs, legal representatives, successors and assigns. Each party hereto and the persons signing below warrant that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Amendment.

10. Attorneys' Fees and Costs. In the event of any action at law or in equity between the parties to enforce any of the provisions hereof, any unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in connection with all appeals) incurred by the successful party, and these costs, expenses and attorneys' fees may be included in and as part of the judgment. A successful party shall be any party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.

11. Entire Agreement; No Amendment. This Amendment constitutes the entire agreement and understanding between the parties with respect to the subject of this amendment and shall supersede all prior written and oral agreements concerning this subject matter. This Amendment may not be amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of Landlord and Tenant. Each party acknowledges that it has read this Amendment, fully understands all of this Amendment's terms and conditions, and executes this Amendment freely, voluntarily and with full knowledge of its significance. This Amendment is entered into by the parties with and upon advice of counsel.

12. Severability. If any provision of this Amendment or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Amendment and the application of such provision to other persons or circumstances, other than

those to which it is held invalid, shall not be affected and shall be enforced to the furthest extent permitted by law.

13. Counterparts. This Amendment may be executed in counterparts, and such counterparts together shall constitute but one original of the Amendment. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each party who has executed it.

14. Agreement to Perform Necessary Acts. Each party agrees that upon demand, it shall promptly perform all further acts and execute, acknowledge, and deliver all further instructions, instruments and documents which may be reasonably necessary or useful to carry out the provisions of this Amendment.

15. Captions and Headings. The titles or headings of the various paragraphs hereof are intended solely for convenience of reference and are not intended and shall not be deemed to modify, explain or place any construction upon any of the provisions of this Amendment.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment as of the day and year first above written.

LANDLORD: FIFTH AND POTTER STREET ASSOCIATION,
a California limited liability company

By: /s/ Richard K. Robins
_____
Richard K. Robbins
Managing Member

TENANT: DYNAVAX TECHNOLOGIES CORPORATION,
a Delaware corporation

By: /s/ Dino Dina
_____
Dino Dina, M.D.
President and Chief
Executive Officer

[AIR LOGO]
STANDARD INDUSTRIAL/COMMERCIAL
MULTI-TENANT LEASE - GROSS
AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION

1. BASIC PROVISIONS ("BASIC PROVISIONS").

1.1 PARTIES: This Lease ("LEASE"), dated for reference purposes only January 31, 2001, is made by and between Neil Goldberg and Hagit Cohen ("LESSOR") and Dynavax Technologies, Inc. ("LESSEE"), (collectively the "PARTIES", or individually a "PARTY").

1.2(a) PREMISES: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 1285-66th Street, located in the City of Emeryville, County of Alameda, State of California, with zip code 94608, as outlined on Exhibit A attached hereto ("PREMISES") and generally described as (describe briefly the nature of the Premises): 6,051 rentable sq. ft. of office space. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises ("BUILDING") or to any other buildings in the Project without prior written consent. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "PROJECT." (See also Paragraph 2.)

1.2(b) PARKING: _____ unreserved vehicle parking spaces ("UNRESERVED PARKING SPACES"); and 5 designated reserved vehicle parking spaces ("RESERVED PARKING SPACES"). (See also Paragraph 2.6.)

1.3 TERM: 3 years and 2 months ("ORIGINAL TERM") _____ ("COMMENCEMENT DATE") and ending _____ ("EXPIRATION DATE"). (See also Paragraph 3.)

1.4 EARLY POSSESSION: Upon mutual lease execution ("EARLY POSSESSION DATE"). (See also Paragraphs 3.2 and 3.3.)

1.5 BASE RENT: $16,640.00 per month ("BASE RENT"), payable on the first day of each month commencing See Exhibit "D". (See also Paragraph 4.)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 LESSEE'S SHARE OF COMMON AREA OPERATING EXPENSES: percent (33%) ("LESSEE'S SHARE").

1.7 BASE RENT AND OTHER MONIES PAID UPON EXECUTION:

(a) BASE RENT: $16,640.00 for the period (INSERT 1.7A).

(b) COMMON AREA OPERATING EXPENSES: $ _____ for the period _____.

(c) SECURITY DEPOSIT: $33,280.00 ("SECURITY DEPOSIT"). (See also Paragraph 5.)

(d) OTHER: $ _____ for _____.

(e) TOTAL DUE UPON EXECUTION OF THIS LEASE: $45,760.00.

1.8 AGREED USE: General office uses. (See also Paragraph 6.)

1.9 INSURING PARTY: Lessor is the "INSURING PARTY". (See also Paragraph 8.)

1.10 REAL ESTATE BROKERS: (See also Paragraph 15.)

(a) REPRESENTATION: The following real estate brokers (the "BROKERS") and brokerage relationships exist in this transaction (check applicable boxes):

[ ] Norheim & Yost John Norheim represents Lessor exclusively ("LESSOR'S BROKER");

[ ] CB Richard Ellis, Inc. Michael Harrison represents Lessee exclusively ("LESSEE'S BROKER"); or

[ ] & Chris Johnke CB Richard Ellis represents both Lessor and Lessee ("DUAL AGENCY").

(b) PAYMENT TO BROKERS: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or ____% of the total Base Rent for the brokerage services rendered by the Brokers).

1.12 ADDENDA AND EXHIBITS. Attached hereto is an Addendum or Addenda consisting of Paragraphs 3.5, and Exhibits A through D, all of which constitute a part of this Lease.

2. PREMISES.

2.1 LETTING. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less.

2.2 CONDITION. Lessor shall deliver that portion of the Premises contained within the Building ("UNIT") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("START DATE"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects. (INSERT 2.2B), as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7).

2.3 COMPLIANCE. Lessor warrants that the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("APPLICABLE REQUIREMENTS"). Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a).) made or to be made by Lessee. NOTE. Lessee is responsible for determining whether or not the zoning is appropriate

AG NG

HC

Initials

If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("CAPITAL EXPENDITURE"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for the portion of such costs reasonably attributable to the Premises pursuant to the formula set out in Paragraph 7.1(d); provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall be fully responsible for the cost thereof, and Lessee shall not have any right to terminate this Lease.

2.4 ACKNOWLEDGEMENTS. Subject to Lessor's warranties under this Lease, Lessee acknowledges that [Insert 2,4A]: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 LESSEE AS PRIOR OWNER/OCCUPANT. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 VEHICLE PARKING. Lessee shall be entitled to use the number of Unreserved Parking Spaces and Reserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "PERMITTED SIZE VEHICLES." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor.

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be payable within 10 business days after written demand thereafter by Lessor.

2.7 COMMON AREAS - DEFINITION. The term "COMMON AREAS" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 COMMON AREAS - LESSEE'S RIGHTS. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right following 3 business days written notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable within 10 business days after written demand, by Lessor.

2.9 COMMON AREAS - RULES AND REGULATIONS. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("RULES AND REGULATIONS") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 COMMON AREAS - CHANGES. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. TERM.

3.1 TERM. Expiration Date (INSERT 3.1A) Paragraph 1.3.

3.2 EARLY POSSESSION. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (excluding the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 DELAY IN POSSESSION. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until it receives possession of the Premises. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 LESSEE COMPLIANCE. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance.

4. RENT.

4.1 RENT DEFINED. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 COMMON AREA OPERATING EXPENSES. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6.) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the total dollar increase, if any, in the following provisions:

(a) "COMMON AREA OPERATING EXPENSES" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (e)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) Trash disposal, pest control services, property management, security services, and the costs of any environmental inspections.

(v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increase" (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(ix) (INSERT 4.2B)

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically and exclusively attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance

thereof, shall be allocated entirely to such Unit, Building, or other building as applicable. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses shall be payable by Lessee within 10 days after a reasonably detailed statement of actual expenses is presented to Lessee. At Lessor's option, however, an amount may be estimated by Lessor from time to time of Lessee's Share of annual Common Area Operating Expenses and the same shall be payable monthly or quarterly, as Lessor shall designate, during each 12 month period of the Lease term, on the same day as the Base Rent is due hereunder. Lessor shall deliver to Lessee within 60 days after the expiration of each calendar year a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments under this Paragraph 4.2(d) during the preceding year exceed Lessee's Share as indicated on such statement, Lessor shall be credited the amount of such over-payment against Lessee's Share of Common Area Operating Expenses next becoming due. If Lessee's payments under this Paragraph 4.2(d) during the preceding year were less than Lessee's Share as indicated on such statement, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement. (INSERT 4.2D)

(e) When a capital component such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences, etc. requires replacement, rather than repair or maintenance, Lessor shall, at Lessor's expense, be responsible for such replacement. Such expenses and/or costs are not Common Area Operating Expenses.

4.3 PAYMENT. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25.

5. SECURITY DEPOSIT. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore

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said Security Deposit to the full amount required by this Lease. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. USE.

6.1 USE. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 HAZARDOUS SUBSTANCES.

(a) REPORTABLE USES REQUIRE CONSENT. The term "HAZARDOUS SUBSTANCE" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) DUTY TO INFORM. If Lessee or Lessor knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by either party, the other party shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) LESSEE REMEDIATION. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) LESSEE INDEMNIFICATION. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease

with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) LESSOR INDEMNIFICATION. Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which existed as a result of Hazardous Substances on the Premises prior to the Start Date or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) INVESTIGATIONS AND REMEDIATIONS. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Start Date, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) LESSOR TERMINATION OPTION. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent of $100,000, whichever is greater. Lessee shall provide with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continued in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 LESSEE'S COMPLIANCE WITH APPLICABLE REQUIREMENTS. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

6.4 INSPECTION; COMPLIANCE. Lessor and Lessor's "LENDER" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times following 24-hour notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination.

7. MAINTENANCE; REPAIRS; UTILITY INSTALLATIONS; TRADE FIXTURES AND ALTERATIONS.

7.1 LESSEE'S OBLIGATIONS.

(a) IN GENERAL. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) SERVICE CONTRACTS. Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, (iii) clarifiers, and (iv) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and if Lessor so elects, Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) FAILURE TO PERFORM. If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly reimburse Lessor for the cost thereof.

(d) REPLACEMENT. Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance at a rate that is commercially reasonable in the judgment of Lessor's accountants. Lessee may, however, prepay its obligation at any time.

7.2 LESSOR'S OBLIGATIONS. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility

systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 UTILITY INSTALLATIONS; TRADE FIXTURES; ALTERATIONS.

(a) DEFINITIONS. The term "UTILITY INSTALLATIONS" refers to all floor and window coverings, air lines, power panels, electrical distribution, security and fire protection systems, communication systems, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "TRADE FIXTURES" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "ALTERATIONS" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "LESSEE OWNED ALTERATIONS AND/OR UTILITY INSTALLATIONS" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) CONSENT. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent (insert 7.3 B). Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) INDEMNIFICATION. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of the contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 OWNERSHIP; REMOVAL; SURRENDER; AND RESTORATION.

(a) OWNERSHIP. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) REMOVAL. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) SURRENDER; RESTORATION. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. INSURANCE; INDEMNITY.

8.1 PAYMENT OF PREMIUM INCREASES.

(a) As used herein, the term "INSURANCE COST INCREASE" is defined as

any increase in the actual cost of the insurance applicable to the Building and/or the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), ("REQUIRED INSURANCE"), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the parties insert a dollar amount in Paragraph 1.9, such amount shall be considered the "BASE PREMIUM." The Base Premium shall be the annual premium applicable to the (INSERT 8.1 A). In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 LIABILITY INSURANCE.

(a) CARRIED BY LESSEE. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on a claims-made basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less the $2,000,000, an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "Insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) CARRIED BY LESSOR. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 PROPERTY INSURANCE BUILDING, IMPROVEMENTS AND RENTAL VALUE.

(a) BUILDING AND IMPROVEMENTS. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence.

(b) RENTAL VALUE. Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("RENTAL VALUE INSURANCE"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) ADJACENT PREMISES. Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) LESSEE'S IMPROVEMENTS. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 LESSEE'S PROPERTY; BUSINESS INTERRUPTION INSURANCE.

(a) PROPERTY DAMAGE. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations but specifically excluding earthquake insurance. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $5,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) BUSINESS INTERRUPTION. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) NO REPRESENTATION OF ADEQUATE COVERAGE. Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

/s/ AG	/s/ NG
- --------	--------
	/s/ H.C.
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Initials	Initials

8.5 INSURANCE POLICIES. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.(INSERT 8.5A)

8.6 WAIVER OF SUBROGATION. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 INDEMNITY. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises. Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 EXEMPTION OF LESSOR FROM LIABILITY. Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. DAMAGE OR DESTRUCTION.

9.1 DEFINITIONS.

(a) "PREMISES PARTIAL DAMAGE" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installation, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "PREMISES TOTAL DESTRUCTION" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "INSURED LOSS" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "REPLACEMENT COST" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "HAZARDOUS SUBSTANCE CONDITION" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in paragraph 6.2(a), in, on, or under the

Premises.

9.2 PARTIAL DAMAGE - INSURED LOSS. If a Premises Partial Damage that is an insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such storage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonably with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 PARTIAL DAMAGE - UNINSURED LOSS. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 TOTAL DESTRUCTION. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 DAMAGE NEAR END OF TERM. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option

expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 ABATEMENT OF RENT; LESSEE'S REMEDIES.

(a) ABATEMENT. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition (INSERT 9.6 A), the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) REMEDIES. If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "COMMENCE" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 TERMINATION; ADVANCE PAYMENTS. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

9.8 WAIVE STATUTES. Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. REAL PROPERTY TAXES.

10.1 DEFINITIONS.

(a) "REAL PROPERTY TAXES." As used herein, the term "REAL PROPERTY TAXES" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. (INSERT 10.1 A)

(b) "BASE REAL PROPERTY TAXES." As used herein, the term "BASE REAL PROPERTY TAXES" shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas (INSERT 10.1 B). In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 PAYMENT OF TAXES. Lessor shall pay the Real Property Taxes applicable to the Project, and except as otherwise provided in Paragraph 10.3, any increases in such amounts over the Base Real Property Taxes shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 ADDITIONAL IMPROVEMENTS. Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.4 JOINT ASSESSMENT. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets of such other information as may be reasonably available.

10.5 PERSONAL PROPERTY TAXES. Lessee shall pay prior to delinquency all

taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 30 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. UTILITIES. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's reasonable judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the dumpster and/or an increase in the number of times per month that the dumpster is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. (INSERT 11A)

12. ASSIGNMENT AND SUBLETTING.

12.1 LESSOR'S CONSENT REQUIRED.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "ASSIGN or ASSIGNMENT") or sublet all or any part of Lessee's interest in this lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) A change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 50% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 50% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "NET WORTH OF LESSEE" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

12.2 TERMS AND CONDITIONS APPLICABLE TO ASSIGNMENT AND SUBLETTING.

(a) Regardless of Lessor's consent, (i) any assignment or subletting shall not be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) any subletting shall not release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment or subletting. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $1,000 or 10% of the current monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater, as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (INSERT 12.2 A)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing. (INSERT 12.2 G)

12.3 ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO SUBLETTING. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. Lessor shall not by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. DEFAULT; BREACH; REMEDIES.

13.1 DEFAULT; BREACH. A "DEFAULT" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "BREACH" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the

coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment of subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 309 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "DEBTOR" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

13.2 REMEDIES. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. In the event of a Breach, Lessor may, with or without further notice or demand, and without miting the Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lessee shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination;; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to reasonable attorneys' fees, the cost of recovering possession of the Premises, expenses of reletting, including [illegible] costs not specifically excluding renovation and alteration of the Premises, attorneys' fees, and that portion of any leasing commission paid by lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer. Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.4 LATE CHARGES. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a wavier of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary. Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 INTEREST. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("INTEREST") charged shall be equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus 4%, but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 BREACH BY LESSOR.

(a) NOTICE OF BREACH. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) PERFORMANCE BY LESSEE ON BEHALF OF LESSOR. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said

notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent an amount equal to the greater of one month's Base Rent or the Security Deposit, and to pay an excess of such expense under protest, reserving Lessee's right to reimbursement from Lessor. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. CONDEMNATION. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "CONDEMNATION"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of Lessee's Reserved Parking Spaces, is taken by Condemnation or is rendered unusable as a result of such Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Rent shall be reduced in proportion to the reduction in utility of the Premises or reserved parking spaces caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

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15. BROKERAGE FEES.

15.3 REPRESENTATIONS AND INDEMNITIES OF BROKER RELATIONSHIPS. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. ESTOPPEL CERTIFICATES.

(a) Each Party (as "RESPONDING PARTY") shall within 15 days after written notice from the other Party (the "REQUESTING PARTY") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "ESTOPPEL CERTIFICATE" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. DEFINITION OF LESSOR. The term "LESSOR" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 20 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 6.2 above.

18. SEVERABILITY. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. DAYS. Unless otherwise specifically indicated to the contrary, the word "DAYS" as used in this Lease shall mean and refer to calendar days.

20. LIMITATION ON LIABILITY. Subject to the provisions of Paragraph 8.7 and Paragraph 17 above, the obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, the individual partners of Lessor or its or their individual partners, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against the individual partners of Lessor, or its or their individual partners, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. TIME OF ESSENCE. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. NO PRIOR OR OTHER AGREEMENTS; BROKER DISCLAIMER. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any

gross negligence or willful misconduct of such Broker.

23. NOTICES.

23.1 NOTICE REQUIREMENTS. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 DATE OF NOTICE. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via overnight delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. WAIVERS. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach of Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. DISCLOSURES REGARDING THE NATURE OF A REAL ESTATE AGENCY RELATIONSHIP.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

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(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value of desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agents's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Lease shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. NO RIGHT TO HOLDOVER. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. CUMULATIVE REMEDIES. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. COVENANTS AND CONDITIONS; CONSTRUCTION OF AGREEMENT. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. BINDING EFFECT; CHOICE OF LAW. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. SUBORDINATION; ATTORNMENT; NON-DISTURBANCE.

30.1 SUBORDINATION. Subject to Paragraph 30.3, this Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "SECURITY DEVICE"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "LENDER") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any

Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 ATTORNMENT. Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 NON-DISTURBANCE. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "NON-DISTURBANCE AGREEMENT") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days of the execution of this Lease, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 SELF-EXECUTING. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. ATTORNEYS' FEES. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to reasonable attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. LESSOR'S ACCESS; SHOWING PREMISES; REPAIRS. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times and upon 24-hour notice to Lessee for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any ordinary "For Sale" signs and Lessor may during the last 6 months of the term hereof place on the Premises any ordinary "For Lease" signs. Lessee may at any time place on the Premises any ordinary "For Sublease" sign.

33. AUCTIONS. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

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34. SIGNS. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. All signs must comply with all Applicable Requirements.

35. TERMINATION; MERGER. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. CONSENTS. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

38. QUIET POSSESSION. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. OPTIONS. If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 DEFINITION. "OPTION" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 OPTIONS PERSONAL TO ORIGINAL LESSEE. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 MULTIPLE OPTIONS. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 EFFECT OF DEFAULT ON OPTIONS.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), (ii) Lessor gives to Lessee 3 or more notices of separate Default during any 12 month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. SECURITY MEASURES. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. RESERVATIONS. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems

necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. PERFORMANCE UNDER PROTEST. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

43. AUTHORITY. If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each party shall, within 30 days after request, deliver to the other party satisfactory evidence of such authority.

44. CONFLICT. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. OFFER. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. AMENDMENTS. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. MULTIPLE PARTIES. If more than one person or entity is named herein as either Lessor or Lessee, such multiple Parties shall have joint and several responsibility to comply with the terms of this Lease.

48. WAIVER OF JURY TRIAL. The Parties hereby waive their respective rights to trial by jury in any action or proceeding involving the Property or arising out of this Agreement.

49. MEDIATION AND ARBITRATION OF DISPUTES. An Addendum requiring the Mediation and/or Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease [ ] is [X] is not attached to this Lease.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

/s/ AG	/s/ NG
- --------	----------
	/s/ HC
- --------	----------
Initials	Initials

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THE LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SUCH INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Emeryville, California	Executed at: Berkeley, CA
on: 2/1/01	on: Jan 31, 01
By LESSOR:	By LESSEE:
Neil Goldberg and Hagit Cohen	Dynavax
_____	_____
By: /s/ Neil Goldberg	By: /s/ Dino Dina
Name Printed: Neil Goldberg	Name Printed: Dino Dina
Title:_____	Title: CEO
By: /s/ Hagit Cohen	By: /s/ Andrew Gengos
Name Printed: Hagit Cohen	Name Printed: Andrew Gengos
Title:_____	Title: VP & CFO
Address: 829 Mendocino Ave Berkeley, CA 94707	Address:_____
_____	_____
_____	_____
Telephone: (510) 868-8188	Telephone: ( )
Facsimile: (510) 868-8187	Facsimile: ( )
Federal ID No:_____	Federal ID No:_____

These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: American Industrial Real Estate Association, 700 South Flower Street, Suite 600, Los Angeles, CA 90017. (213) 687-8777.

[LOGO]

OPTION(S) TO EXTEND
ADDENDUM TO
STANDARD LEASE

Dated December 20, 2000

By and Between (Lessor) Neil Goldberg and Hagit Cohen

(Lessee) Dynavax Technologies, Inc.

Property Address: 1285 66th St. Emeryville, CA

Paragraph 39.5

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for 1 additional 36 month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) Lessee gives to Lessor, and Lessor actually receives on a date which is prior to the date that the option period would commence (if exercised) by at least 6 and not more than 10 months, a written notice of the exercise of the option(s) to extend this Lease for said additional term(s), time being of essence. If said notification of the exercise of said option(s) is (are) not so given and received, the option(s) shall automatically expire; said option(s) may (if more than one) only be exercised consecutively;

(ii) The provisions of paragraph 39, including the provision relating to default of Lessee set forth in paragraph 39.4 of this Lease are conditions of this Option;

(iii) All of the terms and conditions of this Lease except where specifically modified by this option shall apply;

(iv) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:

Check Method(s) to be Used and Fill in Appropriately)

[X] I. COST OF LIVING ADJUSTMENT(S)(COL)

(a) On (Fill in COL Adjustment Date(s): Every 12 months succeeding the Lease commencement date the monthly rent payable under paragraph 1.5 ("BASE RENT") of the attached Lease shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): [ ] CPI W (Urban Wage Earners and Clerical Workers) or [X] CPI U (All Urban Consumers), for (Fill in Urban Area): San Francisco/Oakland/San Jose, All Items (1982-1984 - 100), herein referred to as "C.P.I." The minimum annual increase shall be 3% and the maximum annual increase shall be 8%.

(b) The monthly rent payable in accordance with paragraph AI(a) of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the C.P.I. of the calendar month 2 (two) months prior to the month(s) specified in paragraph AI(a) above during which the adjustment is to take effect, and the denominator of which shall be the C.P.I. of the calendar month which is two (2) months prior to (select one): [X] the first month of the term of this Lease as set forth in paragraph 1.3 ("BASE MONTH") or [ ] (Fill in Other "BASE MONTH"): _____. The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the date for rent adjustment.

(c) In the event the compilation and/or publication of the C.P.I. shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the Index most nearly the same as the C.P.I. shall be used to make such calculation. In the event that Lessor and Lessee cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitrators shall be paid equally by Lessor and Lessee.

[X] II. MARKET RENTAL VALUE ADJUSTMENT(S)(MRV)

(a) On (Fill in MRV Adjustment Date(s): The Commencement date of the Option period, the monthly rent payable under paragraph 1.5 ("BASE RENT") of the attached Lease shall be adjusted to the "MARKET RENTAL VALUE" of the property as follows:

1) Four months prior to the Market Rental Value (MRV) Adjustment Date(s) described above, Lessor and Lessee shall meet to establish an agreed upon new MRV for the specified term. If agreement cannot be reached, then:

Initials: /s/ AG Initials: /s/ NG

/s/ HC

OPTION(S) TO EXTEND

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: American Industrial Real Estate Association, 345 South Figueroa Street, Suite M-1, Los Angeles, CA 90071. (213) 687-8777. Fax No. (213) 687-8616.

i) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish a new MRV within the next 30 days. Any associated costs will be split equally between the parties, or

(ii) Both Lessor and Lessee shall each immediately select and pay the appraiser or broker of their choice to establish a MRV within the next 30 days. If, for any reason, either one of the appraisals is not completed within the next 30 days, as stipulated, then the appraisal that is completed at that time shall automatically become the new MRV. If both appraisals are completed and the two appraisers/brokers cannot agree on a reasonable average MRV then they shall immediately select a third mutually acceptable appraiser/broker to establish a third MRV within the next 30 days. The average of the two appraisals closest in value shall then become the new MRV. The costs of the third appraisal will be split equally between the parties.

2) In any event, the new MRV shall not be less than the rent payable for the month immediately preceding the date for rent adjustment.

(b) Upon the establishment of each New Market Value as described in paragraph AII:

1) the monthly rental sum so calculated for each term as specified in paragraph AII(a) will become the new "Base Rent" for the purpose of calculating any further Cost of Living Adjustments as specified in paragraph AI(a) above and

2) the first month of each Market Rental Value term as specified in paragraph AII(a) shall become the new "Base Month" for the purpose of calculating any further Cost of Living Adjustments as specified in paragraph AI(b).

III. FIXED RENTAL ADJUSTMENT(S) (FRA)

The monthly rent payable under paragraph 1.5 ("BASE RENT") of the attached Lease shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rental shall be:
_____	$_____
_____	$_____
_____	$_____
_____	$_____

NOTICE: Unless specified otherwise herein, notice of any escalations other than Fixed Rental Adjustments shall be made as specified in paragraph 23 of the attached Lease.

BROKER'S FEE:

The Real Estate Brokers specified in paragraph 1.10 of the attached Lease shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the attached Lease.

LESSEE AG ------ Initials: NG ------

HC ------

EXHIBIT "A"

[FLOOR PLAN GRAPHIC]

JENSEN & MACY
ARCHITECTS
53 RODGERS STREET
SAN FRANCISCO, CA 94103
L 415.553.3650
1.415.553.3654

SHEET TITLE 1ST FLOOR PARTITION

PROJECT PRAXIS BUILDING

DATE 04.27.00

SCALE 3/32"=1'-0"

SHEET SK-22

LESSEE AG

LESSOR HC

EXHIBIT B

This Exhibit B is entered into by and between Neil Goldberg and Hagit Cohen as Lessor and Dynavax Technologies Inc. as Lessee, and is intended to modify and supplement the terms of that certain Standard Industrial-Commercial Multi Tenant Lease-Gross, entered into by and between Lessor and Lessee ("the Lease") with respect to the premises located at #1285-66th Street Emeryville, California ("the Premises"). The terms used herein shall have the same definitions as set forth in the Lease.

50. Tenant Improvement Allowance: Lessee shall receive an allowance from Lessor of $40,000.00 toward improvements to be made by Lessee at Lessee's sole expense and direction. Said allowance shall be paid to Lessee within 10 days from request by Lessee and following completion of Lessee's improvements. Prior to payment Lessee to provide copies of all invoices from Lessee's general contractors and sub contractors for Lessor's review. In no event shall Lessor's payment to Lessee exceed Lessee tenant improvements.

51. Improvements by Lessor: Lessor shall, at its sole expense, install carpeting throughout premises of a quality equal to that in Lessor's space, and shall paint the premises and shall complete the build out of the kitchenette in Lessee's premises including appliances.

    All of Lessee's Improvements to the Premises by Lessee shall be made (i) only after receipt by Lessor of all plans and specifications for Lessee's Improvements; (ii) only after written approval by Lessor of all plans and specifications for Lessee's Improvements, which approval shall not be unreasonably withheld, conditioned or delayed; (iii) only after receipt by Lessee of all required governmental permits and approvals; (iv) in compliance with all conditions imposed by any such governmental agencies with respect thereto; (v) in accordance with the plans and specifications for Lessee's Improvements; (vi) in a good workmanlike manner; (vii) by licensed contractors.

52. Roof Deck and 1st floor shower: Lessee shall be granted shared usage with Lessor of the roof deck and 1st floor shower room.

Lessor HC
_____

Lessee AG
_____

EXHIBIT "C"

INSERTS TO DYNAVAX LEASE
(1285 66TH STREET, EMERYVILLE, CALIFORNIA)

INSERT 1.7A
from the Rent Commencement Date to the day immediately preceding the first anniversary of the Rent Commencement Date. Lessee shall pay to Lessor $12,480.00 upon execution as rent for April 2001.

INSERT 1.12A
the Option to Extend and Cost of Living Adjustments.

INSERT 2.2B
(the HVAC, together with the foregoing items, elements and structures collectively referred to herein as the "Systems and Structures") and (ii) Lessee or its agents and contractors shall be granted (1) full and complete access to the Premises for the purpose of constructing Lessee's Improvements therein, and (2) shall be provided such access to the Project as Lessee deems necessary or appropriate for the purpose of installing Lessee's telecommunications cabling and wiring serving the Premises. Lessor warrants that the Structures and Systems shall be free from defects and shall be in good operating condition for the first six (6) full calendar months of the Term. In the event it is determined that any one or more of Lessor's warranties set forth in this Paragraph 2.2 have been violated, then it shall be

INSERT 2.4A
, with the exception of Lessee's reliance upon Lessor's warranties hereunder,

INSERT 3.1A
and the Commencement Date shall be specified in the Commencement Date Memorandum

INSERT 4.2B
Notwithstanding anything contained in this Lease to the contrary, "Common Area Operating Expenses" shall not include the following: (A) wages, salaries and benefits of executives above the rank of building manager or wages, salaries and benefits for employees at or below the rank of building manager (including, without limitation, bonuses and other compensation, including employee benefits and payroll, social security, workers' compensation, unemployment and other similar taxes) or charges of any independent contractor that are not allocated in proportion to the percentage of such employees' and/or contractors' working time actually spent working in connection with the Project; (B) depreciation on the Project or equipment systems therein; (C) interest and debt service; (D) rental and costs relating to any ground or underlying lease; (E) the cost (including any amortization thereof) of any improvements, alterations, facilities or equipment which would be properly classified as "capital expenditures" under Lessor's commercial real estate accounting practices except those capital expenditures that, subject to Lessor's obligations set forth in Paragraph 2.3(e), (x) actually reduce Common Area Operating Expenses (and then only to the extent of the actual reduction of such Common Area Operating Expenses), or (y) are required under any governmental law or regulation enacted after the Start Date; provided, however, that any such permitted capital expenditure shall be amortized (including reasonable financing charges on the unamortized cost) over their useful life in accordance with generally accepted accounting practices and Lessee shall be required to pay only Lessee's Share of the prorata share of the cost of any such items falling due within the Term from and after the date Lessee is to begin paying Lessee's share of Common Area Operating Expenses hereunder based upon such amortization;

(F) rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature (except equipment that is not affixed to the Project and is used in providing janitorial services);

(G) penalties or other costs incurred due to a violation by Lessor, as determined by written admission, stipulation, final judgment or arbitration award, of any of the terms and conditions of this Lease or any other contract relating to the Project except to the extent such costs reflect costs that would have been incurred by Lessor absent such violation; (H) third party claims paid by Lessor (including asbestos related claims) for personal injury or property damage, including costs of Lessor's defense thereof, except that the foregoing shall not relieve Lessee of responsibility for claims (and the defense costs thereof) for which Lessee is responsible pursuant to Paragraphs 6.2(d) and 8.7 or any other provision of this Lease; (I) the cost of any asbestos or other Hazardous Substance abatement or removal activities; provided, however, that Common Area Operating Expenses may include the costs attributable to those actions taken by Lessor to comply with any laws in connection with the ordinary operation and maintenance of the Project, including costs incurred in removing limited amounts of asbestos containing materials or other Hazardous Substances from the Project when such removal is directly related to such ordinary maintenance and operation; (J) attorneys' and other professionals' fees and expenses incurred in connection with lease disputes or lease negotiations with prospective or former tenants or in connection with the defense of Lessor's title to or interest in the Project, or Lessor's sale, purchase or financing thereof; (K) any expense to the extent Lessor is entitled to be reimbursed by another party; (L) all direct costs of refinancing, selling, exchanging or otherwise transferring ownership of the Project or any interest therein or portion thereof, including broker commissions, attorneys' fees and closing costs; (M) charitable and political contributions; (N) reserves for bad debts, rent loss, capital items or future Common Area Operating Expenses; and (O) Common Area Operating Expenses associated with the maintenance and operation of any parking area on the Project to the extent such costs are covered by parking fees actually collected by Lessor from the users of such area.

INSERT 4.2 D

Lessee shall be granted the right to annually review with written request to Lessor, the operating expenses.

INSERT 7.3 B

, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessor must state at the time of consent whether such alteration or improvement must be restored or removed upon the expiration of the Lease.

INSERT 8.1 A

premium amount for a fully built out project taking into account all improvements.

INSERT 8.5A

Notwithstanding anything in this Lease to the contrary, Lessee may carry insurance of the kind required to be carried by Lessee under a blanket insurance policy or policies which cover other properties owned or operated by Lessee in addition to the Premises.

INSERT 9.6A

or damage or destruction to the Project that prevents Lessee's access to the Premises or essential services

INSERT 10.1A

Notwithstanding anything contained herein to the contrary, the term "Real Property Taxes" shall not include any penalties, fines, interest or late charges imposed as a result of Landlord's failure to timely pay such Real Property Taxes or any franchise, transfer, capital stock or gift taxes or any new or increased taxes or assessments resulting from a transfer or change of ownership of the Project and/or the Building or any interest therein or portion thereof or from any construction to the Project and/or the Building or any portion thereof. In the event Lessor actually receives a refund of Real Property Taxes previously paid as a result of any contest, then Lessor shall credit toward any payment for Real Property Taxes next due from Lessee an amount reasonably determined by Lessor to be Lessee's share of any such refund.

INSERT 10.1 B
for the tax year 2001-2002 plus any supplemental bills to cover the completed project.

INSERT 11A
Standard utilities shall be available after hours per the terms and conditions of the lease.

INSERT 12 2A
Lessor shall review any request for consent to an assignment or subletting within fifteen (15) business days after Lessor's receipt of the information required from Lessee pursuant to this Paragraph 12.2(e). Lessor's failure to respond to any such request within said ten (10) business day period shall be deemed to be a consent by Lessor to such proposed assignment or subletting.

INSERT 12.2 G
If Lessor approves an assignment or subletting as herein provided, Lessee shall pay to Lessor, fifty percent (50%) of the difference, if any, between (i) the Rent allocable to that part of the Premises affected by such assignment or subletting pursuant to the provisions of this Lease, and (ii) the rent and any common area operating expenses payable by the assignee or sublessee to Lessee, less (a) reasonable and customary market-based leasing commissions, if any, incurred by Lessee in connection with such assignment or subletting, (b) reasonable attorneys' fees and costs actually incurred by Lessee in connection with such assignment or subletting, (c) Lessee's reasonable costs of advertising or preparing the space for occupancy by the subtenant or assignee, (d) the

INSERT 14 A
or the Project (or any portion thereof that would substantially and adversely affect the operation and profitability of Lessee's business conducted from the Premises)

INSERT 25A
; provided, however, that such agreement shall in no way limit or relieve any Broker's obligation to otherwise maintain information, in accordance with its duties to the Parties, confidential.

Lessee AG
Lessor HC

EXHIBIT D

COMMENCEMENT DATE MEMORANDUM

LESSOR: NEIL GOLDBERG AND HAGIT COHEN
LESSEE: DYNAVAX TECHNOLOGIES, INC.
LEASE DATE: January 31, 2001
PREMISES: Located at #1285 66th Street, Emeryville, California

The Commencement Date of the Lease is hereby established as February 1, 2001 and the date Lessee is to commence paying rent under the Lease is April 1, 2001, the rent for April 2001 shall be $12,480.00 and thereafter Lessee shall pay the base rent of $16,640.00 per month.

LESSEE: DYNAVAX, INC.

A

By: /s/ Andrew Gengos

Name: Andrew Gengos

Title: VP & CFO

Approved and Agreed to:

LESSOR:

Neil Goldberg /s/ Neil Goldberg

Hagit Cohen /s/ Hagit Cohen

LEASE

BETWEEN

2929 SEVENTH STREET, L.L.C. (LANDLORD)

AND

DYNAVAX TECHNOLOGIES CORPORATION (TENANT)

2929 SEVENTH STREET
BERKELEY, CALIFORNIA

LEASE

ARTICLE 1

BASIC LEASE PROVISIONS

1.1 BASIC LEASE PROVISIONS

In the event of any conflict between these Basic Lease Provisions and any other Lease provision, such other Lease provision shall control.

(1) BUILDING ADDRESS:

2929 Seventh Street
Berkeley, California 94710

(2) LANDLORD AND ADDRESS:

2929 Seventh Street, L.L.C.
1120 Nye Street, Suite 400
San Rafael, California 94901

Notices to Landlord shall be addressed:

2929 Seventh Street, L.L.C.
c/o Wareham Property Group
1120 Nye Street, Suite 400
San Rafael, California 94901

(3) TENANT AND CURRENT ADDRESS:

(a) Name: Dynavax Technologies Corporation

(b) State of incorporation: Delaware

Notices to Tenant shall be addressed:

The Premises
Attn: Chief Financial Officer

(4) DATE OF LEASE: as of January 7, 2004

(5) LEASE TERM: 10 years

(6) PROJECTED COMMENCEMENT DATE: April 1, 2004

(7) PROJECTED EXPIRATION DATE: March 31, 2014

(8) MONTHLY BASE RENT:

PERIOD FROM/TO	MONTHLY
Months 1 -12	$25,651.25
Months 13 - 24	$26,420.79
Months 25 - 36	$27,213.41
Months 37 - 48	$28,029.81
Months 49 - 60	$28,870.70
Months 61 - 72	$29,736.82
Months 73 - 84	$30,628.92
Months 85 - 96	$31,547.79
Months 97 - 108	$32,494.22
Months 109 - 120	$33,469.05

(9) RENTABLE AREA OF THE PREMISES: 20,521 square feet

(10) SECURITY DEPOSIT: $76,953.75; provided, however, if the sum of Tenant's cash and cash equivalents falls below $20 million at for a period of 30 consecutive days or more during the Term, the amount of the Security Deposit shall increase to $200,814.30. Thereafter, Tenant may reduce the amount of the Security Deposit to $76,953.75 if: (a) the projected sum of Tenant's cash and cash equivalents will remain above $20 million for the remainder of the Term, or (b) the sum of Tenant's cash and cash equivalents actually remains above $20 million for a period of 12 consecutive months. Tenant may request the reduction of the Security Deposit upon written notice to Landlord providing evidence of the existence of either condition (a) or (b) above.

(11) SUITE NUMBERS OF PREMISES: 130 and 200

(12) TENANT'S USE OF PREMISES: General office administration, and general research and development laboratories with associated administration, including by not limited to research and administration of DNA-based vaccines to develop treatments for allergic, infectious and oncologic diseases.

(13) PARKING: Up to 61 unreserved parking spaces on surface lot at the rate of $0.00 per month, per space, during the Term
(The total number of parking spaces shall not exceed 3 cars per 1,000 square feet of rentable square feet)

(14) BROKERS: NONE

1.2 ENUMERATION OF EXHIBITS, RIDER AND ADDENDUM

The Exhibits, Rider and Addendum set forth below and attached to this Lease are incorporated in this Lease by this reference:

EXHIBIT A Plan of Premises

EXHIBIT B Workletter Agreement

EXHIBIT C Rules and Regulations

EXHIBIT D Letter of Credit

RIDER 1 Commencement Date Agreement

ADDENDUM TO LEASE

1.3 DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

AFFILIATE: Any corporation or other business entity that is currently owned or controlled by, owns or controls, or is under common ownership or control with Tenant.

BUILDING: The office building located at the address specified in Section 1.1.

COMMENCEMENT DATE: The date specified in Section 1.1 as the Projected Commencement Date, unless changed by operation of Article Two.

COMMON AREAS: All areas of the Property made available by Landlord from time to time for the general common use or benefit of the tenants of the Building, and their employees and invitees, or the public, as such areas currently exist and as they may be changed from time to time.

DECORATION: Tenant Alterations which do not require a building permit and which do not involve any of the structural elements of the Building, or any of the Building's systems, including its electrical, mechanical, plumbing, security, heating, ventilating, air-conditioning, communication, and fire and life safety systems.

DEFAULT RATE: Two (2) percentage points above the rate then most recently announced by Bank of America, N.A., at its San Francisco main office as its base lending reference rate, from time to time announced, but in no event higher than the maximum rate permitted by Law.

ENVIRONMENTAL LAWS: All Laws governing the use, storage, disposal or generation of any Hazardous Material, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the Resource Conservation and Recovery Act of 1976, as amended.

EXPIRATION DATE: The date specified in Section 1.1 as the Projected Expiration Date, unless changed by operation of Article Two.

FORCE MAJEURE: Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of Landlord or Tenant, including water shortages, energy shortages or governmental preemption in connection with an act of God, a national emergency, or by reason of Law, or by reason of the conditions of supply and demand which have been or are affected by act of God, war or other emergency.

HAZARDOUS MATERIAL: Such substances, material and wastes which are or become regulated under any Environmental Law; or which are classified as hazardous or toxic under any Environmental Law; and explosives and firearms, radioactive material, asbestos, polychlorinated biphenyls, and petroleum products. The restrictions on use of Hazardous Material are set forth in Section 7.1(c).

INDEMNITEES: Collectively, Landlord, any Mortgagee or ground lessor of the Property, the property manager and the leasing manager for the Property and their respective partners, members, directors, officers and employees.

LAND: The parcel(s) of real estate on which the Building are located.

LANDLORD WORK: The construction or installation of improvements to the Premises to be furnished by Landlord, if any, as specifically described in the Workletter or exhibits attached hereto.

LAWS OR LAW: All laws, ordinances, rules, regulations, other requirements, orders, rulings or decisions adopted or made by any governmental body, agency, department or judicial authority having jurisdiction over the Property, the Premises or Tenant's activities at the Premises and any covenants, conditions or restrictions of record which affect the Property.

LEASE: This instrument and all exhibits and riders attached hereto, as may be amended from time to time.

LEASE YEAR: The twelve month period beginning on the Commencement Date and each subsequent twelve month, or shorter, period until the Expiration Date.

MONTHLY BASE RENT: The monthly base rent specified in Section 1.1.

MORTGAGEE: Any holder of a mortgage, deed of trust or other security instrument encumbering the Property.

NATIONAL HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and other holidays recognized by the Landlord and the janitorial and other unions servicing the Building in accordance with their contracts.

OPERATING EXPENSES: All costs, expenses and disbursements of every kind and nature which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement and repair of the Building and the Property (including, without limitation, property management fees, costs and expenses, and the amortized portion of any capital expenditure or improvement, together with interest thereon, and the costs of changing utility service providers). Operating Expenses shall not include, (i) Leasing

commissions, attorneys' fees, costs, disbursements, and other expenses incurred in connection with negotiations or disputes with tenants, or in connection with leasing, renovating, or improving space for tenants or other occupants or prospective tenants or other occupants of the Building, (ii) capital costs for the Property (except for amortized portion of capital for the purpose of reducing or controlling Operating Expenses or complying with applicable Laws), (iii) depreciation charges; (iv) all interest, loan fees, and other carrying costs related to any mortgage or deed of trust or related to any capital item, and all rental and other payable due under any ground or underlying lease, or any lease for any equipment ordinarily considered to be of a capital nature (except janitorial equipment which is not affixed to the Building and except for loans for capital improvements which Landlord is allowed to include in Operating Expenses as provided above); (v) ground rental payments; (vi) advertising and marketing expenses; (vii) costs of Landlord reimbursed by insurance proceeds; (viii) Landlord's general corporate overhead; (ix) the cost of any service sold to any tenant (including Tenant) or other occupant for which Landlord is entitled to be reimbursed as an additional charge or rental over and above the basic rent and escalations payable under the lease with that tenant; (x) the cost or expense of any services or benefits provided generally to other tenants in the Building and not provided or available to Tenant; (xi) any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord; (xii) any costs, fines, or penalties incurred due to violations by Landlord of any governmental rule or authority, this Lease or any other lease in the Property, or due to Landlord's negligence or willful misconduct; (xiii) management fees in excess of 4 1/2% of gross receipts for the Property; (xiv) costs for sculpture, paintings, or other objects of art in excess of $2,500.00 for any one piece (nor insurance thereon or extraordinary security in connection therewith); (xv) wages, salaries, or other compensation paid to any executive employees above the grade of building manager; (xvi) the cost of containing, removing, or otherwise remediating any contamination of the Property by any Hazardous Materials where such contamination existed prior to the Commencement Date or was caused by another tenant of the Property; (xvii) costs incurred due to Landlord's violation of any terms or conditions of this Lease or any other lease relating to the Building or Property; (xviii) overhead profit increments paid to Landlord's subsidiaries or affiliates for services (other than management services, which services are capped pursuant to item xiii above) on or to the Building or for supplies or other materials to the extent that the cost of the services, supplies, or materials exceeds the cost that would have been paid had the services, supplies, or materials been provided by unaffiliated parties on a competitive basis; and (xix) the cost of correcting any building code or other violations of which Landlord received written notification prior to the Commencement Date.. If Landlord pays the deductible portion on any insurance claim applicable to a capital expenditure or improvement, that deductible portion shall be amortized over the life of the capital expenditure or improvement. If any Operating Expense, though paid in one year, relates to more than one calendar year, at the option of Landlord such expense may be proportionately allocated among such related calendar years.

PREMISES: The space located in the Building at the Suite Number listed in Section 1.1 and depicted on Exhibit A attached hereto.

PROPERTY: The Property consists of the Building, associated surface and garage parking as designated by Landlord from time to time, landscaping and improvements, together with the Land, any associated interests in real property, and the personal property, fixtures,

machinery, equipment, systems and apparatus located in or used in conjunction with any of the foregoing.

REAL PROPERTY: The Property excluding any personal property.

RENT: Collectively, Monthly Base Rent, Rent Adjustments and Rent Adjustment Deposits, and all other charges, payments, late fees or other amounts required to be paid by Tenant under this Lease.

RENT ADJUSTMENT: Any amounts owed by Tenant for payment of Operating Expenses or Taxes. The Rent Adjustments shall be determined and paid as provided in Article Four.

RENT ADJUSTMENT DEPOSIT: An amount equal to Landlord's estimate of the Rent Adjustment attributable to each month of the applicable Lease Year. On or before the beginning of each Lease Year or with Landlord's Statement (defined in Article Four), Landlord may estimate and notify Tenant in writing of its estimate of the Operating Expenses and Taxes for such Lease Year. Prior to the first determination by Landlord of the amount of Operating Expenses and Taxes for the first Lease Year, Landlord may estimate such amounts in the foregoing calculation. The last estimate by Landlord shall remain in effect as the applicable Rent Adjustment Deposit unless and until Landlord notifies Tenant in writing of a change, which notice may be given by Landlord from time to time during a Lease Year.

RENTABLE AREA OF THE PREMISES: The amount of square footage set forth in Section 1.1.

RENTABLE AREA OF THE BUILDING: The amount of square footage which represents the sum of the rentable area of all space intended for office occupancy in the Property, as determined by Landlord from time to time; and Landlord shall notify Tenant of any adjustments in such rentable area and any corresponding change in Tenant's Share.

SECURITY DEPOSIT: The funds specified in Section 1.1 deposited by Tenant with Landlord as security for Tenant's performance of its obligations under this Lease.

SUBSTANTIALLY COMPLETE or SUBSTANTIAL COMPLETION: The completion of the Landlord Work or Tenant Work, as the case may be, except for minor insubstantial details of construction, decoration or mechanical adjustments which remain to be done.

TAXES: All federal, state and local governmental taxes, assessments and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control or operation of the Property or any of its components (including any personal property used in connection therewith), which may also include any rental or similar taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed for any period of such year, whether or not such Taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees, costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or

reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year. If a special assessment payable in installments is levied against any part of the Property, Taxes for any year shall include only the installment of such assessment and any interest payable or paid during such year. Taxes shall not include any federal or state inheritance, general income, gift or estate taxes, except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes. Notwithstanding anything herein to the contrary, Taxes shall include only 50% of any increases that result from a reassessment of value due to "new construction" on or a "change of ownership" of the Property (as such terms are defined in part 0.5 of division 1 of the California Revenue and Taxation Code or any amendments or successor statutes thereto). For the purposes of the Rent Adjustment, Taxes shall be calculated based upon the longest period available for payment.

TENANT ADDITIONS: Collectively, Landlord Work, Tenant Work and Tenant Alterations.

TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Building systems serving the Premises (excluding Landlord Work or Tenant Work).

TENANT DELAY: Any event or occurrence that delays the completion of the Landlord Work which is caused by or is described as follows:

(1) special work, changes, alterations or additions requested or made by Tenant in the design or finish in any part of the Premises after approval of the plans and specifications (as described in the Workletter);

(2) Tenant's delay in submitting plans, supplying information, approving plans, specifications or estimates, giving authorizations or otherwise;

(3) failure to approve and pay for such Tenant Work as Landlord undertakes to complete at Tenant's expense;

(4) the performance or completion by Tenant or any person engaged by Tenant of any work in or about the Premises; or

(5) failure to perform or comply with any obligation or condition binding upon Tenant pursuant to the Workletter, including the failure to approve and pay for such Landlord Work or other items if and to the extent the Workletter provides they are to be approved or paid by Tenant.

TENANT WORK: All work installed or furnished to the Premises by Tenant, if any, pursuant to the Workletter.

TENANT'S SHARE: The percentage that represents the ratio of the Rentable Area of the Premises to the Rentable Area of the Building, as determined by Landlord from time to time;

provided, however, the same formula shall be used for the calculation of the Rentable Area of the Building and the Rentable Area of the Premises.

TERM: The term of this Lease commencing on the Commencement Date and expiring on the Expiration Date.

TERMINATION DATE: The Expiration Date or such earlier date as this Lease terminates or Tenant's right to possession of the Premises terminates.

WORKLETTER: The Agreement regarding the manner of completion of Landlord Work and Tenant Work set forth on Exhibit B attached hereto.

ARTICLE 2

PREMISES, TERM, FAILURE TO GIVE POSSESSION, AND PARKING

2.1 LEASE OF PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the Term and upon the terms, covenants and conditions provided in this Lease. In the event Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, Tenant shall be subject to all of the terms, covenants and conditions of this Lease (except with respect to the payment of Rent) as of the date of such possession.

2.2 TERM

(a) The Commencement Date shall be the date determined as follows:

(i) If the Landlord Work is Substantially Complete on or before the Projected Commencement Date, then on the date which is the earlier to occur of:

(1) the Projected Commencement Date, or

(2) the date Tenant first occupies all or part of the Premises for the conduct of business; or

(ii) If the Landlord Work is not Substantially Complete by the Projected Commencement Date, then on the date on which the Landlord Work is Substantially Complete.

(b) Within thirty (30) days following the occurrence of the Commencement Date, Landlord and Tenant shall enter into an agreement (the form of which is attached hereto as Rider 1) confirming the Commencement Date and the Expiration Date. If Tenant fails to enter into such agreement, then the Commencement Date and the Expiration Date shall be the dates designated by Landlord in such agreement. If the Expiration Date does not fall on the last day of a calendar month, Landlord may elect to adjust the Expiration Date to the last day of the calendar month in

which Expiration Date occurs through the agreement referenced above, which shall set forth such adjusted date.

2.3 FAILURE TO GIVE POSSESSION

If Landlord shall be unable to give possession of the Premises on the Projected Commencement Date by reason of the following: (i) the Building has not been sufficiently completed to make the Premises ready for occupancy, (ii) the Landlord Work, if any, is not Substantially Complete, (iii) the holding over or retention of possession of any tenant, tenants or occupants, or (iv) for any other reason, then Landlord shall not be subject to any liability for the failure to give possession on said date. Under such circumstances, the Commencement Date shall be the date the Premises are made available to Tenant by Landlord, and no such failure to give possession on the Projected Commencement Date shall affect the validity of this Lease or the obligations of the Tenant hereunder. At the option of Landlord to be exercised within thirty (30) days of the delayed delivery of possession to Tenant, the Lease shall be amended so that the Term shall be extended by the period of time possession is delayed. The said Premises shall be deemed to be ready for Tenant's occupancy in the event Landlord's Work, if any, is Substantially Complete, or if the delay in the availability of the Premises for occupancy shall be due to any Tenant Delay and/or default on the part of Tenant and/or its subtenant or subtenants. In the event of any dispute as to whether the Landlord Work is Substantially Complete, the decision of Landlord's architect shall be final and binding on the parties.

Notwithstanding the foregoing to the contrary, if the Commencement Date has not occurred on or before April 1, 2004 (the "Outside Commencement Date"), Tenant shall be entitled to a rent abatement following the Commencement Date of $855.04 for every day in the period beginning on the Outside Commencement Date and ending on the Commencement Date.. Landlord and Tenant acknowledge and agree that the determination of the Commencement Date shall take into consideration the effect of any Tenant Delays by Tenant.

Notwithstanding the foregoing to the contrary, if the Commencement Date has not occurred on or before June 1, 2004 (the "Required Commencement Date"), then, in addition to the remedy set forth above, Tenant may terminate this Lease whereupon any monies previously paid by Tenant to Landlord shall be promptly reimbursed to Tenant and Tenant shall have no further obligation under this Lease. The Required Commencement Date shall be delayed by one day each for each day of Tenant Delay.

2.4 CONDITION OF PREMISES

Tenant shall notify Landlord in writing within thirty (30) days after the later of Substantial Completion of the Landlord Work or when Tenant takes possession of the Premises of any defects in the Premises claimed by Tenant or in the materials or workmanship furnished by Landlord in completing the Landlord Work. Except for defects stated in such notice, Tenant shall be conclusively deemed to have accepted the Premises "AS IS" in the condition existing on the date Tenant first takes possession, and to have waived all claims relating to the condition of the Premises. Landlord shall proceed diligently to correct the defects stated in such notice unless Landlord disputes the existence of any such defects. In the event of any dispute as to the existence of any such defects, the decision of Landlord's architect shall be final and binding on

the parties. No agreement of Landlord to alter, remodel, decorate, clean or improve the Premises or the Real Property and no representation regarding the condition of the Premises or the Real Property has been made by or on behalf of Landlord to Tenant, except as may be specifically stated in this Lease or in the Workletter. Notwithstanding anything in this Section 2.4 to the contrary, Landlord shall deliver the Premises to Tenant in "broom clean" condition with all Building systems, doors and windows in operational condition. Tenant shall notify Landlord in writing within thirty (30) days of any portion of the Premises not being in compliance with the foregoing sentence, and Landlord shall promptly repair same at Landlord's sole cost and expense (i.e., not as part of Operating Expenses).

2.5 PARKING

During the Term, Tenant may use the number of spaces specified in Section 1.1. The locations and type of parking shall be designated by Landlord or Landlord's parking operator from time to time. Tenant acknowledges and agrees that the parking spaces serving the Property may include tandem parking and a mixture of spaces for compact vehicles as well as full-size passenger automobiles, and that Tenant shall not use parking spaces for vehicles larger than the striped size of the parking spaces. All vehicles utilizing Tenant's parking privileges shall prominently display identification stickers or other markers, and/or have passes or keycards for ingress and egress, as may be required and provided by Landlord or its parking operator from time to time. Tenant shall comply with any and all parking rules and regulations from time to time established by Landlord or Landlord's parking operator, including a requirement that Tenant pay to Landlord or Landlord's parking operator a charge for loss and replacement of passes, keycards, identification stickers or markers, and for any and all loss or other damage caused by persons or vehicles related to use of Tenant's parking privileges. Tenant shall not allow any vehicles using Tenant's parking privileges to be parked, loaded or unloaded except in accordance with this Section, including in the areas and in the manner designated by Landlord or its parking operator for such activities. If any vehicle is using the parking or loading areas contrary to any provision of this Section, Landlord or its parking operator shall have the right, in addition to all other rights and remedies of Landlord under this Lease, to remove or tow away the vehicle without prior notice to Tenant, and the cost thereof shall be paid to Landlord within ten (10) days after notice from Landlord to Tenant.

ARTICLE 3

RENT

Tenant agrees to pay to Landlord at the first office specified in Section 1.1, or to such other persons, or at such other places designated by Landlord, without any prior demand therefor in immediately available funds and without any deduction or offset whatsoever, Rent, including Monthly Base Rent and Rent Adjustments in accordance with Article Four, during the Term. Monthly Base Rent shall be paid monthly in advance on the first day of each month of the Term, except that the first installment of Monthly Base Rent shall be paid by Tenant to Landlord concurrently with execution of this Lease. Monthly Base Rent shall be prorated for partial months within the Term. Unpaid Rent shall bear interest at the Default Rate from the date due until paid. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease.

ARTICLE 4

RENT ADJUSTMENTS AND PAYMENTS

4.1 RENT ADJUSTMENTS

Tenant shall pay to Landlord Rent Adjustments with respect to each Lease Year as follows:

(a) The Rent Adjustment Deposit representing Tenant's Share of Operating Expenses for the applicable calendar year, monthly during the Term with the payment of Monthly Base Rent; and

(b) The Rent Adjustment Deposit representing Tenant's Share of Taxes for the applicable calendar year, monthly during the Term with the payment of Monthly Base Rent; and

(c) Any Rent Adjustments due in excess of the Rent Adjustment Deposits in accordance with Section 4.2. Rent Adjustments due from Tenant to Landlord for any calendar year shall be Tenant's Share of Operating Expenses for such year and Tenant's Share of Taxes for such year.

4.2 STATEMENT OF LANDLORD

As soon as feasible after the expiration of each calendar year during the Term, Landlord will furnish Tenant a statement ("Landlord's Statement") showing the following:

(a) Operating Expenses and Taxes for the calendar year;

(b) The amount of Rent Adjustments due Landlord for the last calendar year, less credit for Rent Adjustment Deposits paid, if any; and

(c) Any change in the Rent Adjustment Deposit due monthly in the current calendar year, including the amount or revised amount due for months preceding any such change pursuant to Landlord's Statement.

Tenant shall pay to Landlord within ten (10) business days after receipt of such statement any amounts for Rent Adjustments then due in accordance with Landlord's Statement. Any amounts due from Landlord to Tenant pursuant to this Section shall be credited to the Rent Adjustment Deposit next coming due, or refunded to Tenant if the Term has already expired provided Tenant is not in default hereunder. No interest or penalties shall accrue on any amounts that Landlord is obligated to credit or refund to Tenant by reason of this Section 4.2. Landlord's failure to deliver Landlord's Statement or to compute the amount of the Rent Adjustments shall not constitute a waiver by Landlord of its right to deliver such items nor constitute a waiver or release of Tenant's obligations to pay such amounts. The Rent Adjustment Deposit shall be credited against Rent Adjustments due for the applicable calendar year. During the last complete calendar year or during any partial calendar year in which the Lease terminates, Landlord may include in the Rent Adjustment Deposit its estimate of Rent Adjustments which may not be

finally determined until after the termination of this Lease. Tenant's obligation to pay Rent Adjustments survives the expiration or termination of the Lease. Notwithstanding the foregoing, in no event shall the sum of Monthly Base Rent and the Rent Adjustments be less than the Monthly Base Rent payable.

4.3 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with industry standard accounting and management practices, consistently applied. Tenant or its representative (which representative shall be a certified public accountant licensed to do business in the state in which the Property is located and whose primary business is certified public accounting and who shall not be paid on a contingency basis) shall have the right, for a period of sixty (60) days following the date upon which Landlord's Statement is delivered to Tenant, to examine the Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during normal business hours, upon written notice, delivered at least three (3) business days in advance. If Tenant does not object in writing to Landlord's Statement within sixty (60) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant. If Tenant does dispute any Landlord's Statement, Tenant shall deliver a copy of any such audit to Landlord at the time of notification of the dispute. If Tenant does not provide such notice of dispute and a copy of such audit to Landlord within such sixty (60) day period, it shall be deemed to have waived such right to dispute Landlord's Statement. Any amount due to the Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception. In no event shall Tenant be permitted to examine Landlord's records or to dispute any statement of Expenses unless Tenant has paid and continues to pay all Rent when due. Tenant shall be solely responsible for all costs, expenses and fees incurred for the audit. However, notwithstanding the foregoing, if Landlord and Tenant determine that Operating Expenses for the Building for the year in question were less than stated by more than 5%, Landlord, within 30 days after its receipt of paid invoices therefor from Tenant, shall reimburse Tenant for the reasonable amounts paid by Tenant to third parties in connection with such review by Tenant up to a maximum of $3,500.00. Upon resolution of any dispute with respect to Operating Expenses and Taxes, Tenant shall either pay Landlord any shortfall or Landlord shall credit Tenant with respect to any overages paid by Tenant. The records obtained by Tenant shall be treated as confidential and neither Tenant nor any of its representatives or agents shall disclose or discuss the information set forth in the audit to or with any other person or entity ("Confidentiality Requirement"). Tenant shall indemnify and hold Landlord harmless for any losses or damages arising out of the breach of the Confidentiality Requirement. In no event shall Tenant be permitted to examine Landlord's records or to dispute any statement of Expenses unless Tenant has paid and continues to pay all Rent when due.

4.4 TENANT OR LEASE SPECIFIC TAXES

In addition to Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits and other charges to be paid by Tenant, Tenant shall pay to Landlord, upon demand, any and all taxes payable by Landlord (other than federal or state inheritance, general income, franchise, gift or estate taxes) whether or not now customary or within the contemplation of the parties hereto: (a)

upon, allocable to, or measured by the Rent payable hereunder, including any gross receipts tax or excise tax levied by any governmental or taxing body with respect to the receipt of such rent; or (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (c) upon the measured value of Tenant's personal property located in the Premises or in any storeroom or any other place in the Premises or the Property, or the areas used in connection with the operation of the Property, it being the intention of Landlord and Tenant that, to the extent possible, such personal property taxes shall be billed to and paid directly by Tenant; (d) resulting from Landlord Work, Tenant Work or Tenant Alterations to the Premises, whether title thereto is in Landlord or Tenant; or (e) upon this transaction. Taxes paid by Tenant pursuant to this Section 4.5 shall not be included in any computation of Taxes payable pursuant to Sections 4.1 and 4.2.

ARTICLE 5

SECURITY DEPOSIT

Tenant concurrently with the execution of this Lease shall pay to Landlord in immediately available funds the Security Deposit. The Security Deposit may be applied by Landlord to cure, in whole or part, any default of Tenant under this Lease, and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by paying to Landlord within ten (10) days of demand the amount so applied. Landlord's application of the Security Deposit shall not constitute a waiver of Tenant's default to the extent that the Security Deposit does not fully compensate Landlord for all losses, damages, costs and expenses incurred by Landlord in connection with such default and shall not prejudice any other rights or remedies available to Landlord under this Lease or by Law. Landlord shall not pay any interest on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its general accounts. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action that Landlord may at any time commence against Tenant. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant, regardless of one or more assignments of this Lease. Upon the transfer of Landlord's interest under this Lease, Landlord's obligation to Tenant with respect to the Security Deposit shall terminate upon transfer to the transferee of the Security Deposit, or any balance thereof. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after Landlord recovers possession of the Premises or such longer time as may be permissible under Law. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code or other Law regarding security deposits. Tenant shall provide Landlord with annual financial statements verifying its cash and cash equivalents. In addition, Tenant shall notify Landlord immediately if Tenant's cash and cash equivalents fall below the amount specified in Section 1.1(10) above for a period in excess of 30 consecutive days.

All or part of the Security Deposit may be in the form of an irrevocable letter of credit (the "Letter of Credit"), which Letter of Credit: (a) , when added to any cash Security Deposit

paid by Tenant, shall be in the amount specified in Section 1.1(10); and (b) shall be issued in substantially the form attached hereto as Exhibit D. The Letter of Credit (and any renewals or replacements thereof) shall be for a term of not less than 1 year. Tenant agrees that it shall from time to time, as necessary, whether as a result of a draw on the Letter of Credit by Landlord pursuant to the terms hereof or as a result of the expiration of the Letter of Credit then in effect, renew or replace the original and any subsequent Letter of Credit so that a Letter of Credit, in the amount required hereunder, is in effect until the end of the Term. If Tenant fails to furnish such renewal or replacement at least 60 days prior to the stated expiration date of the Letter of Credit then held by Landlord, Landlord may draw upon such Letter of Credit and hold the proceeds thereof (and such proceeds need not be segregated) as a Security Deposit pursuant to the terms of this Section 4.5. Any renewal or replacement of the original or any subsequent Letter of Credit shall meet the requirements for the original Letter of Credit as set forth above, except that such replacement or renewal shall be issued by a national bank satisfactory to Landlord at the time of the issuance thereof.

If Landlord draws on the Letter of Credit as permitted in this Lease and the Letter of Credit, then, upon demand of Landlord, Tenant shall restore the amount available under the Letter of Credit to its original amount by providing Landlord with an amendment to the Letter of Credit evidencing that the amount available under the Letter of Credit has been restored to its original amount. In the alternative, Tenant may provide Landlord with cash, to be held by Landlord in accordance with this Article, equal to the restoration amount required under the Letter of Credit.

ARTICLE 6

SERVICES

6.1 LANDLORD'S GENERAL SERVICES

(a) So long as the Lease is in full force and effect and Tenant has paid all Rent then due, Landlord shall furnish the following services, the cost of which services shall be included in Operating Expenses or paid directly by Tenant to the utility or service provider (as indicated):

(i) heat, ventilation and air-conditioning ("HVAC") in the Premises and the Common Areas;

(ii) tempered and cold water for use in lavatories in common with other tenants from the regular supply of the Building;

(iii) customary cleaning and janitorial services in the Common Areas five (5) days per week, excluding National Holidays;

(iv) washing of the outside windows in the Premises weather permitting at intervals determined by Landlord; and

(v) automatic passenger and swing/freight elevator service in common with other tenants of the Building. Freight elevator service will be subject to

reasonable scheduling by Landlord and payment of Landlord's standard charges.

(b) If Tenant uses heat generating machines or equipment in the Premises to an extent which adversely affects the temperature otherwise maintained in the Common Areas by the air-cooling system or whenever the occupancy or electrical load adversely affects the temperature otherwise maintained by the air-cooling system, Landlord reserves the right to install or to require Tenant to install supplementary air-conditioning units in the Premises following notice to Tenant advising Tenant of the adverse effect and giving Tenant 30 days to reverse such effect. Tenant shall bear all costs and expenses related to the installation, maintenance and operation of any units installed by Landlord should Tenant fail to act within the 30 day period.

6.2 UTILITY SERVICES

Landlord shall furnish to the Premises, as a service which is paid directly by Tenant to the utility provider, electric current and natural gas service for general office and laboratory use, including normal lighting and normal business office and laboratory machines. Notwithstanding any provision of the Lease to the contrary, without, in each instance, the prior written approval of Landlord, in Landlord's prudent business judgment, Tenant shall not make any alterations or additions to the electric equipment or systems. Tenant's use of electric current shall at no time exceed the capacity of the wiring, feeders and risers providing electric current to the Premises or the Building. The consent of Landlord to the installation of electric equipment shall not relieve Tenant from the obligation to limit usage of electricity to no more than such capacity.

6.3 ADDITIONAL SERVICES

At Tenant's written request, Landlord shall furnish additional quantities of any of the services specified in Section 6.1, if Landlord can reasonably do so, on the terms set forth herein. For services requested by Tenant and furnished by Landlord, Tenant shall pay to Landlord as a charge therefor Landlord's prevailing rates charged from time to time for such services, which rates shall be based upon Landlord's actual cost plus a 15% administrative fee. If Tenant shall fail to make any such payment, Landlord may, upon notice to Tenant and in addition to Landlord's other remedies under this Lease, discontinue any or all of such additional services.

6.4 TELEPHONE SERVICES

All telegraph, telephone, and communication connections which Tenant may desire shall be subject to Landlord's prior written approval, in Landlord's reasonable discretion, and the location of all wires and the work in connection therewith shall be performed by contractors approved by Landlord and shall be subject to the direction of Landlord, except that such approval is not required as to Tenant's telephone equipment (including cabling) within the Premises and from the Premises in a route designated by Landlord to any telephone cabinet or panel provided (as existing or as installed as part of Landlord's Work, if any) on Tenant's floor for Tenant's connection to the telephone cable serving the Building so long as Tenant's equipment does not require connections different than or additional to those to the telephone cabinet or panel

provided. Except to the extent of such cabling within the Premises or from the Premises to such telephone cabinet or panel, Landlord reserves the right to designate and control the entity or entities providing telephone or other communication cable installation, removal, repair and maintenance in the Building and to restrict and control access to telephone cabinets or panels. In the event Landlord designates a particular vendor or vendors to provide such cable installation, removal, repair and maintenance for the Building, Tenant agrees to abide by and participate in such program. Tenant shall be responsible for and shall pay all costs incurred in connection with the installation of telephone cables and communication wiring in the Premises, including any hook-up, access and maintenance fees related to the installation of such wires and cables in the Premises and the commencement of service therein, and the maintenance thereafter of such wire and cables; and there shall be included in Operating Expenses for the Building all installation, removal, hook-up or maintenance costs incurred by Landlord in connection with telephone cables and communication wiring serving the Building which are not allocable to any individual users of such service but are allocable to the Building generally. If Tenant fails to maintain all telephone cables and communication wiring in the Premises and such failure affects or interferes with the operation or maintenance of any other telephone cables or communication wiring serving the Building, Landlord or any vendor hired by Landlord may enter into and upon the Premises forthwith and perform such repairs, restorations or alterations as Landlord deems necessary in order to eliminate any such interference (and Landlord may recover from Tenant all of Landlord's costs in connection therewith). If required by Landlord, no later than the Termination Date Tenant shall remove all telephone cables and communication wiring installed by Tenant for and during Tenant's occupancy. Tenant agrees that neither Landlord nor any of its agents or employees shall be liable to Tenant, or any of Tenant's employees, agents, customers or invitees or anyone claiming through, by or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action because of any interruption, diminution, delay or discontinuance at any time for any reason in the furnishing of any telephone or other communication service to the Premises and the Building.

6.5 DELAYS IN FURNISHING SERVICES

Tenant agrees that Landlord shall not be in breach of this Lease nor be liable to Tenant for damages or otherwise, for any failure to furnish, or a delay in furnishing, or a change in the quantity or character of any service when such failure, delay or change is occasioned, in whole or in part, by repairs, improvements or mechanical breakdowns by the act or default of Tenant or other parties or by an event of Force Majeure. No such failure, delay or change shall be deemed to be an eviction or disturbance of Tenant's use and possession of the Premises, or relieve Tenant from paying Rent or from performing any other obligations of Tenant under this Lease, without any deduction or offset. Failure to any extent to make available, or any slowdown, stoppage, or interruption of, the specified utility services resulting from any cause, including changes in service provider or Landlord's compliance with any voluntary or similar governmental or business guidelines now or hereafter published or any requirements now or hereafter established by any governmental agency, board, or bureau having jurisdiction over the operation of the Property shall not render Landlord liable in any respect for damages to either persons, property, or business, nor be construed as an eviction of Tenant or work an abatement of Rent, nor relieve Tenant of Tenant's obligations for fulfillment of any covenant or agreement hereof. Should any equipment or machinery furnished by Landlord break down or for any cause cease to function properly, Landlord shall use reasonable diligence to repair same promptly, but Tenant shall have

no claim for abatement of Rent or damages on account of any interruption of service occasioned thereby or resulting therefrom. Notwithstanding anything in this Section 6.5 to the contrary, if the Premises, or a material portion of the Premises, are made untenantable for a period in excess of 3 consecutive business days as a result of a failure, delay or change in any service due to Landlord's negligence or willful misconduct, and Tenant has given Landlord notice of such failure, delay or change, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the 4th consecutive business day after such notice and ending on the day the service has been restored. If the entire Premises have not been rendered untenantable by such failure, delay or change , the amount of abatement shall be equitably prorated.

6.6 CHOICE OF SERVICE PROVIDER

Tenant acknowledges that Landlord may, at Landlord's sole option, to the extent permitted by applicable law, elect to change, from time to time, the company or companies which provide services (including electrical service, gas service, water, telephone and technical services) to the Building, the Premises and/or its occupants. Notwithstanding anything to the contrary set forth in this Lease, Tenant acknowledges that Landlord has not and does not make any representations or warranties concerning the identity or identities of the company or companies which provide services to the Building and the Premises or its occupants and Tenant acknowledges that the choice of service providers and matters concerning the engagement and termination thereof shall be solely that of Landlord. The foregoing provision is not intended to modify, amend, change or otherwise derogate any provision of this Lease concerning the nature or type of service to be provided or any specific information concerning the amount thereof to be provided. Tenant agrees to cooperate with Landlord and each of its service providers in connection with any change in service or provider.

6.7 SIGNAGE

Initial Building standard signage will be installed by Landlord in the directory in the main lobby of the Building, in the listing of tenants in the elevator lobby for the floor on which the Premises is located and at Tenant's main entry door to the Premises at Tenant's sole cost and expense except to the extent that funds are available out of any Tenant Improvement Allowance, if any, provided pursuant to the Workletter. Any change in such initial signage shall be only with Landlord's prior written consent, shall conform to Building standard signage and shall be at Tenant's sole cost and expense. Tenant shall not place on the exterior of the Premises or the door, window or roof, within any display window space or within five (5) feet behind the entry to the Premises, any sign, decoration, lettering, advertising matter or descriptive material without Landlord's prior written approval. Tenant shall submit to Landlord reasonably detailed drawings of its proposed signs for review and approval by Landlord prior to utilizing same. All signs, awnings, canopies, decorations, lettering, advertising matter or other items used by Tenant shall conform to the standards of design, motif, and decor, from time to time, established by Landlord for the Building and shall be insured and maintained at all times by Tenant in good condition, operating order and repair. Flashing signs and credit card or other signs, advertisements and hand lettered signs visible from outside the Building or the Common Areas are prohibited. Landlord shall have the right, without notice to Tenant and without any liability for damage to the Premises reasonably caused thereby, to remove any items displayed or affixed in or to the

Premises which Landlord determines to be in violation of the provisions of this Section. If any damage is done to Tenant's signs, Tenant shall commence to repair same within five (5) days after such damage occurs, and upon Tenant's failure to commence the repair work within said five (5) day period and to diligently prosecute the same to completion, Landlord may, after notice to Tenant, repair such damage and Tenant shall pay Landlord, upon demand, Landlord's costs and expenses in connection therewith.

Notwithstanding anything in this Section 6.7 to the contrary, Tenant shall have the right to install one (1) sign on the exterior of the Building and one (1) monument sign on the Property (collectively, the "Sign"), if Tenant is not in default (beyond applicable notice and cure periods) under any term or condition of the Lease on the date Tenant elects to install the Sign. Tenant, at its sole cost and expense, shall obtain all necessary building permits and zoning and regulatory approval in connection with the Sign. All costs in connection with the Sign, including any costs for the design, installation, supervision of installation, wiring, maintenance, repair and removal of the Sign, will be at Tenant's expense. Tenant shall submit to Landlord reasonably detailed drawings of the proposed Sign, including without limitation, the size, material, shape and lettering for review and approval by Landlord. The Sign shall conform to the standards of design and motif established by Landlord for the exterior of the Building and the Property. Tenant shall reimburse Landlord for any costs associated with Landlord's review and supervision as hereinbefore provided including, but not limited to, engineers and other professional consultants. Tenant will be responsible for the repair of any damage that the installation of the Sign may cause to the Building or Property. Tenant agrees upon the expiration date or sooner termination of this Lease, upon Landlord's request, to remove the Sign and to repair and restore any damage to the Building and Property at Tenant's expense.

ARTICLE 7

POSSESSION, USE AND CONDITION OF PREMISES

7.1 POSSESSION AND USE OF PREMISES

(a) Tenant shall be entitled to possession of the Premises when the Landlord Work is Substantially Complete. Tenant shall occupy and use the Premises only for the uses specified in Section 1.1 to conduct Tenant's business. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (1) is unlawful or in violation of any Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building or covering its operations; (3) is contrary to or prohibited by the terms and conditions of this Lease or the rules of the Building set forth in Article Eighteen; or (4) would tend to create or continue a nuisance.

(b) Tenant shall comply with all Environmental Laws pertaining to Tenant's occupancy and use of the Premises and concerning the proper storage, handling and disposal of any Hazardous Material introduced to the Premises, the Building or the Property by Tenant or other occupants of the Premises, or their employees, servants, agents, contractors, customers or invitees during the Term. Landlord

shall comply with all Environmental Laws applicable to the Property other than those to be complied with by Tenant pursuant to the preceding sentence. Tenant shall not generate, store, handle or dispose of any Hazardous Material in, on, or about the Property without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, except that such consent shall not be required to the extent of Hazardous Material packaged and contained in office products for consumer use in general business offices or laboratories in quantities for ordinary day-to-day use provided such use does not give rise to, or pose a risk of, exposure to or release of Hazardous Material. Landlord consents to the use by Tenant of necessary quantities of Hazardous Material in connection with the operations of its laboratory facilities provided that: (i) materials are stored in original containers, (ii) Tenant provides Landlord with a list of all such Hazardous Materials and the quantities at the Premises from time to time within ten (10) days after request by Landlord, (iii) such use is in compliance with applicable Environmental Law and (iv) such use does not give rise to, or pose a risk of, exposure to or release of Hazardous Materials. Upon request, and from time to time, Tenant shall provide Landlord with a list of all such Hazardous Materials and the quantity of such Hazardous Materials used at the Premises. In the event that Tenant is notified of any investigation or violation of any Environmental Law arising from Tenant's activities at the Premises, Tenant shall immediately deliver to Landlord a copy of such notice. In such event or in the event Landlord reasonably believes that a violation of Environmental Law exists, Landlord may conduct such tests and studies relating to compliance by Tenant with Environmental Laws or the alleged presence of Hazardous Materials upon the Premises as Landlord deems desirable, all of which shall be completed at Tenant's expense. Landlord's inspection and testing rights are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed any responsibility to Tenant or any other party for compliance with Environmental Laws, as a result of the exercise, or non-exercise of such rights. Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claim, demand, action, expense, liability and cost (including attorneys' fees and expenses) arising out of or in any way related to the presence of any Hazardous Material introduced to the Premises during the Term by any party other than Landlord or Landlord's Indemnitees, agents or contractors. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. If any Hazardous Material is released, discharged or disposed of on or about the Property and such release, discharge or disposal is not caused by Tenant or other occupants of the Premises, or their employees, servants, agents, contractors, customers or invitees, such release, discharge or disposal shall be deemed casualty damage under Article Fourteen to the extent that the Premises are affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under such Article.

(c) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises, the Building and the Property depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant Alterations in the Premises, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant's use of the Premises. Landlord represents and warrants that the Premises shall be in compliance with ADA Title III as of the Commencement Date, other than those ADA requirements that may be triggered by Tenant's use of the Premises for other than general office use. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

7.2 LANDLORD ACCESS TO PREMISES; APPROVALS

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant's use, layout or design of the Premises is not materially affected or altered. Landlord or Landlord's agents shall have the right to enter upon the Premises in the event of an emergency, or to inspect the Premises, to perform janitorial and other services, to conduct safety and other testing in the Premises and to make such repairs, alterations, improvements or additions to the Premises or the Building or other parts of the Property as Landlord may deem necessary or desirable (including all alterations, improvements and additions in connection with a change in service provider or providers). Any entry or work by Landlord may be during normal business hours and Landlord may use reasonable efforts to ensure that any entry or work shall not materially interfere with Tenant's occupancy of the Premises.

(b) If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord's agents), after attempting to notify Tenant (unless Landlord believes an emergency situation exists), may enter the Premises without rendering

Landlord or its agents liable therefor, and without relieving Tenant of any obligations under this Lease.

(c) Landlord may enter the Premises for the purpose of conducting such inspections, tests and studies as Landlord may deem desirable or necessary to confirm Tenant's compliance with all Laws and Environmental Laws or for other purposes necessary in Landlord's reasonable judgment to ensure the sound condition of the Property and the systems serving the Property. Landlord's rights under this Section 7.2(c) are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party as a result of the exercise or non-exercise of such rights, for compliance with Laws or Environmental Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of the Tenant, or otherwise.

(e) The review, approval or consent of Landlord with respect to any item required or permitted under this Lease is for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party, as a result of the exercise or non-exercise of such rights, for compliance with Laws or Environmental Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

7.3 QUIET ENJOYMENT

Landlord covenants, in lieu of any implied covenant of quiet possession or quiet enjoyment, that so long as Tenant is in compliance with the covenants and conditions set forth in this Lease, Tenant shall have the right to quiet enjoyment of the Premises without hindrance or interference from Landlord or those claiming through Landlord, and subject to the covenants and conditions set forth in the Lease and to the rights of any Mortgagee or ground lessor.

ARTICLE 8

MAINTENANCE

8.1 LANDLORD'S MAINTENANCE

Subject to the provisions of Articles Four (as to reimbursement of Operating Expenses) and Fourteen, Landlord shall maintain in good order, condition and repair the foundations, roofs, exterior walls, and the structural elements of the Building, plus the electrical, plumbing, heating, ventilating, air-conditioning, mechanical and the fire and life safety systems of the Building (including the Premises), except that: (a) Landlord shall not be responsible for the maintenance or repair of any floor or wall coverings in the Premises; (b) the cost of performing any of said maintenance or repairs to the Premises shall be paid directly by Tenant as Additional Rent and

not included in Operating Expenses, and (c) the cost of performing any of said maintenance or repairs to the Building caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid directly by Tenant as Additional Rent and not included in Operating Expenses, subject to the waivers set forth in Section 16.4. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or in connection with the use of, any adjacent or nearby building, land, street or alley. Landlord shall maintain the Building in compliance with all Environmental Laws to the extent Landlord has received written notice of violation of such Laws.

8.2 TENANT'S MAINTENANCE

Subject to the provisions of Section 8.1 above and Article Fourteen, Tenant, at its expense, shall keep and maintain the Premises and all Tenant Additions in good order, condition and repair and in accordance with all Laws and Environmental Laws (except to the extent Landlord is responsible for compliance with Laws and Environmental Laws in the Premises under the terms of this Lease). Tenant shall provide regular janitorial services to the Premises, at Tenant's sole cost and expense. Tenant shall not permit waste and shall promptly and adequately repair all damages to the Premises and replace or repair all damaged or broken glass in the interior of the Premises, fixtures or appurtenances. Any repairs or maintenance shall be completed with materials of similar quality to the original materials, all such work to be completed under the supervision of Landlord. Any such repairs or maintenance shall be performed only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld, and whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. If Tenant fails to perform any of its obligations set forth in this Section 8.2, Landlord may, in its sole discretion and upon 24 hours prior notice to Tenant (except without notice in the case of emergencies), perform the same, and Tenant shall pay to Landlord any costs or expenses incurred by Landlord upon demand.

ARTICLE 9

ALTERATIONS AND IMPROVEMENTS

9.1 TENANT ALTERATIONS

(a) Except for completion of Tenant Work undertaken by Tenant pursuant to the Workletter, the following provisions shall apply to the completion of any Tenant Alterations:

(i) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, make or cause to be made any Tenant Alterations in or to the Premises or any Property systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord ten (10) days prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of non-responsibility. Subject to all other requirements of this Article Nine,

Tenant may undertake Decoration work without Landlord's prior written consent. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time designate, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld, provided, however, that Landlord may, in its sole discretion, specify the engineers and contractors to perform all work relating to the Building's systems (including the mechanical, heating, plumbing, security, ventilating, air-conditioning, electrical, communication and the fire and life safety systems in the Building). The contractors, mechanics and engineers who may be used are further limited to those whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord: architectural plans and specifications, opinions from Landlord's engineers stating that the Tenant Alterations will not in any way adversely affect the Building's systems, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. Landlord may, in the exercise of reasonable judgment, request that Tenant provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit. Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

(ii) Tenant shall pay the cost of all Tenant Alterations and the cost of decorating the Premises and any work to the Property occasioned thereby. Upon completion of Tenant Alterations, Tenant shall furnish Landlord with contractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used in connection therewith and such other documentation reasonably requested by Landlord or Mortgagee.

(iii) Tenant agrees to complete all Tenant Alterations (i) in accordance with all Laws, Environmental Laws, all requirements of applicable insurance companies and in accordance with Landlord's standard construction rules and regulations, and (ii) in a good and workmanlike manner with the use of good grades of materials. Tenant shall notify Landlord immediately if Tenant receives any notice of violation of any Law in connection with completion of any Tenant Alterations and shall immediately take such steps as are necessary to remedy such violation. In no event shall such

supervision or right to supervise by Landlord nor shall any approvals given by Landlord under this Lease constitute any warranty by Landlord to Tenant of the adequacy of the design, workmanship or quality of such work or materials for Tenant's intended use or of compliance with the requirements of Section 9.1(a)(3)(i) and (ii) above or impose any liability upon Landlord in connection with the performance of such work.

(b) All Tenant Additions whether installed by Landlord or Tenant, shall without compensation or credit to Tenant, become part of the Premises and the property of Landlord at the time of their installation and shall remain in the Premises, unless pursuant to Article Twelve, Tenant may remove them or is required to remove them at Landlord's request.

9.2 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any other part of the Property arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall within ten (10) days of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, in addition to its rights and remedies under Article Eleven, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and attorneys' fees.

ARTICLE 10

ASSIGNMENT AND SUBLETTING

10.1 ASSIGNMENT AND SUBLETTING

(a) Without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of Law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant, provided, however, if Landlord chooses not to recapture the space proposed to be subleased or assigned as provided in Section 10.2, Landlord shall not unreasonably withhold its consent to a subletting or assignment under this Section 10.1. Tenant agrees that the provisions governing sublease and assignment set forth in this Article Ten shall be deemed to be reasonable. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord

("Tenant's Notice"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least fifteen (15) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease less than all of the Rentable Area of the Premises, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.2 within thirty (30) days after receipt of Tenant's Notice (and all required information). Tenant shall submit for Landlord's approval (which approval shall not be unreasonably withheld) any advertising which Tenant or its agents intend to use with respect to the space proposed to be sublet.

(b) With respect to Landlord's consent to an assignment or sublease, Landlord may take into consideration any factors that Landlord may deem relevant, and the reasons for which Landlord's denial shall be deemed to be reasonable shall include, without limitation, the following:

(1) the business reputation or creditworthiness of any proposed subtenant or assignee is not acceptable to Landlord; or

(2) in Landlord's reasonable judgment the proposed assignee or sublessee would diminish the value or reputation of the Building or Landlord; or

(3) any proposed assignee's or sublessee's use of the Premises would be different from the Use of the Premises set forth in Section 1.1 or would violate Section 7.1 of the Lease or would violate the provisions of any other leases of tenants in the Property; or

(4) the proposed sublessee or assignee is a bona fide prospective tenant of Landlord in the Property as demonstrated by a written proposal dated within ninety (90) days prior to the date of Tenant's request; or

(5) the proposed sublessee or assignee would materially increase the estimated pedestrian and vehicular traffic to and from the Premises and the Building.

(c) Any sublease or assignment shall be expressly subject to the terms and conditions of this Lease. Any subtenant or assignee shall execute such documents as Landlord may reasonably require to evidence such subtenant's sublease of all or a portion of the Premises or assignee's assumption of the obligations and liabilities of Tenant under this Lease. Tenant shall deliver to Landlord a copy of all

agreements executed by Tenant and the proposed subtenant and assignee with respect to the Premises. Landlord's approval of a sublease, assignment, hypothecation, transfer or third party use or occupancy shall not constitute a waiver of Tenant's obligation to obtain Landlord's consent to further assignments or subleases, hypothecations, transfers or third party use or occupancy.

(d) For purposes of this Article Ten, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock of Tenant occurring by operation of Law or otherwise if Tenant is a corporation whose shares of stock are not traded publicly. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment.

(e) Notwithstanding anything in this Article Ten to the contrary, occupancy of all or part of the Premises by (i) any related entity, parent company, subsidiary, or Affiliate of Tenant, or (ii) any entity which owns or is owned by an Affiliate of Tenant, or (iii) any company in which Tenant has a controlling interest, or (iv) any successor corporation to Tenant, whether by merger, consolidation, or otherwise, or any person or entity who purchases all or substantially all of Tenant's business or assets, shall not be deemed an assignment or subletting requiring Landlord's prior written consent, provided that such related entity, parent company, subsidiary, Affiliate, controlled company, or successor corporation was not formed as a subterfuge to avoid the obligations of this Article Ten. In such transactions, the provisions of subsections (a) and (b), above, shall not apply, and Tenant may assign the Lease at any time, or sublease all or part of the Premise at any time, without receipt of Landlord's consent, to any such entity so long as such transaction was not entered into as a subterfuge to avoid the obligations and restrictions of this Lease and Landlord receives written notice of such assignment or sublease within 30 days of such transaction. In addition, the provisions of Sections 10.2 and 10.3 below shall not apply to such transactions, and any options or rights that Tenant may have under this Lease shall transfer to such entity.

10.2 RECAPTURE

Landlord shall have the option to exclude from the Premises covered by this Lease ("recapture"): (a) in the event of an assignment, the space subject to the assignment, and (b) if Tenant exercises its Expansion Option (as defined in the Addendum), as to the Expansion Space only, that portion of the Expansion Space proposed to be sublet, but only if the sublease is for more than seventy-five percent (75%) of the Expansion Space and for more than seventy-five percent (75%) of the then remaining Term. The recapture shall be effective as of the proposed commencement date of such sublease or assignment. If Landlord elects to recapture, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises, such date being the Termination Date for such space. Effective as of the date of recapture of any portion of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant's Share shall be adjusted accordingly.

10.3 EXCESS RENT

Tenant shall pay Landlord on the first day of each month during the term of the sublease or assignment, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect) due from the subtenant or assignee for such month exceeds: (i) that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet or assigned (the "Sublease/Assignment Rent"); and (ii) the following costs and expenses for the subletting or assignment of such space: (1) brokerage commissions and attorneys' fees and expenses, (2) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease or assignment; and (3) "free rent" periods, costs of any inducements or concessions given to subtenant or assignee, moving costs, and other amounts in respect of such subtenant's or assignee's other leases or occupancy arrangements.

10.4 TENANT LIABILITY

In the event of any sublease or assignment, whether or not with Landlord's consent, Tenant shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option, to the extent such exercise is expressly permitted by Landlord. Tenant's liability shall remain primary, and in the event of default by any subtenant, assignee or successor of Tenant in performance or observance of any of the covenants or conditions of this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said subtenant, assignee or successor. After any assignment, Landlord may consent to subsequent assignments or subletting of this Lease, or amendments or modifications of this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant or any successor of Tenant of liability under this Lease. If Landlord grants consent to such sublease or assignment, Tenant shall pay all reasonable attorneys' fees and expenses incurred by Landlord with respect to such assignment or sublease. In addition, if Tenant has any options to extend the Term or to add other space to the Premises, such options shall not be available to any subtenant or assignee, directly or indirectly without Landlord's express written consent, which may be withheld in Landlord's sole discretion.

10.5 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord and furnished to Landlord not later than fifteen (15) days prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord's option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that, upon termination of the Lease, the subtenant will attorn to Landlord and will pay all subrent directly to Landlord; provided, however, Landlord agrees to mitigate any damages to which Landlord would otherwise be entitled under California Civil Code Section 1951.2 by the amount of subrent Landlord receives.

ARTICLE 11

DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

The occurrence or existence of any one or more of the following shall constitute a "Default" by Tenant under this Lease:

(a) Tenant fails to pay any installment or other payment of Rent including Rent Adjustment Deposits or Rent Adjustments within five (5) days after written notice;

(b) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease or the Workletter and fails to cure such default within thirty (30) days after written notice thereof to Tenant (or such additional time as may be required, up to a maximum of ninety (90) days, subject to extension due to Force Majeure events), unless the default involves a hazardous condition, which shall be cured forthwith or unless the failure to perform is a Default for which this Lease specifies there is no cure or grace period;

(c) the interest of Tenant in this Lease is levied upon under execution or other legal process;

(d) a petition is filed by or against Tenant to declare Tenant bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Act, or any amendment, replacement or substitution therefor, or to delay payment of, reduce or modify Tenant's debts, which in the case of an involuntary action is not discharged within thirty (30) days;

(e) Tenant is declared insolvent by Law or any assignment of Tenant's property is made for the benefit of creditors;

(f) a receiver is appointed for Tenant or Tenant's property, which appointment is not discharged within thirty (30) days;

(g) any action taken by or against Tenant to reorganize or modify Tenant's capital structure in a materially adverse way which in the case of an involuntary action is not discharged within thirty (30) days;

(h) upon the dissolution of Tenant; or

(i) upon the third occurrence within any calendar year during the Term that Tenant fails to pay Rent when due and incurred late fees or has breached a particular covenant of this Lease (whether or not such failure or breach is thereafter cured within any stated cure or grace period or statutory period); provided, this provision shall not apply unless Landlord has provided Tenant with written notice of its applicability following the second such occurrence.

11.2 LANDLORD'S REMEDIES

(a) A Default shall constitute a breach of the Lease for which Landlord shall have the rights and remedies set forth in this Section 11.2 and all other rights and remedies set forth in this Lease or now or hereafter allowed by Law, whether legal or equitable, and all rights and remedies of Landlord shall be cumulative and none shall exclude any other right or remedy.

(b) With respect to a Default, at any time Landlord may terminate Tenant's right to possession by written notice to Tenant stating such election. Any written notice required pursuant to Section 11.1 shall constitute notice of unlawful detainer pursuant to California Code of Civil Procedure Section 1161 if, at Landlord's sole discretion, it states Landlord's election that Tenant's right to possession is terminated after expiration of any period required by Law or any longer period required by Section 11.1. Upon the expiration of the period stated in Landlord's written notice of termination (and unless such notice provides an option to cure within such period and Tenant cures the Default within such period), Tenant's right to possession shall terminate and this Lease shall terminate, and Tenant shall remain liable as hereinafter provided. Upon such termination in writing of Tenant's right to possession, Landlord shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or otherwise as permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures, personal property and those Tenant Additions which Tenant is required or permitted to remove under Article Twelve), but Landlord shall not be obligated to effect such removal, and such property may, at Landlord's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Tenant, and the proceeds of any sale shall be applied pursuant to Law. Landlord shall in no event be responsible for the value, preservation or safekeeping of any such property. Tenant hereby waives all claims for damages that may be caused by Landlord's removing or storing Tenant's personal property pursuant to this Section or Section 12.1, and Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including attorneys' fees and expenses) arising out of or in any way related to such removal or storage. Upon such written termination of Tenant's right to possession and this Lease, Landlord shall have the right to recover damages for Tenant's Default as provided herein or by Law, including the following damages provided by California Civil Code Section 1951.2:

(i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award

exceeds the amount of such Rent loss that Tenant proves could reasonably have been avoided;

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term of this Lease after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; and

(iv) any other 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, including, without limitation, Landlord's unamortized costs of tenant improvements, leasing commissions and legal fees incurred in connection with entering into this Lease. The word "rent" as used in this Section 11.2 shall have the same meaning as the defined term Rent in this Lease. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the Default Rate. The worth at the time of award of the amount referred to in clause (3) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid Rent under clause (3) above, the monthly Rent reserved in this Lease shall be deemed to be the sum of the Monthly Base Rent, monthly storage space rent, if any, and the amounts last payable by Tenant as Rent Adjustments for the calendar year in which Landlord terminated this Lease as provided hereinabove.

(c) Even if Tenant is in Default and/or has abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession by written notice as provided in Section 11.2(b) above, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. In such event, Landlord shall have all of the rights and remedies of a landlord under California Civil Code Section 1951.4 (Landlord may continue Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute. During such time as Tenant is in Default, if Landlord has not terminated this Lease by written notice and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises, subject to Landlord's option to recapture pursuant to Section 10.2, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Tenant acknowledges and agrees that the provisions of Article Ten shall be deemed to constitute reasonable limitations of Tenant's right to assign or sublet. Tenant acknowledges and agrees that in the absence of written notice pursuant to Section 11.2(b) above terminating Tenant's right to possession, no other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, including acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's

interest under this Lease or the withholding of consent to a subletting or assignment, or terminating a subletting or assignment, if in accordance with other provisions of this Lease.

(d) In the event that Landlord seeks an injunction with respect to a breach or threatened breach by Tenant of any of the covenants, conditions or provisions of this Lease, Tenant agrees to pay the premium for any bond required in connection with such injunction.

(e) Tenant hereby waives any and all rights to relief from forfeiture, redemption or reinstatement granted by Law (including California Civil Code of Procedure Sections 1174 and 1179) in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of Tenant's Default or otherwise;

(f) Notwithstanding any other provision of this Lease, a notice to Tenant given under this Article and Article Twenty-four of this Lease or given pursuant to California Code of Civil Procedure Section 1161, and any notice served by mail shall be deemed served, and the requisite waiting period deemed to begin under said Code of Civil Procedure Section upon mailing, without any additional waiting requirement under Code of Civil Procedure Section 1011 et seq. or by other Law. For purposes of Code of Civil Procedure Section 1162, Tenant's "place of residence", "usual place of business", "the property" and "the place where the property is situated" shall mean and be the Premises, whether or not Tenant has vacated same at the time of service.

(g) The voluntary or other surrender or termination of this Lease, or a mutual termination or cancellation thereof, shall not work a merger and shall terminate all or any existing assignments, subleases, subtenancies or occupancies permitted by Tenant, except if and as otherwise specified in writing by Landlord.

(h) No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, and no exercise by Landlord of its rights pursuant to Section 25.15 to perform any duty which Tenant fails timely to perform, shall impair any right or remedy or be construed as a waiver. No provision of this Lease shall be deemed waived by Landlord unless such waiver is in writing signed by Landlord. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease.

11.3 ATTORNEY'S FEES

In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses

of investigation, and all attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes, in establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

11.4 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "Electing Party") must provide for:

(i) The Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of assumption and it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(ii) If the Electing Party has assumed this Lease or elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

(iii) For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(1) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease; and

(2) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing

arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(c) Landlord's acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

11.5 LANDLORD'S DEFAULT

Landlord shall be in default hereunder in the event Landlord has not begun and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform. In no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord's default as to any covenant or agreement contained in this Lease. Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant's remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give the Mortgagee notice and a reasonable time to cure any default by Landlord.

ARTICLE 12

SURRENDER OF PREMISES

12.1 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition, excepting ordinary wear and tear, and damage caused by Landlord. Tenant shall deliver to Landlord all keys to the Premises. Tenant shall remove from the Premises all movable personal property of Tenant and Tenant's trade fixtures, including, subject to Section 6.4, cabling for any of the foregoing. Tenant shall be entitled to remove such Tenant Alterations, which at the time of their installation Landlord and Tenant agreed may be removed by Tenant. Tenant shall also remove such other Tenant Alterations as required by Landlord, including any Tenant Alterations containing Hazardous Materials. Tenant shall pay any costs Landlord incurs to: (a) repair damage resulting from removal of any of Tenant's property, furnishings or Tenant Alterations; (b) close floor, ceiling and roof openings caused by such removal; and (c) restore the Premises to a tenantable condition as reasonably determined by Landlord. If any of the Tenant Alterations which were installed by Tenant involved the lowering of ceilings, raising of floors or the installation of specialized wall or floor coverings or lights, then Tenant shall also be liable for the cost to return such surfaces to their condition prior to the commencement of this Lease. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above, Landlord may (but shall not be obligated to), at Tenant's expense, remove any of such property and store, sell or otherwise deal

with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section.

12.2 LANDLORD'S RIGHTS

All property which may be removed from the Premises by Landlord shall be conclusively presumed to have been abandoned by Tenant and Landlord may deal with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section. Tenant shall also reimburse Landlord for all costs and expenses incurred by Landlord in removing any of Tenant Alterations and in restoring the Premises to the condition required by this Lease at the Termination Date.

ARTICLE 13

HOLDING OVER

In the event that Tenant holds over in possession of the Premises after the Termination Date, Tenant shall pay Landlord 125% of the monthly Rent payable for the month immediately preceding the holding over (including increases for Rent Adjustments which Landlord may reasonably estimate. Tenant shall also pay all damages sustained by Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord, and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance.

ARTICLE 14

DAMAGE BY FIRE OR OTHER CASUALTY

14.1 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenantable for the Permitted Use, Landlord shall, with reasonable promptness after the occurrence of such damage, cause a licensed architect or contractor to estimate the length of time that will be required to substantially complete the repair and restoration and shall by notice advise Tenant of such estimate ("Landlord's Notice"). If Landlord's Notice indicates that the amount of time required to substantially complete such repair and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant if all or a substantial portion of the Premises or the Building is rendered untenantable, shall have the right to terminate this Lease as of the date of such damage upon giving written notice to the other at any time within twenty (20) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination.

(b) Unless this Lease is terminated as provided in the preceding subparagraph, Landlord shall proceed with reasonable promptness to repair and restore the Premises to its condition as existed prior to such casualty, subject to reasonable

delays for insurance adjustments and Force Majeure delays, and also subject to zoning Laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration. Notwithstanding the foregoing to the contrary, if the repair and restoration is not completed within two hundred seventy (270) days from the date such damage occurred, then Tenant shall have the right to terminate this Lease as of the two hundred seventy- first (271st) day after the date such damage occurred by providing twenty (20) days prior written notice to Landlord.

(c) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damages to the Premises, except for those proceeds of Tenant's insurance of its own personal property and equipment which would be removable by Tenant at the Termination Date. All such insurance proceeds shall be payable to Landlord whether or not the Premises are to be repaired and restored, provided, however, if this Lease is not terminated and the parties proceed to repair and restore Tenant Additions at Tenant's cost, to the extent Landlord received proceeds of Tenant's insurance covering Tenant Additions, such proceeds shall be applied to reimburse Tenant for its cost of repairing and restoring Tenant Additions.

(d) Notwithstanding anything to the contrary herein set forth: (i) Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Additions or to expend for any repair or restoration of the Premises or Building amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the act or neglect of Tenant, its agent or employees. Whether or not the Lease is terminated pursuant to this Article Fourteen, in no event shall Tenant be entitled to any compensation or damages for loss of the use of the whole or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding or restoration of the Premises or the Building or access thereto.

(e) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article Nine hereof.

14.2 INSUBSTANTIAL UNTENANTABILITY

If the Premises or the Building is damaged by a casualty but neither is rendered substantially untenantable for the Permitted Use and Landlord's Notice indicates that the time to substantially complete the repair or restoration will not exceed one hundred eighty (180) days from the date such damage occurred, then Landlord shall proceed to repair and restore the Premises or the Building other than Tenant Additions, with reasonable promptness; provided, however, if such damage is to the Premises and occurs during the last twelve (12) months of the Term and the estimated time to complete repairs exceeds thirty-three and one-third percent

(33 1/3%) of the then remaining Term, or occurs during the last six (6) months of the Term (regardless of the estimated repair time), then either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within twenty (20) days after the date of such casualty. Notwithstanding the aforesaid, Landlord's obligation to repair shall be limited in accordance with the provisions of Section 14.1 above.

14.3 RENT ABATEMENT

Except for the negligence or willful act of Tenant or its agents, employees, contractors or invitees, if all or any part of the Premises are rendered untenantable by fire or other casualty and this Lease is not terminated, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenantable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform, provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenantable during such period.

14.4 WAIVER OF STATUTORY REMEDIES

The provisions of this Lease, including this Article Fourteen, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, the Premises or the Property or any part of either, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or the Property or any part of either, and are hereby waived.

ARTICLE 15

EMINENT DOMAIN

15.1 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) and is thereby rendered untenantable, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Notwithstanding anything to the contrary herein set forth, in the event the taking is temporary (for less than the remaining Term of the Lease), Landlord may elect either (i) to terminate this Lease or (ii) permit Tenant to receive the entire award attributable to the Premises in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

15.2 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, the Lease shall be amended to reduce or increase, as the case may be, the Monthly

Base Rent and Tenant's Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Additions) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days prior written notice to Tenant.

15.3 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, to Tenant Additions paid for by Tenant without any credit or allowance from Landlord so long as there is no diminution of Landlord's award as a result.

ARTICLE 16

INSURANCE

16.1 TENANT'S INSURANCE

Tenant, at Tenant's expense, agrees to maintain in force, with a company or companies acceptable to Landlord, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on a claims-made basis against all claims for personal injury, bodily injury, death and property damage, including broad form contractual liability coverage, and such insurance shall be for such limits that are reasonably required by Landlord from time to time but not less than a combined single limit of One Million and No/100 Dollars ($1,000,000.00), plus an umbrella policy of not less than Four Million and No/100 Dollars ($4,000,000.00), have a retroactive date that is the same as the Commencement Date and be written with an insurance company having an A.M. Best Rating of "A-VII" or greater; (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "Special Perils" property insurance in an amount adequate to cover the full replacement cost of all Tenant Additions, equipment, installations, fixtures and contents of the Premises in the event of loss; (d) in the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles; and (e) such other insurance or coverages as Landlord reasonably requires provided such other insurance or coverages are

consistent with the requirements of landlords of buildings similar to the Building in the San Francisco Bay Area.

16.2 FORM OF POLICIES

The Commercial General Liability Insurance and umbrella policies referred to in 16.1 shall satisfy the following requirements. Each policy shall (i) name Landlord and the Indemnitees as additional insureds (except Workers' Compensation and Employers' Liability Insurance), (ii) be issued by one or more responsible insurance companies licensed to do business in the State of California reasonably satisfactory to Landlord, (iii) where applicable, provide for deductible amounts satisfactory to Landlord and not permit co-insurance, (iv) shall provide that such insurance may not be canceled without thirty (30) days' prior written notice to the Landlord, and (v) each policy of "Special Perils" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance and at Landlord's request, copies of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and not less than ten (10) days prior to the expiration date of each policy.

16.3 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts not less than the greater of eighty (80%) percent of the then full replacement cost (without depreciation) of the Building (above foundations and excluding Tenant Additions) or an amount sufficient to prevent Landlord from becoming a co-insurer under the terms of the applicable policies, against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Building on an occurrence basis against all claims for personal injury, bodily injury, death, and property damage. Such insurance shall be for a combined single limit of not less than Three Million and No/100 Dollars ($3,000,000.00). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

16.4 WAIVER OF SUBROGATION

(a) Landlord agrees that, if obtainable at no, or minimal, additional cost, and so long as the same is permitted under the laws of the State of California, it will include in its "Special Perils" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be

invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, if obtainable at no, or minimal, additional cost, and so long as the same is permitted under the laws of the State of California, in its "Special Perils" insurance policy or policies on Tenant Additions, whether or not removable, and on Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this Lease appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord and/or any tenant of space in the Building with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. If Landlord shall be named as an additional insured in accordance with the foregoing, Landlord agrees to endorse promptly to the order of Tenant, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy or representing any other payment growing out of or connected with said policies, and Landlord does hereby irrevocably waive any and all rights in and to such proceeds and payments.

(c) Provided that Landlord's right of full recovery under its policy or policies aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Real Property and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees and against every other tenant of the Real Property who shall have executed a similar waiver as set forth in this Section 16.4 (c) for loss or damage to Tenant Additions, whether or not removable, and to Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent the same is coverable by Tenant's insurance required under this Lease, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy that would affect such clauses or naming.

16.5 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.

ARTICLE 17

WAIVER OF CLAIMS AND INDEMNITY

17.1 WAIVER OF CLAIMS

To the extent permitted by Law, Tenant releases the Indemnitees from, and waives all claims for, damage to person or property sustained by the Tenant or any occupant of the Premises or the Property resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Property or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Property, or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Property or of any other person, including Landlord's agents and servants, except to the extent caused by the gross negligence or willful and wrongful act of any of the Indemnitees. To the extent permitted by Law, Tenant hereby waives any consequential damages, compensation or claims for inconvenience or loss of business, rents, or profits as a result of such injury or damage, whether or not caused by the gross negligence or willful and wrongful act of any of the Indemnitees. If any such damage, whether to the Premises or the Property or any part of either, or whether to Landlord or to other tenants in the Property, results from any act or neglect of Tenant, its employees, servants, agents, contractors, invitees or customers, Tenant shall be liable therefor and Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, as payment of additional Rent hereunder, reimburse Landlord within ten (10) days of demand for the total cost of such repairs, in excess of amounts, if any, paid to Landlord under insurance covering such damages.

17.2 INDEMNITY BY TENANT

To the extent permitted by Law, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including attorneys' fees and expenses for the defense thereof, arising from Tenant's occupancy of the Premises performed by Tenant, from the undertaking of any Tenant Alterations or repairs to the Premises, from the conduct of Tenant's business on the Premises, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any willful act or negligence of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Tenant and reasonably acceptable to Landlord. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not operate to relieve Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Indemnitees. Further, the foregoing

indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "Special Perils" property insurance.

17.3 INDEMNITY BY LANDLORD

To the extent permitted by Law, Landlord hereby indemnifies, and agrees to protect, defend and hold Tenant harmless from and against any and all liability, loss, suits, claims, actions, costs and expense, including without limitation, any attorney's fees, arising from any contamination of the Premises or the Property (including the underlying land and groundwater) by any Hazardous Materials, where such contamination was not caused by Tenant. The provision of this Section 17.3 shall survive the expiration or earlier termination of the Term. Nothing in this Section 17.3 shall be deemed to modify Tenant's obligations under Section 4.1 of the Lease.

ARTICLE 18

RULES AND REGULATIONS

18.1 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the rules and regulations listed on Exhibit C attached hereto and with all reasonable modifications and additions thereto which Landlord may make from time to time.

18.2 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce the rules and regulations as set forth on Exhibit C or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall use reasonable efforts to enforce the rules and regulations of the Property in a uniform and non-discriminatory manner.

ARTICLE 19

LANDLORD'S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for offset or abatement of Rent: (1) to change the Building's name or street address upon thirty (30) days' prior written notice to Tenant; (2) to install, affix and maintain all signs on the exterior and/or interior of the Building; (3) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises; (4) upon reasonable notice to Tenant, to display the Premises to prospective purchasers and lenders at reasonable hours at any time during the Term and to prospective tenants at reasonable hours during the last twelve (12)

months of the Term; (5) to grant to any party the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose permitted hereunder; (6) to change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, washrooms or public portions of the Building, and to close entrances, doors, corridors, elevators or other facilities, provided that such action shall not materially and adversely interfere with Tenant's access to the Premises or the Building; (7) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (8) to close the Building after Standard Operating Hours, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such regulations as Landlord prescribes for security purposes.

ARTICLE 20

ESTOPPEL CERTIFICATE

20.1 IN GENERAL

Within ten (10) days after request therefor by Landlord, Tenant, Mortgagee or any prospective mortgagee or owner, Tenant or Landlord agrees as directed in such request to execute an Estoppel Certificate in recordable form, binding upon Tenant or Landlord , certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises if that is the case; (iv) that to the knowledge of the party completing the Estoppel Certificate, Landlord or Tenant (as applicable) is not in default under this Lease, or, if a default has occurred, the nature thereof in detail; (v) (if Tenant is completing Estoppel Certificate) that Tenant , to its knowledge, has no offsets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any offsets or defenses, a full and complete explanation thereof); (vi) that the Premises have been completed in accordance with the terms and provisions hereof or the Workletter, that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto; (vii) (if Tenant is completing Estoppel Certificate) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the reasonable provisions thereof; (viii) (if Tenant is completing Estoppel Certificate) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord; and (ix) to any other information reasonably requested. Landlord or Tenant shall pay all reasonable attorneys' fees and expenses incurred by the requesting party with respect to executing the Estoppel Certificate.

20.2 ENFORCEMENT

In the event that Tenant fails to deliver an Estoppel Certificate, then such failure shall be a Default for which there shall be no cure or grace period. In addition to any other remedy available to Landlord, Landlord may impose a charge equal to $500.00 for each day that Tenant fails to deliver an Estoppel Certificate

ARTICLE 21

RELOCATION OF TENANT

[INTENTIONALLY OMITTED]

ARTICLE 22

REAL ESTATE BROKERS

Tenant represents that Tenant has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises to Tenant. Tenant hereby agrees to indemnify, protect, defend and hold Landlord and the Indemnitees, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation. Landlord agrees to pay any commission to which the brokers listed in Section 1.1 are entitled in connection with this Lease pursuant to Landlord's written agreement with such broker.

ARTICLE 23

MORTGAGEE PROTECTION

23.1 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, extensions, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, and all amendments, extensions, renewals, replacements and modifications of such mortgage or trust deed and/or the obligation secured thereby, unless such ground lease or ground lessor, or mortgage, trust deed or Mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage or trust deed. If any such mortgage or trust deed is foreclosed (including any sale of the Real Property pursuant to a power of sale), or if any such lease is terminated, upon request of the Mortgagee or ground lessor, as the case may be, Tenant shall attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, defense or damages arising out of a default of any obligations of any preceding Landlord; or (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor subsequent to the date of such Mortgagee's or ground lessor's security interest; or (iv) liable for any security deposits not actually received in cash by such purchaser or ground lessor. This subordination shall be self-operative and no further certificate or instrument of subordination need be required by any such Mortgagee or ground lessor. In confirmation of such subordination, however, Tenant shall execute promptly any reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request. Tenant hereby

constitutes Landlord as Tenant's attorney-in-fact to execute such certificate or instrument for and on behalf of Tenant upon Tenant's failure to do so within fifteen (15) days of a request to do so. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attornment provided for herein.

Notwithstanding the foregoing, upon written request by Tenant, Landlord will use reasonable efforts to obtain a non-disturbance, subordination and attornment agreement from Landlord's then current Mortgagee on such Mortgagee's then current standard form of agreement. "Reasonable efforts" of Landlord shall not require Landlord to incur any cost, expense or liability to obtain such agreement, it being agreed that Tenant shall be responsible for any fee or review costs charged by the Mortgagee. Upon request of Landlord, Tenant will execute the Mortgagee's form of non-disturbance, subordination and attornment agreement and return the same to Landlord for execution by the Mortgagee. Landlord's failure to obtain a non-disturbance, subordination and attornment agreement for Tenant shall have no effect on the rights, obligations and liabilities of Landlord and Tenant or be considered to be a default by Landlord hereunder.

23.2 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail, a copy of any notice of default served upon the Landlord by Tenant, provided that prior to such notice Tenant has received notice (by way of service on Tenant of a copy of an assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within that time, then such additional notice time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings or other proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of default. This Lease may not be modified or amended so as to reduce the Rent or shorten the Term, or so as to adversely affect in any other respect to any material extent the rights of the Landlord, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the ground lessor or the Mortgagee.

ARTICLE 24

NOTICES

All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or mailed by first class, registered or certified United States mail, return receipt requested, postage prepaid. All notices, demands or requests to be sent

pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed in Sections 1.1. Notices, demands or requests sent by mail or overnight courier service as described above shall be effective upon deposit in the mail or with such courier service. However, the time period in which a response to any such notice, demand or request must be given shall commence to run from (i) in the case of delivery by mail, the date of receipt on the return receipt of the notice, demand or request by the addressee thereof, or (ii) in the case of delivery by Federal Express or other overnight courier service, the date of acceptance of delivery by an employee, officer, director or partner of Landlord or Tenant. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, as indicated by advice from Federal Express or other overnight courier service or by mail return receipt, shall be deemed to be receipt of notice, demand or request sent. Notices may also be served by personal service upon any officer, director or partner of Landlord or Tenant, and shall be effective upon such service. By giving to the other party at least thirty (30) days written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

ARTICLE 25

MISCELLANEOUS

25.1 LATE CHARGES

(a) All payments required hereunder (other than the Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits, which shall be due as hereinbefore provided) to Landlord shall be paid within ten (10) business days after Landlord's demand therefor. All such amounts (including Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits) not paid when due shall bear interest from the date due until the date paid at the Default Rate in effect on the date such payment was due.

(b) In the event Tenant is more than five (5) days late in paying any installment of Rent due under this Lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent installment of Rent. The parties agree that (i) such delinquency will cause Landlord to incur costs and expenses not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Landlord in processing each delinquent payment of rent by Tenant, (b) the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Landlord for each delinquent payment in addition to all Rent otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for in subparagraph (a) above are distinct and separate from one another in that the payment of interest is to compensate Landlord for its inability to use the money improperly withheld by Tenant, while the payment of late charges is to compensate Landlord for its additional administrative expenses in handling and processing delinquent payments.

(c) Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Tenant under this Lease, nor shall the foregoing provisions of this Article or any such payments prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay Rent when due, including the right to terminate this Lease.

25.2 NO JURY TRIAL; VENUE; JURISDICTION

Each party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury, and hereby further waives any objection to venue in the County in which the Property is located, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any statute, emergency or otherwise, whether any of the foregoing is based on this Lease or on tort law. No party will seek to consolidate any such action in which a jury has been waived with any other action in which a jury trial cannot or has not been waived. It is the intention of the parties that these provisions shall be subject to no exceptions. By execution of this Lease the parties agree that this provision may be filed by any party hereto with the clerk or judge before whom any action is instituted, which filing shall constitute the written consent to a waiver of jury trial pursuant to and in accordance with Section 631 of the California Code of Civil Procedure. No party has in any way agreed with or represented to any other party that the provisions of this Section will not be fully enforced in all instances. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

25.3 OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of the Lease to Tenant does not constitute a reservation of or option for the Premises, but when executed by Tenant and delivered to Landlord, the Lease shall constitute an irrevocable offer by Tenant in effect for fifteen (15) days to lease the Premises on the terms and conditions herein contained.

25.4 AUTHORITY

Each party represents and warrants to the other party that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Either party may request that the other party provide the requesting party with evidence of authority.

25.5 ENTIRE AGREEMENT

This Lease, plus the Exhibits, the Rider (if any) and the Addendum (if any), attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written, and no other representations or statements,

either oral or written, on which Tenant has relied. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

25.6 MODIFICATION OF LEASE FOR BENEFIT OF MORTGAGEE

If Mortgagee of Landlord requires a modification of this Lease which shall not result in any increased cost or expense to Tenant or in any other substantial and adverse change in the rights and obligations of Tenant hereunder, then Tenant agrees that the Lease may be so modified.

25.7 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Lease shall only be enforced against Landlord's equity interest in the Property and in no event against any other assets of the Landlord, or Landlord's officers or directors or partners, and that any liability of Landlord with respect to this Lease shall be so limited and Tenant shall not be entitled to any judgment in excess of such amount.

25.8 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt or acceptance of payment from anyone other than Tenant, including an assignee of Tenant, is not a waiver of any breach of Article Ten, and Landlord may accept such payment on account of the amount due without prejudice to Landlord's right to pursue any remedies available to Landlord.

25.9 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, provided such transferee has expressly assumed such obligations of Landlord. Landlord agrees to transfer any Security Deposit held hereunder; provided, however, Landlord shall have no liability or obligation to Tenant if such buyer or transferee breaches its obligation to credit Tenant for such transferred Security Deposit. Landlord shall have the right to assign this Lease to an entity comprised of the principals of Landlord or affiliates of such entities. Upon such assignment and assumption of the obligations of Landlord hereunder, Landlord shall be entirely freed and relieved of all obligations hereunder after the date of transfer.

25.10 BINDING EFFECT

Subject to the provisions of Article Ten, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

25.11 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

25.12 TIME; APPLICABLE LAW; CONSTRUCTION

Time is of the essence of this Lease and each and all of its provisions. This Lease shall be construed in accordance with the Laws of the State of California. If more than one person signs this Lease as Tenant, the obligations hereunder imposed shall be joint and several. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by Law. Wherever the term "including" or "includes" is used in this Lease, it shall have the same meaning as if followed by the phrase "but not limited to". The language in all parts of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

25.13 ABANDONMENT

In the event Tenant abandons the Premises but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (i) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises and (iii) during the last six (6) months of the Term, have the right to prepare the Premises for occupancy by another tenant upon the end of the Term. Tenant expressly acknowledges that in the absence of written notice pursuant to Section 11.2(b) or pursuant to California Civil Code Section 1951.3 terminating Tenant's right to possession, none of the foregoing acts of Landlord or any other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, and the Lease shall continue in effect.

25.14 LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES

If Tenant fails timely to perform any of its duties under this Lease or the Workletter, Landlord shall have the right (but not the obligation), to perform such duty on behalf and at the expense of Tenant without prior notice to Tenant, and all sums expended or expenses incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable upon demand by Landlord.

25.15 SECURITY SYSTEM

Landlord shall not be obligated to provide or maintain any security patrol or security system. Landlord shall not be responsible for the quality of any such patrol or system which may be provided hereunder or for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such patrol or system.

25.16 NO LIGHT, AIR OR VIEW EASEMENTS

Any diminution or shutting off of light, air or view by any structure which may be erected on lands of or adjacent to the Property shall in no way affect this Lease or impose any liability on Landlord.

25.17 CONSENTS

Wherever the consent, approval, judgment or determination of Landlord or Tenant is required or permitted under this Lease, such consent, approval, judgment or determination shall not be unreasonably withheld, conditioned or delayed, unless the Lease specifically otherwise specifies the standards under which Landlord or Tenant may withhold its consent.

25.18 RECORDATION

Neither this Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Tenant. Any such unauthorized recording shall be a Default for which there shall be no cure or grace period. Tenant agrees to execute and acknowledge, at the request of Landlord, a memorandum of this Lease, in recordable form.

25.19 SURVIVAL

The waivers of the right of jury trial, the other waivers of claims or rights, the releases and the obligations of Tenant under this Lease to indemnify, protect, defend and hold harmless Landlord and/or Indemnitees shall survive the expiration or termination of this Lease, and so shall all other obligations or agreements which by their terms survive expiration or termination of the Lease.

25.20 RIDERS

All Riders attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Section 1.1 hereof.

TENANT:	LANDLORD:
DYNAVAX TECHNOLOGIES CORPORATION, a Delaware corporation	2929 SEVENTH STREET, L.L.C., a California limited liability company
By: /s/ Dino Dina	By: /s/ Richard K. Robbins
Dino Dina, M.D. President and Chief Executive Officer	Richard K. Robbins Managing Member

EXHIBIT A

PLAN OF PREMISES

A-1

EXHIBIT B

WORKLETTER AGREEMENT

This Workletter Agreement ("Workletter") is attached to and a part of a certain Lease herewith by 2929 Seventh Street, L.L.C., a California limited liability company, as Landlord, and Dynavax Technologies Corporation, a Delaware corporation, as Tenant, for the Premises as described therein (the "Lease").

1. Capitalized terms used in this Work Letter shall have the same meanings set forth in the Lease except as otherwise specified herein and except for terms capitalized in the ordinary course of punctuation.

2. Landlord shall perform improvements to the Premises in accordance with the following work list (the "Worklist") using Building standard methods, materials and finishes (except as otherwise specified). The improvements to be performed in accordance with the Worklist are hereinafter referred to as the "Landlord Work" and shall be performed at Landlord's sole cost and expense. Landlord shall enter into direct contracts for the Landlord Work with subcontractors selected by Landlord.

WORK LIST

A. Replace the chain link fence at the top of the west stairs between the 2 suites comprising the Premises (the "West Stairs") with a sheetrock wall of appropriate height to meet the requirements of the Uniform Building Code.

B. Replace the wooden handrail on the West Stairs with a more substantial handrail of a design and material that is reasonably acceptable to both Landlord and Tenant.

3. All other work and upgrades, subject to Landlord's approval, shall be at Tenant's sole cost and expense (subject to the terms of Section 9.1 of the Lease), plus any applicable state sales or use tax thereon. Tenant shall be responsible for any Tenant Delay in completion of the Premises resulting from any such other work and upgrades requested or performed by Tenant.

4. Other than as specified above, Landlord's supervision or performance of any work for or on behalf of Tenant shall not be deemed to be a representation by Landlord that such work complies with applicable insurance requirements, building codes, ordinances, laws or regulations or that the improvements constructed will be adequate for Tenant's use.

EXHIBIT C

RULES AND REGULATIONS

1. No sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors or halls shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and if the Premises are situated on the ground floor of the Property, Tenant shall further, at Tenant's own expense, keep the sidewalks and curb directly in front of the Premises clean and free from rubbish.

2. No awning or other Projection shall be attached to the outside walls or windows of the Property without the prior written consent of Landlord. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, Projections, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Landlord, and shall be attached in the manner approved by Landlord. All lighting fixtures hung in offices or spaces along the perimeter of the Premises must be of a quality, type, design, bulb color, size and general appearance approved by Landlord.

3. No sign, advertisement, notice, lettering, decoration or other thing shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Property, without the prior written consent of Landlord. In the event of the violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

4. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Property shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the window sills or in the public portions of the Property.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Property, nor placed in public portions thereof without the prior written consent of Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant to the extent that Tenant or Tenant's agents, servants, employees, contractors, visitors or licensees shall have caused the same.

7. Tenant shall not mark, paint, drill into or in any way deface any part of the Premises or the Property. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

8. No animal or bird of any kind shall be brought into or kept in or about the Premises or the Property, except seeing-eye dogs, other seeing-eye animals or animals used in connection with Tenant's laboratory use of the Premises.

9. Prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and extinguish all lights.

10. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Property, or neighboring buildings or premises, or those having business with them. Tenant shall not throw anything out of the doors, windows or skylights or down the passageways.

11. Neither Tenant nor any of Tenant's agents, servants, employees, contractors, visitors or licensees shall at any time bring or keep upon the Premises any flammable, combustible or explosive fluid, chemical or substance.

12. No additional locks, bolts or mail slots of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any change be made in existing locks or the mechanism thereof. Tenant must, upon the termination of the tenancy, restore to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.

13. All removals, or the carrying in or out of any safes, freight, furniture, construction material, bulky matter or heavy equipment of any description must take place during the hours which Landlord or its agent may determine from time to time. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon two-inch thick plank strips to distribute the weight. The moving of safes, freight, furniture, fixtures, bulky matter or heavy equipment of any kind must be made upon previous notice to the Building Manager and in a manner and at times prescribed by him, and the persons employed by Tenant for such work are subject to Landlord's prior approval. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Property and to exclude from the Property all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

14. Tenant shall not purchase spring water, towels, janitorial or maintenance or other like service from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with security and proper operation of the Property.

15. Landlord shall have the right to prohibit any advertising or business conducted by Tenant referring to the Property which, in Landlord's opinion, tends to impair the reputation of the Property or its desirability as a first class building for offices and/or commercial services and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.

16. Tenant's contractors shall, while in the Premises or elsewhere in the Property, be subject to and under the control and direction of the Building Manager (but not as agent or servant of said Building Manager or of Landlord).

17. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from

time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

18. The requirements of Tenant will be attended to only upon application at the office of the Property. Property personnel shall not perform any work or do anything outside of their regular duties unless under special instructions from the office of the Landlord.

19. Canvassing, soliciting and peddling in the Property are prohibited and Tenant shall cooperate to prevent the same.

20. No water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord.

21. There shall not be used in any premises, or in the public halls, plaza areas, lobbies, or elsewhere in the Property, either by Tenant or by Tenant's contractors or others, in the delivery or receipt of merchandise, any hand trucks or dollies, except those equipped with rubber tires and sideguards.

22. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in any driveways, service entrances, or areas posted "No Parking" and shall comply with any other parking restrictions imposed by Landlord from time to time.

23. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

24. Tenant shall not use the name of the Property for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Property in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.

25. Tenant shall not prepare any food nor do any cooking, operate or conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, except that food and beverage preparation by Tenant's employees using microwave ovens or coffee makers shall be permitted provided no odors of cooking or other processes emanate from the Premises without the prior approval of Landlord. Tenant shall not install or permit the installation or use of any vending machine or permit the delivery of any food or beverage to the Premises except by such persons and in such manner as are approved in advance in writing by Landlord.

26. The Premises shall not be used as an employment agency, a public stenographer or typist, a labor union office, a physician's or dentist's office, a dance or music studio, a school, a beauty salon, or barber shop, the business of photographic, multilith or multigraph reproductions or offset printing (not precluding using any part of the Premises for photographic, multilith or multigraph reproductions solely in connection with Tenant's own business and/or activities), a restaurant or bar, an establishment for the sale of confectionery, soda, beverages,

sandwiches, ice cream or baked goods, an establishment for preparing, dispensing or consumption of food or beverages of any kind in any manner whatsoever, or news or cigar stand, or a radio, television or recording studio, theatre or exhibition hall, or manufacturing, or the storage or sale of merchandise, goods, services or property of any kind at wholesale, retail or auction, or for lodging, sleeping or for any immoral purposes.

27. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not install any machine or equipment which causes noise, heat, cold or vibration to be transmitted to the structure of the building in which the Premises are located without Landlord's prior written consent, which consent may be conditioned on such terms as Landlord may require. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry and which is allowed by Law.

28. Tenant shall not bring any Hazardous Materials onto the Premises except for those that are in general commercial and laboratory use and are incidental to Tenant's business operations and only in quantities suitable for immediate use.

29. Tenant shall not store any vehicle within the parking area. Tenant's parking rights are limited to the use of parking spaces for short-term parking, of up to twenty-four (24) hours, of vehicles utilized in the normal and regular daily travel to and from the Property. Tenants who wish to park a vehicle for longer than a 24-hour period shall notify the Building Manager for the Property and consent to such long-term parking may be granted for periods up to two (2) weeks. Any motor vehicles parked without the prior written consent of the Building Manager for the Property for longer than a 24-hour period shall be deemed stored in violation of this rule and regulation and shall be towed away and stored at the owner's expense or disposed of as provided by Law.

30. Smoking is prohibited in the Premises, the Building and all enclosed Common Areas of the Property, including all lobbies, all hallways, all elevators and all lavatories.

31. In the event of any conflict between these Rules and Regulations and any other Lease provision, such other Lease provision shall control.

EXHIBIT D

LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF_____

DATED: _____, 20__

BENEFICIARY:
2929 SEVENTH STREET, L.L.C.
C/O WAREHAM PROPERTY GROUP
1120 NYE STREET, SUITE 400
SAN RAFAEL, CALIFORNIA 94901

AS "LANDLORD"

APPLICANT:
DYNAVAX TECHNOLOGIES CORPORATION
2929 SEVENTH STREET
BERKELEY, CALIFORNIA 94710

ATTENTION: MR. WILLIAM J. DAWSON

AS "TENANT"

AMOUNT: US$76,953.75 (SEVENTY-SIX THOUSAND NINE HUNDRED FIFTY-THREE AND 75/100 U.S. DOLLARS)

EXPIRATION DATE: _____ ___, _____ [THIS IS THE INITIAL EXPIRATION DATE. CLIENT MUST PROVIDE US THIS DATE PRIOR TO ISSUANCE OF THE LC]

LOCATION: SANTA CLARA, CALIFORNIA

LADIES AND GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF_____ IN YOUR FAVOR. THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT PAYMENT WITH OURSELVES ONLY AGAINST PRESENTATION AT THIS OFFICE OF THE FOLLOWING DOCUMENTS:

1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENT (S), IF ANY.

2. YOUR SIGHT DRAFT DRAWN ON US IN THE FORM ATTACHED HERETO AS EXHIBIT "A".

3. A DATED CERTIFICATION PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER OR REPRESENTATIVE OF THE BENEFICIARY, FOLLOWED BY HIS/HER PRINTED NAME AND DESIGNATED TITLE, STATING EITHER OF THE FOLLOWING, WITH INSTRUCTIONS IN BRACKETS THEREIN COMPLIED WITH:

(A.)"AN EVENT OF DEFAULT (AS DEFINED IN THE LEASE) HAS OCCURRED BY [INSERT NAME] AS TENANT UNDER THAT CERTAIN LEASE AGREEMENT BY AND BETWEEN TENANT, AND BENEFICIARY, AS LANDLORD AND THE TERMS AND CONDITIONS OF THE LEASE AUTHORIZE LANDLORD TO NOW DRAW DOWN ON THE LETTER OF CREDIT."

OR

(B.)"WITHIN THIRTY (30) DAYS PRIOR TO THE EXPIRY DATE OF THIS LETTER OF CREDIT BENEFICIARY HAS NOT RECEIVED AN EXTENSION AT LEAST FOR ONE YEAR TO THE EXISTING LETTER OF CREDIT OR A REPLACEMENT LETTER OF CREDIT SATISFACTORY TO THE BENEFICIARY."

WE AGREE THAT WE SHALL HAVE NO DUTY OR RIGHT TO INQUIRE AS TO THE BASIS UPON WHICH LANDLORD HAS DETERMINED THAT THE AMOUNT IS DUE AND OWING OR HAS DETERMINED TO PRESENT TO US ANY DRAFT UNDER THIS LETTER OF CREDIT, AND THE PRESENTATION OF SUCH DRAFT PRESENTED IN STRICT COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, SHALL AUTOMATICALLY RESULT IN PAYMENT TO LANDLORD.

PARTIAL DRAWS ARE ALLOWED.

THIS LETTER OF CREDIT MUST ACCOMPANY ANY DRAWINGS HEREUNDER FOR ENDORSEMENT OF THE DRAWING AMOUNT AND WILL BE RETURNED TO THE BENEFICIARY UNLESS IT IS FULLY UTILIZED.

THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY EXTENDED FOR AN ADDITIONAL PERIOD OF ONE YEAR, WITHOUT AMENDMENT, FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE UNLESS AT LEAST THIRTY (30) DAYS PRIOR TO THE THEN CURRENT EXPIRATION DATE WE NOTIFY YOU BY REGISTERED MAIL/OVERNIGHT COURIER SERVICE AT THE ABOVE ADDRESS THAT THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE.

THIS LETTER OF CREDIT MAY ONLY BE TRANSFERRED IN ITS ENTIRETY BY THE ISSUING BANK UPON OUR RECEIPT OF THE ATTACHED EXHIBIT "B" DULY COMPLETED AND EXECUTED BY THE BENEFICIARY AND ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENT(S), IF ANY. APPLICANT SHALL PAY OUR TRANSFER FEE OF -1/4 OF 1% OF THE TRANSFER AMOUNT (MINIMUM US$250.00) UNDER THIS LETTER OF CREDIT. ANY REQUEST FOR TRANSFER WILL BE EFFECTED BY US SUBJECT TO THE ABOVE CONDITIONS. HOWEVER, ANY REQUEST FOR TRANSFER IS NOT CONTINGENT UPON APPLICANT'S ABILITY TO PAY OUR TRANSFER FEE.

ANY TRANSFER OF THIS LETTER OF CREDIT MAY NOT CHANGE THE PLACE OR DATE OF EXPIRATION OF THE LETTER OF CREDIT FROM OUR ABOVE SPECIFIED OFFICE. EACH TRANSFER SHALL BE EVIDENCED BY OUR ENDORSEMENT ON THE REVERSE OF THE LETTER OF CREDIT AND WE SHALL FORWARD THE ORIGINAL OF THE LETTER OF CREDIT SO ENDORSED TO THE TRANSFEREE.

DRAFT(S) AND DOCUMENTS MUST INDICATE THE NUMBER AND DATE OF THIS LETTER OF CREDIT.

DOCUMENTS MUST BE DELIVERED TO US DURING REGULAR BUSINESS HOURS ON A BUSINESS DAY OR FORWARDED TO US BY OVERNIGHT DELIVERY SERVICE TO: SILICON VALLEY BANK, 3003 TASMAN DRIVE, 2ND FLOOR, MAIL SORT HF210, SANTA CLARA, CALIFORNIA 95054, ATTENTION: INTERNATIONAL DIVISION - STANDBY LETTER OF CREDIT NEGOTIATION DEPARTMENT (THE "BANK'S OFFICE).

AS USED HEREIN, THE TERM "BUSINESS DAY" MEANS A DAY ON WHICH WE ARE OPEN AT OUR ABOVE ADDRESS IN SANTA CLARA, CALIFORNIA TO CONDUCT OUR LETTER OF CREDIT BUSINESS. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE UCP (AS HEREINAFTER DEFINED), IF THE EXPIRATION DATE OR THE FINAL EXPIRATION DATE IS NOT A BUSINESS DAY THEN SUCH DATE SHALL BE AUTOMATICALLY EXTENDED TO THE NEXT SUCCEEDING DATE WHICH IS A BUSINESS DAY.

WE HEREBY ENGAGE WITH YOU THAT DRAFT(S) DRAWN AND/OR DOCUMENTS PRESENTED UNDER AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT

SHALL BE DULY HONORED UPON PRESENTATION TO SILICON VALLEY BANK, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500 (THE "UCP").

SILICON VALLEY BANK,

_____ _____

AUTHORIZED SIGNATURE AUTHORIZED SIGNATURE

EXHIBIT "A"

SIGHT DRAFT/BILL OF EXCHANGE

DATE: _____ REF. NO. _____

AT SIGHT OF THIS BILL OF EXCHANGE

PAY TO THE ORDER OF _____ US$_____
US DOLLARS _____

"DRAWN UNDER SILICON VALLEY BANK, SANTA CLARA, CALIFORNIA, IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER NO. SVBSF_____ DATED _____ __, 2003"

TO: SILICON VALLEY BANK
3003 TASMAN DRIVE
SANTA CLARA, CA 95054

_____
[INSERT NAME OF BENEFICIARY]

_____
AUTHORIZED SIGNATURE

GUIDELINES TO PREPARE THE SIGHT DRAFT OR BILL OF EXCHANGE:

1. DATE INSERT ISSUANCE DATE OF DRAFT OR BILL OF EXCHANGE.

2. REF. NO. INSERT YOUR REFERENCE NUMBER IF ANY.

3. PAY TO THE ORDER OF: INSERT NAME OF BENEFICIARY

4. US$ INSERT AMOUNT OF DRAWING IN NUMERALS/FIGURES.

5. USDOLLARS INSERT AMOUNT OF DRAWING IN WORDS.

6. LETTER OF CREDIT NUMBER INSERT THE LAST DIGITS OF OUR STANDBY L/C NUMBER THAT PERTAINS TO THE DRAWING.

7. DATED INSERT THE ISSUANCE DATE OF OUR STANDBY L/C.

NOTE: BENEFICIARY SHOULD ENDORSE THE BACK OF THE SIGHT DRAFT OR BILL OF EXCHANGE AS YOU WOULD A CHECK.

IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS SIGHT DRAFT OR BILL OF EXCHANGE, PLEASE CALL OUR L/C PAYMENT SECTION AND ASK FOR: ALICE DALUZ AT (408) 654-7120 OR EFRAIN TUVILLA AT (408) 654-6349.

EXHIBIT "B"

DATE:

TO: SILICON VALLEY BANK
3003 TASMAN DRIVE
SANTA CLARA, CA 95054

ATTENTION: INTERNATIONAL DIVISION

RE: SILICON VALLEY BANK, SANTA CLARA, CALIFORNIA
IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF_____
DATED _____ ___, 2003 AMOUNT: US$_____.

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BEING A DULY AUTHORIZED REPRESENTATIVE OR OFFICER OF THE BENEFICIARY ("BENEFICIARY") HEREBY IRREVOCABLY TRANSFERS TO:

_____
(NAME OF TRANSFEREE)

_____
(ADDRESS)

("TRANSFEREE") ALL RIGHTS OF THE BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT UP TO ITS AVAILABLE AMOUNT AS SHOWN ABOVE AS OF THE DATE OF THIS TRANSFER.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE. TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HEREWITH, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

SINCERELY,

[INSERT NAME OF TRANSFEROR BENEFICIARY]

_____
(AUTHORIZED SIGNATURE)

SIGNATURE AUTHENTICATION:(1)
THE ABOVE SIGNATURE WITH TITLE
CONFORMS WITH THAT ON FILE WITH US.

_____
(NAME OF BANK OF TRANSFEROR BENEFICIARY)

_____
(AUTHORIZED SIGNATURE)

- --------
(1) SIGNATURE CAN BE AUTHENTICATED EITHER BY BENEFICIARY'S BANK OR NOTARIZED BY A NOTARY PUBLIC.

RIDER 1

COMMENCEMENT DATE AGREEMENT

2929 Seventh Street, L.L.C., a California limited liability company ("Landlord"), and Dynavax Technologies Corporation, a Delaware corporation ("Tenant"), have entered into a certain Lease dated as of____, 20__ (the "Lease").

WHEREAS, Landlord and Tenant wish to confirm and memorialize the Commencement Date, Expiration Date and potential Accelerated Expiration Dates of the Lease as provided for in Section 2.2(b) of the Lease, and Sections 1.b.iv. and 2.a. of the Addendum to Lease;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein and in the Lease, Landlord and Tenant agree as follows:

1. Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Lease.

2. The Commencement Date (as defined in the Lease) of the Lease is _____.

3. The Expiration Date (as defined in the Lease) of the Lease is _____.

4. The delivery dates for the Acceleration Notice are _____ (i.e., 12 months before the first day of the 60th month of the Term) or _____ (i.e., 12 months before the first day of the 90th month of the Term), and the Accelerated Expiration Dates of the Lease are _____ (i.e., the first day of the 60th month of the Term) or _____ (i.e., the first day of the 90th month of the Term).

5. Tenant hereby confirms the following:

(a) That it has accepted possession of the Premises pursuant to the terms of the Lease; and

(b) That the Landlord Work is Substantially Complete; and

(c) That the Lease is in full force and effect.

6. Except as expressly modified hereby, all terms and provisions of the Lease are hereby ratified and confirmed and shall remain in full force and effect and binding on the parties hereto.

7. The Lease and this Commencement Date Agreement contain all of the terms, covenants, conditions and agreements between the Landlord and the Tenant relating to the subject matter herein. No prior other agreements or understandings pertaining to such matters are valid or of any force and effect.

TENANT:	LANDLORD:
DYNAVAX TECHNOLOGIES CORPORATION, a Delaware corporation	2929 SEVENTH STREET, L.L.C., a California limited liability company
By:_____ Print Name:_____ Its:_____	By:_____ Richard K. Robbins Managing Member

ADDENDUM TO LEASE
BETWEEN
2929 SEVENTH STREET, L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY
AND
DYNAVAX TECHNOLOGIES COMPANY, A DELAWARE CORPORATION

This Addendum to Lease is attached to and forms a part of that certain Lease by and between 2929 Seventh Street, L.L.C., a California limited liability company ("Landlord"), and Dynavax Technologies Corporation, a Delaware corporation ("Tenant"), for premises located in the building located at 2929 Seventh Street, Berkeley, California. Words and terms that are defined in the Lease shall have the same meaning in this Addendum as the meaning provided in the Lease. In the event of any inconsistency between the terms of this Addendum and the Lease, the terms of this Addendum shall control.

1. EXPANSION OPTION.

a. Grant of Option; Conditions. Tenant shall have the option (the "Expansion Option") to lease Suite 100 on the 1st floor of the Building containing approximately 47,000 square feet of rentable area, as shown on Addendum Exhibit 1 hereto (the "Expansion Space") if:

i. Landlord receives written notice (the "Expansion Notice") from Tenant of the exercise of its Expansion Option on or before May 31, 2004; and

ii. Tenant is not in default under the Lease beyond any applicable cure periods at the time that Landlord receives the Expansion Notice; and

iii. The Lease has not been assigned prior to the date that Landlord receives the Expansion Notice; and

iv. The Expansion Space is intended for the exclusive use of only Tenant during the Term; and

v. Tenant has not vacated or abandoned the Premises at the time Landlord receives the Expansion Notice.

b. Terms for Expansion Space.

i. During the Expansion Space Term (as defined in subsection b.iv. below), the Monthly Base Rent for the Expansion Space shall be as follows:

PERIOD FROM/TO	MONTHLY
Months 1 - 12	$110,450.00
Months 13 - 24	$113,763.50

Months 25 - 36	$117,176.41
Months 37 - 48	$120,691.70
Months 49 - 60	$124,312.45
Months 61 - 72	$128,041.82
Months 73 - 84	$131,883.07
Months 85 - 96	$135,839.56
Months 97 - 108	$139,914.75
Months 109 - 120	$144,112.19

Monthly Base Rent attributable to the Expansion Space shall be payable in monthly installments in accordance with the terms and conditions of Article 3 of the Lease.

ii. Tenant shall pay Rent Adjustment Deposits and Rent Adjustments for the Expansion Space on the same terms and conditions set forth in Article 4 of the Lease, provided that Tenant's Share shall increase appropriately to account for the addition of the Expansion Space.

iii. Subject to the terms of Section B.4. below and Landlord's delivery and repair duties under Section 2.4 of the Lease, the Expansion Space (including improvements and personalty, if any) shall be accepted by Tenant in its "as-built" condition and configuration existing on the earlier of the date Tenant takes possession of the Expansion Space or as of the date the term for the Expansion Space commences.

iv. The term for the Expansion Space shall commence on the date Landlord has shampooed the carpeting and touched up the paint (the "Initial Expansion Space Work") throughout the Expansion Space (which date Landlord and Tenant anticipate will be June 1, 2004) (the "Expansion Space Commencement Date"), and shall end, unless sooner terminated pursuant to the terms of the Lease, 10 years after the Expansion Space Commencement Date (the "Expansion Space Expiration Date"); provided, however, if the Expansion Space Expiration Date does not fall on the last day of a calendar month, Landlord may elect to adjust the Expansion Space Expiration Date to the last day of the calendar month in which Expansion Space Expiration Date occurs. Subsequent to the Expansion Space Commencement Date, the term "Commencement Date" as used in the Lease shall mean the Expansion Space Commencement Date, the term "Expiration Date" shall mean the Expansion Space Expiration Date, and the term "Term" shall mean the period commencing with the Expansion Space Expiration Date and ending with the Expansion Space Termination Date (the "Expansion Space Term"), it being the intention of the parties hereto that the term for the Expansion Space and the Term for the initial Premises shall be coterminous. If Landlord is delayed delivering possession of the Expansion Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the Expansion Space shall be postponed

until the date Landlord delivers possession of the Expansion Space to Tenant free from occupancy by any party with the Initial Expansion Space Work completed. Within thirty (30) days following the occurrence of the Expansion Space Commencement Date, Landlord and Tenant shall enter into an agreement in substantially the form of attached hereto as Rider 1 confirming the Expansion Space Commencement Date and the Expansion Space Expiration Date. If Tenant fails to enter into such agreement, then the Expansion Space Commencement Date and the Expansion Space Expiration Date shall be the dates designated by Landlord in such agreement.

v. Subsequent to the Expansion Effective Date, Landlord will construct a conference room and up to three (3) offices within the Expansion Space at Landlord's sole cost and expense (the "Subsequent Expansion Space Work"). Landlord and Tenant agree to cooperate with each other in order to enable the Subsequent Expansion Space Work to be performed in a timely manner and with as little inconvenience to the operation of Tenant's business as is reasonably possible.

vi. The Expansion Space shall be considered Premises, subject to all the terms and conditions of the Lease (including the Termination Option, as specified below), except that no allowances, credits, abatements or other concessions (if any) set forth in the Lease for the initial Premises shall apply to the Expansion Space, except as may be specifically provided otherwise in this Expansion Option provision. Tenant shall have the right to modify the HVAC supply and internal finishes within the areas of the Expansion Space designated on Addendum Exhibit 2 hereto, provided that (a) Tenant shall provide plans for such modifications to Landlord for Landlord's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed), (b) such modifications shall be performed in accordance with Section 9.1 of the Lease, and (c) Landlord shall not require Tenant to remove such modifications upon the expiration or earlier termination of the Term. In addition, Tenant shall have the right to place an additional sign on the Building near the Expansion Space pursuant to the terms of Section 6.7 of the Lease.

vii. Notwithstanding the foregoing to the contrary, if the Expansion Space Commencement Date has not occurred on or before June 1, 2004 (the "Outside Expansion Space Commencement Date"), Tenant shall be entitled to a rent abatement following the Expansion Space Commencement Date of $3,186.67 for every day in the period beginning on the Outside Expansion Space Commencement Date and ending on the Expansion Space Commencement Date.. Landlord and Tenant acknowledge and agree that the determination of the Expansion Space Commencement Date shall take into consideration the effect of any Tenant Delays by Tenant.

viii. Notwithstanding the foregoing to the contrary, if the Expansion Space Commencement Date has not occurred on or before June 1, 2004 (the "Required Expansion Space Commencement Date"), then, in addition to the remedy set forth above, Tenant may terminate this Lease in accordance with Section 2 below; provided, however, the Acceleration Notice (as defined in Section 2.a.ii.) must be delivered within 30 days after the Required Commencement Date and the Accelerated Expiration Date shall be the date specified in the Acceleration Notice, which date may be no sooner than July 1, 2004. The Required Commencement Date shall be delayed by one day each for each day of Tenant Delay.

c. Early Delivery of Expansion Notice. Although Tenant is not required to deliver the Expansion Notice prior to the date specified in Section 1.a. above, Tenant shall either deliver the Expansion Notice to Landlord or inform Landlord that it does not intent to exercise the Expansion Option as soon as Tenant has sufficient information to make its decision.

d. Expansion Amendment. If Tenant is entitled to and properly exercises the Expansion Option, Landlord shall prepare an amendment (the "Expansion Amendment") to reflect the commencement date of the term for the Expansion Space and the changes in Monthly Base Rent, Rentable Area of the Premises, Tenant's Share, Parking (at the rate of 3 spaces per 1,000 rentable square feet) and other appropriate terms. A copy of the Expansion Amendment shall be sent to Tenant within a reasonable time after Landlord's receipt of the Expansion Notice, and Tenant shall execute and return the Expansion Amendment to Landlord within 15 days thereafter, but an otherwise valid exercise of the Expansion Option shall be fully effective whether or not the Expansion Amendment is executed.

e. Subleasing of Original Premises. If, upon Tenant's occupancy of the Expansion Space, Tenant notifies Landlord that the original Premises are excess, Landlord shall reasonably cooperate with Tenant's efforts to sublease the original Premises.

2. OPTION TO TERMINATE.

a. Tenant shall have the option to terminate the Lease ("Termination Option") as of either the first day of the 60th month of the Term (as may be redefined pursuant to Section 1.b.iv. above) or as of the first day of the 90th month of the Term (as may be redefined pursuant to Section 1.b.iv. above) (the date selected being the "Accelerated Expiration Date"), if:

i. Tenant is not in default under the Lease at the Tenant provides Landlord with an Acceleration Notice (hereinafter defined); and

ii. Landlord receives notice of acceleration ("Acceleration Notice") not less than 12 full calendar prior to the selected Accelerated Expiration Date.

b. Tenant shall remain liable for all Monthly Base Rent, Additional Rent and other sums due under the Lease up to and including the Accelerated Expiration Date even though billings for such may occur subsequent to the Accelerated Expiration Date.

c. Notwithstanding anything to the contrary herein, the Termination Option shall automatically terminate without notice and shall be of no further force and effect, whether or not Tenant has timely exercised such option, if Tenant is in default under the Lease (beyond applicable cure periods) on the Accelerated Expiration Date.

d. As of the date Tenant provides Landlord with an Acceleration Notice, any unexercised rights or options of Tenant to renew the Term of the Lease or to expand the Premises (whether expansion options, rights of first or second refusal, rights of first or second offer, or other similar rights), shall immediately be deemed terminated and no longer available or of any further force or effect.

3. USE OF EXISTING FURNITURE. Tenant may use the office furniture in the Premises that Landlord purchases from the existing tenant, Sygen (the "Furniture"). Tenant shall accept the Furniture in its "AS IS" and "WHERE IS" condition as of the Commencement Date. Tenant shall insure the furniture under its "Special Perils" property insurance. At the end of the Term, Tenant shall surrender the Furniture to Landlord in the same condition as when Tenant received it, reasonable wear and tear excepted.

ADDENDUM EXHIBIT 1

PLAN OF EXPANSION SPACE

ADDENDUM EXHIBIT 2

LOCATION OF EXPANSION SPACE ALTERATIONS

EXHIBIT 23.2

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated February 28, 2003, except for Note 13, as to which the date is October 21, 2003, in Amendment No.3 to the Registration Statement (Form S-1) and the related Prospectus of Dynavax Technologies Corporation for the registration of shares of its common stock.

Ernst & Young LLP

Palo Alto, California

The foregoing consent is in the form that will be signed upon the completion of the approval of the reverse stock split described in Note 13 to the consolidated financial statements.

Palo Alto, California
January 15, 2004

EXHIBIT 23.3

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the use in this Amendment No. 3 to the Registration Statement on Form S-1 of our report dated July 20, 2001, except as to the second paragraph of Note 13 which is as of October 23, 2003, relating to the financial statements for the year ended December 31, 2000 of Dynavax Technologies Corporation, which appear in such Registration Statement. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
January 15, 2004