Dealdoc

Acquisition agreement for OSI

Astellas Pharma
OSI Pharmaceuticals

Mar 01 2010
Acquisition agreement for OSI

Companies: Astellas Pharma
             OSI Pharmaceuticals

Announcement date: Mar 01 2010
Deal value, US$m: 4000.0 : all cash transaction

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Details

Announcement date: Mar 01 2010
Start date: May 16 2010
Industry sectors: Bigpharma
Pharmaceutical

Financials

Deal value, US$m: 4000.0 : all cash transaction

Termsheet

1 March 2010
Tender offer to acquire all outstanding shares of common stock of OSI Pharmaceuticals for $52.00 per share in cash, or an aggregate of approximately $3.5 billion on a fully diluted basis.

The all-cash offer represents a significant premium of over 40% on the closing price of OSI's common stock of $37.02 per share on February 26, 2010, a 53% premium to its three-month average of $34.01 per share, and a 31% premium to its 52-week high of $39.66 per share.

Astellas' offer is not subject to any financing conditions.

16 May 2010
May 16, 2010; Astellas Pharma and OSI Pharma have entered into a definitive merger agreement under which Astellas will acquire OSI.

Astellas will increase its offer price to $57.50 per share, which represents a premium of 55% to the closing price for OSI's shares of $37.02 on February 26, 2010, the last trading day before the announcement by Astellas of its tender offer.

The all-cash transaction is valued at $4.0 billion on a fully diluted basis.

This is an all-cash transaction with no financing conditions to close.

9 June 2010
Astellas Pharma Inc has completed its acquisition of OSI Pharmaceuticals for $4.0 billion.

Press Release

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March 1, 2010

Dear Dr. Goddard:

As you know from our meetings, we have a great deal of respect for you and OSI, its employees and what the company has achieved. We believe there are significant benefits from OSI's acquisition by Astellas and believe that a combined entity would allow us to achieve the goal of discovering, developing and delivering novel medications for patients with unmet needs in the oncology space far better than each of our companies could do independently.

Following is a copy of the letter Astellas sent earlier today to Colin Goddard, OSI's CEO:

March 1, 2010

Colin Goddard, Chief Executive Officer, OSI Pharmaceuticals

Cc: Robert A. Ingram, Chairman, OSI Pharmaceuticals

Dear Dr. Goddard:

As you know from our meetings, we have a great deal of respect for you and OSI, its employees and what the company has achieved. We believe there are significant benefits from OSI's acquisition by Astellas and believe that a combined entity would allow us to achieve the goal of discovering, developing and delivering novel medications for patients with unmet needs in the oncology space far better than each of our companies could do independently.

Masafumi Nogimori, President and Chief Executive Officer of Astellas, commenting on the offer, said, "This offer follows our attempts over the past 13 months to engage OSI in meaningful discussions. We firmly believe in the compelling strategic rationale behind the combination and the opportunity it provides to the OSI stockholders to realize full and fair value, in cash, immediately. As recently as February 12, 2010, Astellas presented this proposal to acquire OSI, which reflected a 50% premium on that date. However, we received a response stating that our offer 'very significantly undervalues' OSI. That response was the latest indication to us that OSI is not interested in engaging in substantive discussions. We are therefore taking our offer directly to OSI's stockholders. Our proposal and its significant premium recognize both the value created by OSI to date and its future prospects. Of course, we are open to, and we hope that OSI's Board and management will commence, discussions with us to effect a negotiated transaction."

Astellas has made numerous attempts to engage in substantive discussions to acquire OSI. Astellas first raised its interest in acquiring OSI during a meeting with OSI's CEO in January 2009 and made its first written proposal in February 2009. Despite subsequent letters reiterating Astellas' interest in March and June 2009 and several face-to-face meetings, including a meeting between the two CEOs on February 12, 2010, OSI has refused to engage in a meaningful discussion. As a result, Astellas has decided to commence a tender offer and go directly to the OSI stockholders. Astellas will consider all means necessary to secure a completed transaction. Among other things, Astellas intends to nominate directors at OSI's upcoming annual meeting to give stockholders a voice in the outcome.

Astellas will commence a tender offer on March 2, 2010, to purchase all outstanding common stock of OSI for $52.00 per share in cash. Following successful completion of the tender offer, a merger will be completed at the same price. The complete terms and conditions of the offer will be filed with the U.S. Securities and Exchange Commission and disseminated to OSI stockholders. Astellas has cash and cash equivalents on hand to complete the transaction. The offer is not subject to any financing or due diligence conditions, and will be subject only to customary closing conditions, including the tender of a majority of OSI's shares of common stock on a fully diluted basis, and OSI's Board taking all necessary actions to make its stockholder rights plan and Section 203 of the Delaware Corporation Law inapplicable to Astellas' offer. There are no anticipated regulatory hurdles to completion.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison & Foerster LLP is acting as legal counsel.

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March 1, 2010

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March 1, 2010

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Dear Dr. Goddard:

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When we met on February 12, 2010, I presented our proposal to acquire all of OSI shares for $52 per share, a 50% premium to the prior day's closing price. This followed Astellas' numerous attempts to engage in meaningful conversations with OSI over the last 13 months regarding the potential for bringing our two businesses together.

I was hopeful that our February 12th meeting would have finally resulted in a constructive attempt by you and OSI's Board to discuss a transaction and bring value to your stockholders. Instead, your written response dated February 22nd stated that our proposal "very significantly undervalues" OSI. It also contained a confidentiality agreement with a two-year "standstill" provision which we believe would not be in your stockholders' best interests, as it would have restricted us from making our offer directly to them.

As we have stated to you consistently in our many communications to you over the last 13 months, we believe the acquisition of OSI by Astellas makes for a compelling business proposition and provides a unique opportunity for our respective stockholders, employees and customers. However, because your response indicates that you have no intention to engage in substantive discussions, our Board has authorized me to take our offer directly to OSI's stockholders.

We remain enthusiastic about the potential of this transaction to realize the value of OSI's current commercialized products and to ensure the successful development and commercialization of additional products from its pipeline. We respect your organization very much, and as such we would expect to integrate the strengths of your business and of OSI's employees into our company as we have in the past with similar strategic acquisitions.

Our proposal would be subject to standard acquisition conditions, including the removal of your stockholder rights plan, and is not subject to any financing or any due diligence conditions. We do not foresee any regulatory or other impediment to closing.

We continue to be excited about the possibility of bringing our two organizations together and we hope that you and your Board will reconsider your position and work with us to achieve a mutually beneficial outcome. Astellas has engaged Citigroup as financial advisor and Morrison & Foerster LLP as legal counsel to assist us in completing this transaction. We and our advisors stand ready to meet with you and your advisors to answer any questions you may have about our offer.

Very truly yours,

Masafumi Nogimori Chief Executive Officer
cc: Toichi Takenaka, Chairman

Additional Information All details related to this proposal can be found on www.oncologyleader.com

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About Astellas Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 14,200 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.

1 March 2010

OSI Pharmaceuticals Confirms Receipt of Unsolicited Proposal From Astellas Pharma

• Advises Stockholders to Take No Action at this Time -

MELVILLE, N.Y., Mar 01, 2010 (BUSINESS WIRE) -- OSI Pharmaceuticals, Inc. (NASDAQ: OSIP) today confirmed that it has received an unsolicited proposal from Astellas Pharma Inc. ("Astellas") to acquire the Company for $52.00 per share.

OSI's Board of Directors will review the proposal with its financial and legal advisors. OSI's stockholders are advised to take no action at this time.

The Company noted that in February 2010, OSI received an oral proposal from Astellas with a value of $52 per share and OSI's Board of Directors, after consultation with its financial and legal advisors, determined that it was not interested in undertaking a sale of OSI at that price, since it believes Astellas' proposal very significantly undervalues the Company. In responding to the February proposal, the Company offered to provide Astellas with non-public information which is fundamental to its valuation of OSI. The response to that letter was Astellas' unsolicited proposal. The February 22nd letter from Colin Goddard, Chief Executive Officer of OSI, to Astellas responding to Astellas' oral proposal is set

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Dear Nogimori-san:

I enjoyed meeting you on Friday, February 12th and appreciated our frank and open discussions along with the opportunity to share with you our strategic thinking and the broad range of initiatives we have ongoing to enhance the value of our company for our shareholders. Following our meeting, I briefed my Board of Directors on our discussions, including the $52 per share price at which you said Astellas would be interested in acquiring our Company.

As I had suggested at our meeting, our Board is not interested in undertaking a sale of OSI at that price, which we believe very significantly undervalues our Company. However, I can confirm that we are prepared to provide you with certain non-public information regarding the Company, which is fundamental to our view of the value of OSI Pharmaceuticals. Inasmuch as this information is confidential, our willingness to make it available to your team is subject to your execution of a Nondisclosure Agreement and we have taken the liberty of attaching the form hereto.

We have handled our discussions in an appropriately confidential manner and trust you will do the same.

Very truly yours,

Colin Goddard
Chief Executive Officer

About OSI Pharmaceuticals

OSI Pharmaceuticals is committed to “shaping medicine and changing lives” by discovering, developing and commercializing high-quality, novel and differentiated targeted medicines designed to extend life and improve the quality of life for patients with cancer and diabetes/obesity. For additional information about OSI, please visit http://www.osip.com

2 March 2010

Astellas Pharma Inc. (JOBS) Commences Tender Offer to Acquire All Outstanding Shares of OSI Pharmaceuticals, Inc. (OSIP) for $52 per Share in Cash; Bid Goes Hostile

TOKYO, March 2 /PRNewswire-FirstCall/ -- Astellas Pharma Inc. (TSE:4503.to - News), a global pharmaceutical company, today announced that its indirect subsidiary, Ruby Acquisition, Inc., has commenced a cash tender offer for all outstanding shares of common stock of OSI Pharmaceuticals (Nasdaq:OSIP - News) for $52.00 per share in cash. The offer and withdrawal rights are scheduled to expire at 12:00 midnight New York City time on March 31, 2010, unless the offer is extended.

The Company also announced that Astellas US Holding, Inc., a wholly owned subsidiary of Astellas Pharma Inc., filed a lawsuit in the Delaware Court of Chancery against OSI and its directors seeking, among other things, declaratory and injunctive relief enjoining OSI and its directors from engaging in any action or inaction, including applying OSI's “poison pill” rights plan, that has the effect of improperly impeding, thwarting, frustrating or interfering with the tender offer in a manner inconsistent with the directors' fiduciary duties.

The Astellas tender offer represents a significant premium of over 40% to OSI's closing share price of $37.02 on February 26, 2010, a 53% premium to its three-month average of $34.01 per share and a 31% premium to its 52-week high of $39.66 per share.

The offer is not conditioned on financing. The offer is conditioned on there being validly tendered and not withdrawn at least a majority of the total number of OSI shares outstanding on a fully diluted basis, OSI's Board of Directors redeeming or invalidating its “poison pill” shareholder rights plan and receipt of regulatory approvals and customary closing conditions as described in the Offer to Purchase.

The Offer to Purchase, Letter of Transmittal and other offering documents will be filed today with the U.S. Securities and Exchange Commission. OSI's stockholders may obtain copies of all of the offering documents free of charge at the SEC's website (www.sec.gov) or by directing a request to Georgeson Inc., the Information Agent for the offer, at (212) 440-9800 or toll-free at 800-213-0473. Additional information about the transaction, including the offering documents, is also available at www.oncologyleader.com. The tender offer will expire at 12:00 midnight New York City time on March 31, 2010, unless extended in the manner set forth in the Offer to Purchase.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison and Foerster LLP is acting as legal counsel.

About Astellas

Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 14,200 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.
3 March 2010

OSI Pharmaceuticals, Inc. (OSIP) Board of Directors to Review Astellas Pharma Inc.’s Unsolicited Tender Offer

MELVILLE, N.Y.--(BUSINESS WIRE)--OSI Pharmaceuticals, Inc. (NASDAQ: OSIP) (“OSI”) today confirmed that Astellas Pharma Inc. (“Astellas”) has commenced an unsolicited tender offer to acquire all outstanding common shares of OSI for $52.00 per share in cash.

Consistent with its fiduciary duties and as required by applicable law, the OSI Board of Directors will review the offer to determine the course of action that it believes is in the best interests of the Company and its stockholders. OSI stockholders are advised to take no action at this time pending the review of the tender offer by the OSI Board of Directors.

The OSI Board of Directors, in consultation with its independent financial and legal advisors, intends to advise stockholders of its formal position regarding the offer in due course by making available to stockholders and filing with the Securities and Exchange Commission a solicitation/recommendation statement on Schedule 14D-9.

About OSI Pharmaceuticals

OSI Pharmaceuticals is committed to “shaping medicine and changing lives” by discovering, developing and commercializing high-quality, novel and differentiated targeted medicines designed to extend life and improve the quality of life for patients with cancer and diabetes/obesity. For additional information about OSI, please visit http://www.osip.com.

5 March 2010

Astellas Pharma Inc. (JOBS) Needs to Raise OSI Pharmaceuticals, Inc. (OSIP) Bid by 15%, OrbiMed Says

Bloomberg -- Astellas Pharma Inc. needs to increase its $3.5 billion hostile takeover bid for OSI Pharmaceuticals Inc. by 15 percent, said OrbiMed Advisors LLC, OSI’s fifth-biggest shareholder.

9 March 2010

OSI Bid Likely to Rise as Astellas Seeks Cancer Sales

March 9 (Bloomberg) -- OSI Pharmaceuticals Inc.’s status as one of the few U.S. biotechnology companies with income from an approved cancer drug likely will drive up the price Tokyo-based Astellas Pharma Inc. must pay to acquire it.

OSI stock has surged above Astellas’s $52-a-share bid as investors anticipate a higher offer. Astellas, which has bought rights to four experimental cancer drugs since 2007, could use OSI to shepherd those therapies through U.S. approval. It could also use OSI’s 50-person sales force to promote new medicines.

“It will give Astellas a base for oncology business in the U.S., skills to develop cancer drugs, and a sales force and networks among cancer specialists,” said Yasuhiro Nakazawa, a Tokyo-based analyst with Mitsubishi UFJ Securities.

Astellas needs new products to replenish revenue lost since its patent expired on Prograf, a transplant rejection drug with fiscal 2008 sales of $2.01 billion. With the OSI takeover, Astellas would gain its first marketed cancer medicine, the advanced lung tumor treatment Tarceva, a $1.6 billion revenue generator in 2009 for OSI and its partner, Roche Holding AG. Those sales may double if Tarceva is cleared for earlier use, said George Farmer, a Canaccord Adams analyst in New York.

The Japanese drugmaker offered $55 to $57 per share in cash in a letter on Feb. 2, 2009, and remained prepared to negotiate at the same price range in a letter on June 15, according to a court filing this month. OSI rejected the offer, saying it undervalues the company, according to the filing. Astellas declined to comment today.

Astellas had 492 billion yen ($5.5 billion) in cash and marketable securities as of Dec. 31, according to filings on its Web site. Its long-term liabilities totaled 31 billion yen, about half of that in employee retirement benefits.

9.5 Times More

The last five similar biotechs acquired for cancer drugs commanded average prices 9.5 times greater than annual revenue, Leerink Swann & Co. analyst Howard Liang said in a March 4 telephone interview. Astellas would need to offer $59 a share to match that premium, Liang said.

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“If you look at commercial-phase oncology companies, most of them have been bought already,” said Liang, who raised his OSI target price to $60 the day after Astellas made its $3.5 billion hostile takeover bid. “There aren’t many left. The price is due to scarcity value.”


OSI may win U.S. clearance of Tarceva as maintenance therapy for lung cancer by April 19, said Geoffrey Meacham, an analyst with JPMorgan Research, in a March 1 report. By the end of the year, the company will have results from the third and final stage of testing Tarceva in patients with genetic mutations who may benefit from using the drug as an early treatment, he said.

Ovarian Cancer Data

There will also be data in ovarian cancer in the first half of 2011, Meacham said.

“This is perhaps why OSI management was bullish enough to walk away from the initial Astellas bid,” Meacham said.

Astellas should increase its bid by 15 percent, to $60 a share, said Samuel Isaly, a managing partner at New York-based OrbiMed Advisors LLC, OSI’s fifth-largest shareholder with 1.7 million shares as of Dec. 31.

“The market price is higher than the bid because investors expect a higher bid,” Isaly said in a March 5 e-mail interview. “We think $60 is a fair price.”

Astellas’s takeover effort follows the Japanese company’s failed $1.1 billion hostile bid last year for CV Therapeutics Inc., which was bought by white knight Gilead Sciences Inc., based in Foster City, California, for about $1.4 billion.

Prostate Tumor Medicine

Astellas’s most-advanced cancer drug, MDV 3100 for prostate tumors, is in the third and final stage of testing generally needed for U.S. approval. The Tokyo drugmaker agreed in October to pay as much as $765 million to license it from San Francisco-based Medivation Inc.

In December, Astellas agreed to pay closely held Ambit Biosciences of San Diego as much as $390 million to jointly develop leukemia drug AC 220, in the second of three stages of tests. Another drug in phase two, AGS 8M4, was gained in Astellas’s 2007 purchase of San Diego-based Agensys Inc. for $587 million. Astellas is also in the second stage of testing YM 155 for breast tumors, non-Hodgkin lymphoma and melanoma.

Japan’s top four drugmakers have spent at least $14.6 billion over the last five years buying companies with cancer drugs, licensing rights to tumor treatments, and gaining technologies to develop such drugs.

“Astellas is obviously aware of its urgent need for products for future growth,” said Koji Hirai, chief executive officer of M&A advisory Kachitas Co. in Tokyo, in a March 3 telephone interview.

Few Targets

Few U.S. biotechnology companies have enough revenue from approved cancer drugs to be attractive takeover targets, Leerink’s Liang said. One is Allos Therapeutics Inc., which won U.S. approval Sept. 24 for Folotyn, a treatment for peripheral T-cell lymphomas. Allos, of Westminster, Colorado, doesn’t have a partnership that would deter potential buyers, Liang said.

Onyx Pharmaceuticals Inc., maker of the kidney and liver cancer drug Nexavar, would be less appealing to buyers because its partnership with Bayer AG would transfer added drug income to the German drugmaker after an acquisition, Liang said. Onyx, based in Emeryville, California, splits revenue with Bayer outside the U.S., while each company sells the treatment separately in the U.S.

Any buyer could “significantly decrease” the $250 million or more OSI spends on research, sales and administration, and also benefit from income provided by Tarceva and royalties from sales of Merck & Co.’s Januvia and similar diabetes drugs in a family of medicines known as DPP-4 inhibitors, Meacham said.

U.S. Clearance

Tarceva won U.S. clearance in November 2004 for non-small cell lung cancer, and a year later for pancreatic cancer. It’s approved for patients who stop responding to chemotherapy. The drug targets human epidermal growth factor receptor, which some cancers require to survive.

OSI splits profit from U.S. sales of Tarceva with Basel, Switzerland-based Roche and receives royalties from sales in the rest of the world. OSI reported $146 million in royalties and $209 million in sales for Tarceva last year. Roche reported Tarceva revenue of $1.21 billion last year.

“Roche is the logical” white knight for OSI, said Jason Zhang, an analyst with the Bank of Montreal, in a telephone interview March 1. “OSI will probably go to Roche and ask for a higher bid.”

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Roche spokesman Geoffrey Teeter said in an e-mailed statement that "We don't comment on rumor and speculation." OSI spokeswoman Kathy Galante said she had no comment beyond what the company said in a March 2 statement.

Diabetes Drug Royalties

Royalties from patents covering DPP-4 inhibitors generated $62 million for OSI last year, 51 percent more than 2008. OSI gained the DPP-4 technology from Probiodrug AG in 2004. The company gets royalties from sales of Januvia, Novartis AG's pill Galvus, and Onglyza, made by Bristol-Myers Squibb Co.


While Tarceva is OSI's biggest asset, the diabetes-drug royalties would also help lure a buyer and a premium price, said Eric Schmidt, an analyst with Cowen & Co. in New York, in a March 4 telephone interview.

"Astellas seems willing to pay a premium for those assets or is willing to put a premium on early-stage assets beyond what they would get if they were trading separately," Schmidt said.

Centerview Partners LLC and Lazard Ltd. are OSI's financial advisers. Skadden, Arps, Slate, Meagher and Flom LLP is providing legal counsel.

15 March 2010
Astellas Pharma Inc. Responds to OSI Pharmaceuticals, Inc. (OSIP) Rejection

TOKYO, March 15 /PRNewswire/ -- Astellas Pharma Inc. today released the following statement in response to OSI Pharmaceuticals' rejection of Astellas' tender offer for $52.00 per share.

Unfortunately, today's action by OSI's board continues to delay the opportunity for OSI's stockholders to consider Astellas' offer. Astellas continues to have no alternative at this time but to proceed with its offer directly to OSI's stockholders. To ensure that OSI's stockholders have a voice in the outcome, Astellas will also nominate a full slate of directors for OSI's upcoming shareholder meeting. We believe that the slate, if elected and subject to its fiduciary duties, will fully and fairly consider Astellas' offer.

Astellas and certain of their directors and executive officers may be deemed to be participants in the solicitation of proxies in connection with the proposed transaction. Information regarding these directors and executive officers is available in the Schedule TO that was filed March 2, 2010, and other documents filed by Astellas with the SEC as described above. Further information will be available in any proxy statement or other relevant materials filed with the SEC in connection with the solicitation of proxies when they become available.

19 March 2010
Astellas Announces Expiration of HSR Waiting Period for OSI Tender Offer

TOKYO, Mar 19 /PRNewswire/ -- Astellas Pharma Inc. today announced that the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, applicable to Astellas' proposed acquisition of OSI Pharmaceuticals Inc. (Nasdaq: OSIP) has expired.

On March 2, 2010, Astellas commenced a tender offer to acquire all of the outstanding shares of OSI for $52.00 per share in cash. The expiration of the HSR waiting period satisfies one of the conditions of the tender offer. The tender offer is not subject to any financing conditions or due diligence and only contains customary conditions to close.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison & Foerster LLP is acting as legal counsel.

Additional Information

Further details related to this announcement can be found on www.oncologyleader.com

29 March 2010
Agreement Allows Astellas Pharma Inc. to Review Certain Confidential Information Related to OSI Pharmaceuticals, Inc. (OSIP)

MELVILLE, N.Y., Mar 29, 2010 (BUSINESS WIRE) -- OSI Pharmaceuticals, Inc. today announced that it had entered into an agreement with Astellas Pharma Inc., under which Astellas will be able to review certain confidential information related to OSI.

"We are pleased that Astellas has now responded to our previous offer to review non-public information and has entered into a non-disclosure agreement with us which contains an appropriate standstill provision," stated Dr. Colin Goddard, CEO of OSI Pharmaceuticals, Inc. "This agreement will allow Astellas to participate in our ongoing process and is consistent with the basic provisions we have offered other parties. We are taking this step -- which reflects our board's prior commitment to explore the availability of a transaction that reflects the full intrinsic value of
our company -- in order to ensure that our stockholders have the full benefit of a complete, open and fair process."

No assurance can be given as to whether the process being conducted by OSI will result in any transaction.

Centerview Partners LLC is acting as lead financial advisor to OSI. Lazard also was retained as a financial advisor to OSI. Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates is acting as legal advisor.

About OSI Pharmaceuticals

OSI Pharmaceuticals is committed to "shaping medicine and changing lives" by discovering, developing and commercializing high-quality, novel and differentiated targeted medicines designed to extend life and improve the quality of life for patients with cancer and diabetes/obesity.

Additional Information

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities of any stockholder of OSI Pharmaceuticals, Inc. ("OSI").

In connection with the unsolicited tender offer commenced by Astellas, OSI has filed a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC (as amended, the "Schedule 14D-9"). STOCKHOLDERS OF OSI ARE URGED TO READ THE SCHEDULE 14D-9 AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY IN THEIR ENTIRETY BECAUSE THEY CONTAIN IMPORTANT INFORMATION. Stockholders may obtain a free copy of the Schedule 14D-9 and other documents filed by OSI with the SEC through the website maintained by the SEC at http://www.sec.gov. Stockholders may also obtain, without charge, a copy of the Schedule 14D-9 from MacKenzie Partners, Inc., OSI's information agent, by calling 800-322-2885 toll free or by calling 212-929-5500 or by emailing osipharma@mackenziepartners.com.

29 March 2010

Agreement Allows Astellas to Review Certain Confidential Information Related to OSI

Terms Include Standstill and Nondisclosure Agreement

MELVILLE, N.Y., Mar 29, 2010 (BUSINESS WIRE) -- OSI Pharmaceuticals, Inc. (NASDAQ: OSIP) today announced that it had entered into an agreement with Astellas Pharma Inc., under which Astellas will be able to review certain confidential information related to OSI.

"We are pleased that Astellas has now responded to our previous offer to review non-public information and has entered into a non-disclosure agreement with us which contains an appropriate standstill provision," stated Dr. Colin Goddard, CEO of OSI Pharmaceuticals, Inc. "This agreement will allow Astellas to participate in our ongoing process and is consistent with the basic provisions we have offered other parties. We are taking this step - which reflects our board's prior commitment to explore the availability of a transaction that reflects the full intrinsic value of our company - in order to ensure that our stockholders have the full benefit of a complete, open and fair process."

No assurance can be given as to whether the process being conducted by OSI will result in any transaction.

Centerview Partners LLC is acting as lead financial advisor to OSI. Lazard also was retained as a financial advisor to OSI. Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates is acting as legal advisor.

About OSI Pharmaceuticals

OSI Pharmaceuticals is committed to "shaping medicine and changing lives" by discovering, developing and commercializing high-quality, novel and differentiated targeted medicines designed to extend life and improve the quality of life for patients with cancer and diabetes/obesity.

Additional Information

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities of any stockholder of OSI Pharmaceuticals, Inc. ("OSI").

In connection with the unsolicited tender offer commenced by Astellas, OSI has filed a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC (as amended, the "Schedule 14D-9"). STOCKHOLDERS OF OSI ARE URGED TO READ THE SCHEDULE 14D-9 AND OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY IN THEIR ENTIRETY BECAUSE THEY CONTAIN IMPORTANT INFORMATION. Stockholders may obtain a free copy of the Schedule 14D-9 and other documents filed by OSI with the SEC through the website maintained by the SEC at http://www.sec.gov. Stockholders may also obtain, without charge, a copy of the Schedule 14D-9 from MacKenzie Partners, Inc., OSI's information agent, by calling 800-322-2885 toll free or by calling 212-929-5500 or by emailing osipharma@mackenziepartners.com.

31 March 2010

Astellas Pharma Inc. Extends Tender Offer for OSI Pharmaceuticals, Inc. (OSIP) to April 23
TOKYO, March 31 2010 /PRNewswire/ -- Astellas Pharma Inc. (TSE:4503.to - News) announced today that it has extended its all-cash tender offer for $52 per share for all of the currently outstanding shares of common stock (including the associated stock purchase rights) of OSI Pharmaceuticals (Nasdaq:OSIP - News) to 11:59 p.m. New York City time on Friday, April 23, 2010, unless further extended. The tender offer was previously set to expire at 12:00 midnight New York City time on Wednesday, March 31, 2010.

As of 4:00 p.m. New York City time on Tuesday, March 30, 2010, 37,858 shares of OSI had been tendered in and not withdrawn from the tender offer.

Additional Information

Further details related to this proposal can be found on www.oncologyleader.com

About Astellas

Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 14,200 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.

19 April 2010

Astellas: won't raise OSI bid on FDA move alone

TOKYO, April 19 (Reuters) - Astellas Pharma (4503.T), Japan's No.2 drugmaker, said on Monday it has no plan to lift its bid for OSI Pharmaceuticals (OSIP.O) despite U.S. regulators approving wider use of OSI's cancer pill Tarceva.

"We will not raise our offer based on the approval, though we still may change the offer based on the outcome of our ongoing due diligence under our confidential agreement with OSI," Astellas spokesman Ryuji Samukawa said.

Astellas will likely take until the May 15 deadline set in the confidential agreement, which allows it to review OSI's non-public information, to complete the due diligence process, Samukawa said.

The U.S. Food and Drug Administration cleared the blockbuster lung cancer pill Tarceva for use by patients with lung cancer that remains stable after chemotherapy. Tarceva is already used for treating lung cancer that worsens after chemotherapy. [ID:nN16168556]

OSI and its business partner Roche Holding AG (ROG.VX) co-market Tarceva, which logged $1.2 billion in sales last year.

Astellas has launched a hostile takeover bid for OSI. It recently extended to April 23 the deadline for the $52 per share tender offer, which would total $3.5 billion.

23 April 2010

Astellas Extends Offer Deadline for OSI

April 23, 2010 (Bloomberg) -- Astellas Pharma Inc. extended its $3.5 billion unsolicited offer for OSI Pharmaceuticals Inc. a second time as less than 1 percent of shares were tendered.

The offer will close May 17 instead of today, Tokyo-based Astellas said in a statement.

Astellas’s offer, maintained at $52 a share, remains below OSI’s current share price, after the stock surged 58 percent since the Japanese drugmaker announced the takeover bid on March 1. The acquisition would give Astellas its first marketed cancer drug, Tarceva, which Melville, New York-based OSI projects will have revenue of $7 billion through 2020.

The Japanese drugmaker’s shares fell 1.3 percent to close at 3,320 yen in Tokyo before its announcement. OSI dropped 1.3 percent to $58.66 in Nasdaq Stock Market composite trading yesterday.

Astellas said it received acceptances for 42,283 OSI shares, or a 0.07 percent stake, as of 4 p.m. New York time April 22. Investors had agreed to tender 0.06 percent of OSI shares at the original deadline of March 31, prompting Astellas to extend the offer by three weeks at that time.

Astellas has said it won’t buy shares of the U.S. company until May 15, as part of an agreement announced on March 29 that OSI would share financial information with the Japanese drugmaker along with other parties.

Cancer Drug Revenue

Tarceva, a treatment for advanced non-small-cell lung cancer and pancreatic tumors, generated $1.6 billion in revenue for OSI and its Basel, Switzerland-based partner Roche Holding AG in 2009. OSI’s sales relating to Tarceva totaled $359 million, accounting for about 84 percent of revenue.

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U.S. regulators approved the drug on April 16 for use as an initial maintenance treatment for non-small-cell lung cancer, the most common form of the malignancy, spurring analyst expectations that Astellas would increase its offer. A drug is usually given as maintenance therapy to control symptoms or progression of cancer after initial treatment.

The Japanese drugmaker will likely acquire OSI at or near $60 a share, Bret Holley, an analyst with Oppenheimer & Co., wrote in an April 19 report. Astellas said that day it had factored in the wider use of Tarceva for its $52-a-share offer.

Astellas has committed to spending more than $1 billion since October last year to gain rights to experimental cancer treatments. The company identified cancer as a focus to replenish sales lost since patent protection expired in August for its biggest drug, Prograf. The medicine, for organ-transplant patients, generated $2 billion last fiscal year.

16 May 2010
Astellas Pharma Inc. Buys OSI Pharmaceuticals, Inc. (OSIP) for $4 Billion in Cancer Push

TOKYO and MELVILLE, N.Y. May 16 /PRNewswire-FirstCall/ -- Astellas Pharma Inc., a global pharmaceutical company, and OSI Pharmaceuticals, Inc. (Nasdaq:OSIP - News), a biotechnology company primarily focused on the discovery, development and commercialization of molecular targeted therapies addressing medical needs in oncology, diabetes and obesity, today announced that they have entered into a definitive merger agreement under which Astellas will acquire OSI.

Under the terms of the merger agreement, Astellas will increase its offer price to $57.50 per share, which represents a premium of 55% to the closing price for OSI's shares of $37.02 on February 26, 2010, the last trading day before the announcement by Astellas of its tender offer. The boards of directors of both companies have unanimously approved the combination. The all-cash transaction is valued at $4.0 billion on a fully diluted basis.

The combined company creates a world-class oncology platform supporting Astellas’ stated growth strategy of becoming a Global Category Leader in Oncology, a high-priority therapeutic area for Astellas. OSI commercializes Tarceva® (erlotinib), a leading cancer medication. OSI’s total annual revenues for 2009, as reported in its Form 10-K for the year ended December 31, 2009, were $428 million and operating income was $153 million.

Masafumi Nogimori, President and Chief Executive Officer of Astellas, said, “The merger with OSI provides Astellas with a top-tier oncology platform in the U.S. and an expanded product portfolio and pipelines. In addition to Tarceva®, we are pleased to add its oncology infrastructure, discovery platform, expanded pipelines and talent base to our existing businesses. We look forward to working together with our OSI colleagues to grow the combined business and realize our shared goal of improving the health of the people around the world every day.”

Colin Goddard, Ph.D., Chief Executive Officer of OSI Pharmaceuticals, said, “We believe today’s announcement recognizes the significant value we have built for our stockholders while providing the merged companies the opportunity to forge a stronger collective path forward in a shared mission to provide innovative new medicines to patients around the world.”

Financial Details and Closing Conditions

This is an all-cash transaction with no financing conditions to close.

The transaction is subject to other customary closing conditions, including the tender of a majority of OSI’s shares of common stock on a fully diluted basis. The HSR waiting period applicable to the acquisition of OSI by Astellas expired on March 19, 2010.

Astellas’ all-cash tender offer for $57.50 per share for all of the currently outstanding shares of common stock (including the associated stock purchase rights) of OSI Pharmaceuticals, Inc. will expire no later than 10 business days after the amendment to the Schedule TO is filed (which is expected to be filed on or before May 21st), unless extended. As of 4:00 p.m. New York City time on Friday, May 14, 2010, 299,214 shares of OSI had been tendered in and not withdrawn from the tender offer.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison & Foerster LLP is acting as legal counsel. Centerview Partners LLP is acting as lead financial advisor to OSI. Lazard also was retained as a financial advisor to OSI. Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates is acting as legal counsel.

Additional Information

Details related to this announcement can be found on www.oncologyleader.com

About Astellas

Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 15,000 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.

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17 May 2010

Expiration Date of OSI Pharmaceuticals, Inc. Offer Extended to June 2, 2010

TOKYO, May 17 /PRNewswire/ -- Astellas Pharma Inc. (TSE: 4503) announced today that it had extended its all-cash tender offer for $57.50 per share for all of the currently outstanding shares of common stock (including the associated stock purchase rights) of OSI Pharmaceuticals, Inc. (Nasdaq: OSIP) to 12:00 midnight New York City time on Wednesday, June 2, 2010, unless further extended. The tender offer was previously set to expire at 5:00 p.m. New York City time on Monday May 17, 2010. In connection with the execution of a Merger Agreement with OSI Pharmaceuticals, Inc. on Sunday, May 16, 2010, Astellas increased the price it was offering to acquire all shares of common stock (including the associated stock purchase rights) of OSI Pharmaceuticals, Inc. from $52.00 to $57.50 per share.

As of 4:00 p.m. New York City time on Friday, May 14, 2010, 229,214 shares of OSI had been tendered in and not withdrawn from the tender offer.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison & Foerster LLP is acting as legal counsel.

Additional Information

Further details related to this proposal can be found on www.oncologyleader.com

About Astellas

Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 15,000 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.

3 June 2010

TOKYO, June 3 /PRNewswire/ -- Astellas Pharma Inc. announced today the completion of the initial tender offer for all outstanding shares of common stock in OSI Pharmaceuticals, Inc.

The initial offer period expired at 12:00 midnight, New York City time, on June 2, 2010. Computershare Trust Company, N.A., the depositary for the tender offer, has advised that a total of 48,415,727 shares were validly tendered and not withdrawn prior to the expiration of the initial offer period, representing approximately 79% of OSI's issued and outstanding shares. All shares validly tendered and not withdrawn have been accepted for payment. 5,014,478 additional shares were tendered subject to guaranteed delivery procedures prior to the expiration of the initial offer period. The total number of shares validly tendered, plus the shares tendered subject to guaranteed delivery procedures, represents approximately 87% of OSI's issued and outstanding shares.

Astellas also announced today that it would make available a subsequent offer period commencing immediately and expiring at 12:00 midnight, New York City time on June 7, 2010, unless extended. During the subsequent offer period, any shares validly tendered will be immediately accepted for payment, and tendering stockholders will promptly thereafter be paid $57.50 per share in cash, less any withholding taxes and without interest, which is the same amount per share that was offered and paid to OSI stockholders who previously tendered into the initial offer.

The procedures for tendering shares during the subsequent offer period are the same as during the initial offer period, except that shares tendered during the subsequent offer period may not be tendered by the guaranteed delivery procedure and may not be withdrawn.

Following the expiration of the subsequent offer period, if Astellas owns at least 90% of the issued and outstanding shares of OSI common stock, Astellas intends to complete the acquisition of OSI through the short-form merger procedure under Delaware law, by which the companies can complete the merger without a meeting of OSI's stockholders. In the merger, each outstanding share of OSI common stock not tendered and purchased in the initial offer period or the subsequent offer period will be converted into the right to receive the same consideration provided in the initial offer, except for such shares for which appraisal rights have been validly asserted. As a result of the merger, which Astellas expects to close as soon as practicable, OSI's common stock will cease to be traded on the Nasdaq Global Select Market.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison & Foerster LLP is acting as legal counsel.

Additional Information
Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 15,000 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.

8 June 2010

Astellas Pharma Inc. Announces Successful Completion of Tender Offer for Shares of OSI Pharmaceuticals, Inc. (OSIP)

TOKYO, June 8 /PRNewswire/ -- Astellas Pharma Inc. (TSE: 4503) announced today the completion of its tender offer for all outstanding shares of common stock in OSI Pharmaceuticals, Inc. (Nasdaq: OSIP).

The subsequent offer period announced by Astellas on June 3 expired at 12:00 midnight, New York City time, on June 7, 2010. Computershare Trust Company, N.A., the depositary for the tender offer, has advised that, as of the expiration of the subsequent offer period, a total of 57,232,357 shares had been validly tendered and not withdrawn (including shares tendered in the initial tender offer that expired on June 2, 2010). The tendered shares in total represent approximately 93% of OSI's issued and outstanding shares. All shares validly tendered and not withdrawn have been accepted for payment.

Astellas now owns more than 90% of the issued and outstanding shares of OSI's common stock, and intends, as promptly as practicable, to complete the acquisition of OSI through a short-form merger without a meeting of OSI's stockholders. In the merger, each outstanding share of OSI common stock not purchased in the tender offer or otherwise owned by Astellas will be converted into the right to receive the same $57.50 consideration that was provided in the tender offer, without interest, except shares for which appraisal rights are validly asserted.

As a result of the merger, OSI will be a wholly-owned subsidiary of Astellas US Holding, Inc., a holding company owned by Astellas Pharma Inc., and OSI's common stock will cease to be traded on the Nasdaq Global Select Market.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison & Foerster LLP is acting as legal counsel.

About Astellas

Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 15,000 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.

9 June 2010

Completes Acquisition of OSI Pharmaceuticals, Inc. (OSIP)

TOKYO, June 9 /PRNewswire/ -- Astellas Pharma Inc. (TSE: 4503) announced today that the company has completed its acquisition of OSI Pharmaceuticals, Inc. (Nasdaq: OSIP) for $4.0 billion.

Masafumi Nogimori, President and CEO of Astellas said, “We are delighted to announce the completion of this transaction with OSI. We are truly excited by the opportunities that the combination will provide and we look forward to working with our new colleagues at OSI. This compelling transaction marks an important step forward for Astellas as the company works towards developing a world-class oncology platform and realizing our goal of improving the health of people around the world.”

OSI is a biotechnology company primarily focused on the discovery, development and commercialization of molecular targeted therapies addressing medical needs in oncology, diabetes and obesity. OSI manufactures and sells Tarceva® (erlotinib), a leading cancer medication, and has several prospective new oncology medications in its R&D pipeline. OSI is expected to augment Astellas' strong existing franchises in urology and transplantation, expanding the product portfolio and pipeline of the combined company.

Astellas completed the acquisition of OSI through a short-form merger without a meeting of OSI's stockholders. In the merger, each outstanding share of OSI common stock not purchased in Astellas' tender offer or otherwise owned by Astellas was converted into the right to receive the same $57.50 consideration that was provided in the tender offer, without interest, except shares for which appraisal rights are validly asserted. OSI is now a wholly-owned subsidiary of Astellas US Holding, Inc., a holding company owned by Astellas Pharma Inc., and OSI's common stock has ceased to be traded on the Nasdaq Global Select Market.

Citigroup is acting as exclusive financial advisor to Astellas and Morrison & Foerster LLP is acting as legal counsel.

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About Astellas

Astellas Pharma Inc., located in Tokyo, Japan, is a pharmaceutical company dedicated to improving the health of people around the world through the provision of innovative and reliable pharmaceuticals. Astellas has approximately 15,000 employees worldwide. The organization is committed to becoming a global category leader in urology, immunology & infectious diseases, neuroscience, DM complications & metabolic diseases and oncology. For more information on Astellas Pharma Inc., please visit our website at http://www.astellas.com/en.

Filing Data

Not available.

Contract

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

ASTELLAS PHARMA INC.,

ASTELLAS US HOLDING, INC.,

RUBY ACQUISITION, INC.,

AND

OSI PHARMACEUTICALS, INC.

DATED AS OF MAY 16, 2010

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AGREEMENT AND PLAN OF MERGER
AGREEMENT AND PLAN OF MERGER, dated as of May 16, 2010 (this “Agreement”), by and among Astellas Pharma Inc., a corporation formed under the laws of Japan ("Parent"), Astellas US Holding, Inc., a Delaware corporation and a wholly-owned subsidiary of the Parent, Ruby Acquisition, Inc., a Delaware corporation and a direct wholly-owned subsidiary of Holding and an indirect wholly-owned subsidiary of Parent ("Merger Sub"), and OSI Pharmaceuticals, Inc. a Delaware corporation (the "Company").

W I T N E S S E T H:

WHEREAS, Merger Sub has previously commenced a cash tender offer (the “Pending Offer”) to purchase all of the issued and outstanding shares of common stock, par value $0.01 per share, of the Company (each, a “Share” and, collectively, “Shares”), together with the Rights attached thereto or associated therewith, for $52.00 per Share, net to the seller in cash, subject to any withholding of Taxes required by applicable Law and subject to certain terms and conditions; and

WHEREAS, Parent, Holding, Merger Sub and the Company have agreed to the acquisition of the Company on the terms and subject to the conditions set forth herein and, accordingly, Merger Sub has agreed to amend the Pending Offer to provide for the purchase of all of the issued and outstanding Shares (as the Pending Offer is so amended and as it may be amended from time to time as permitted by this Agreement, the “Offer”), for $57.50 per Share, net to the seller in cash (such price, or any other price per Share as may be paid in the Offer pursuant to the terms of this Agreement, is referred to herein as the “Offer Price”), without interest, subject to any withholding of Taxes required by applicable Law and subject to the conditions set forth herein; and

WHEREAS, in furtherance of the transaction, it is proposed that, following the acceptance for payment of Shares pursuant to the Offer, upon the terms and subject to the conditions set forth in this Agreement, Merger Sub will be merged with and into the Company, with the Company continuing as the Surviving Corporation (the “Merger”), in accordance with the General Corporation Law of the State of Delaware (the “DGCL”), whereby each issued and outstanding Share (other than Shares to be canceled in accordance with Section 3.1(b) of this Agreement and the Appraisal Shares) will be converted into the right to receive the Offer Price, payable net to the holder in cash, without interest, subject to any withholding of Taxes required by applicable Law; and

WHEREAS, the board of directors of the Company (the “Company Board”) has, upon the terms and subject to the conditions set forth herein, (i) determined that this Agreement and the transactions contemplated hereby, including the Offer and the Merger, are advisable and in the best interests of the Company and its stockholders, (ii) approved and declare advisable this Agreement and the transactions contemplated hereby, including, the Offer and the Merger and, (iii) recommended that the stockholders of the Company accept the Offer and tender their Shares pursuant to the Offer and, to the extent required to consummate the Merger, adopt this Agreement and approve the Merger (the “Company Board Recommendation”); and

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WHEREAS, the respective boards of directors of Parent, Holding and Merger Sub have, upon the terms and subject to the conditions set forth herein, approved and declared advisable this Agreement and the transactions contemplated hereby, including the Offer and the Merger; and

WHEREAS, Holding, as the sole stockholder of Merger Sub, has approved and adopted this Agreement and approved the transactions contemplated hereby, including the Offer and the Merger, upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Parent, Holding, Merger Sub and the Company wish to make certain representations, warranties, covenants and agreements in connection with the Offer and the Merger and to prescribe certain conditions to the consummation of the Offer and the Merger as set forth herein; and

WHEREAS, terms used but not defined herein shall have the meanings set forth in Section 9.3, unless otherwise noted.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements of the parties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

THE OFFER

1.1 The Offer.

(a) Provided that this Agreement shall not have been terminated in accordance with Article VIII hereof, Parent shall cause Merger Sub to, and Merger Sub shall, amend the Pending Offer to reflect the execution of this Agreement and the terms hereof as promptly as practicable after the date of this Agreement (but in no event later than the fifth (5th) Business Day following the date of this Agreement). The date on which Merger Sub amends the Pending Offer is referred to in this Agreement as the “Offer Amendment Date.”
(b) The obligation of Merger Sub to accept for payment (and the obligation of Parent to cause Merger Sub to accept for payment) Shares and associated Rights validly tendered (and not withdrawn) pursuant to the Offer shall only be subject to (i) the condition that there shall be validly tendered in accordance with the terms of the Offer (and not withdrawn) prior to the Expiration Date a number of Shares that, together with any Shares owned by Parent, Holding or Merger Sub immediately prior to the acceptance for payment of Shares and associated Rights pursuant to the Offer or with respect to which Parent, Holding or Merger Sub otherwise has, directly or indirectly, sole voting power, represents more than 50% of the Adjusted Outstanding Share Number (as defined below) at the Expiration Date (the “Minimum Condition”) and (ii) the satisfaction or waiver by Parent of the other conditions set forth in Annex I. The Minimum Condition and the other conditions set forth in Annex I are referred to collectively as the “Offer Conditions.” For purposes of this Agreement, the “Adjusted Outstanding Share Number” shall be the sum of (x) the aggregate number of Shares issued and outstanding immediately prior to the Acceptance Time (as defined herein), plus (y) the sum of (a) the aggregate number of Shares issuable upon the exercise of all Company Options and conversion of all Company RSUs, Company DSUs and other rights to acquire Shares that are outstanding immediately prior to the acceptance of Shares for payment pursuant to the Offer and that are vested and exercisable or may become vested and exercisable prior to the Effective Time, plus (B) the aggregate number of Shares issuable upon conversion of all Convertible Notes that are outstanding immediately prior to the Acceptance Time and that are convertible into such Shares or may become convertible into such Shares prior to the Effective Time.

(c) Parent and Merger Sub expressly reserve the right to (i) increase the Offer Price and (ii) waive or make any other changes to the terms and conditions of the Offer; provided, however, that without the prior written consent of the Company: (A) the Minimum Condition may not be amended or waived; and (B) no change may be made to the Offer that (1) changes the form of consideration to be delivered by Merger Sub pursuant to the Offer, (2) decreases the Offer Price, (3) decreases the number of Shares to be purchased by Merger Sub in the Offer, (4) imposes conditions to the Offer in addition to the Offer Conditions, (5) amends the Offer Conditions so as to broaden the scope of the Offer Conditions, (6) except as provided in Section 1.1(d), extends the Expiration Date beyond the Initial Expiration Date or (7) otherwise amends any other term or condition of the Offer in a manner adverse to the holders of Shares. Subject to the terms and conditions of the Offer and this Agreement, Merger Sub shall, and Parent shall cause Merger Sub to, (x) accept for payment all Shares and associated Rights validly tendered (and not withdrawn) pursuant to the Offer promptly, and in any event in compliance with Rule 14e-1(c) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and, if applicable, Rule 14d-11 of the Exchange Act and (y) promptly pay the Offer Price in exchange for each Share and associated Rights accepted for payment pursuant to the Offer.

(d) Subject to the terms and conditions of this Agreement, the Offer shall initially be scheduled to expire no later than ten (10) Business Days following the Offer Amendment Date (calculated as set forth in Rule 14d-1(g)(3) under the Exchange Act) (the “Initial Expiration Date”), or if the Initial Expiration Date has been extended in accordance with this Agreement, the date on which the Offer has been so extended (the Initial Expiration Date, or such later date to which the Initial Expiration Date has been extended in accordance with this Agreement, the “Expiration Date”). Notwithstanding anything to the contrary contained in this Agreement, but subject to the parties’ respective termination rights under Section 8.1, (i) if, at the time of any then scheduled Expiration Date, any Offer Condition is not satisfied and has not been waived, then, subject to the parties’ respective termination rights under Section 8.1, Merger Sub shall extend the Offer on one or more occasions, for additional successive periods of up to ten (10) Business Days per extension (with the length of such periods to be determined by Parent upon consultation with the Company), until all Offer Conditions are satisfied or validly waived in order to permit the Acceptance Time to occur; provided, however, that in no event shall Merger Sub be required to extend the Offer beyond the Outside Date or if, in the reasonable discretion of Parent and Merger Sub, any Offer Condition is not reasonably capable of being satisfied on or before the Outside Date, and (ii) Merger Sub shall extend the Offer from time to time for any period required by any rule, regulation, interpretation or position of the SEC or the staff of the SEC or the Nasdaq Stock Market applicable to the Offer; provided, however, that in no event shall Merger Sub be required to extend the Offer beyond the Outside Date. Merger Sub may, in its sole discretion (and without the consent of the Company or any other person), elect to provide for a subsequent offering period (and up to two five Business Day extensions thereof) (a “Subsequent Offering Period”) in accordance with Rule 14d-11 under the Exchange Act if, as of the commencement of such period, the number of Shares that have been validly tendered (excluding Shares tendered pursuant to the guaranteed delivery procedures that have not yet been delivered in settlement or satisfaction of the guarantee), and not properly withdrawn pursuant to the Offer would be insufficient to permit the Merger to be effected without a meeting of stockholders of the Company in accordance with Section 253(a) of the DGCL. Subject to the terms and conditions of this Agreement, Merger Sub shall, and Parent shall cause Merger Sub to, promptly accept for payment, and pay for, all Shares and associated Rights that are validly tendered during any such Subsequent Offering Period (or any extension thereof).

(e) Merger Sub shall not terminate or withdraw the Offer prior to the Outside Date without the prior written consent of the Company, unless this Agreement is earlier terminated pursuant to Article VIII.

(f) On the Offer Amendment Date, Parent or Merger Sub shall: (i) cause to be filed with the SEC an amendment to Parent’s Tender Offer Statement on Schedule TO, as amended and originally filed on March 2, 2010 with respect to the Pending Offer, which amendment shall reflect
the execution of this Agreement and the terms hereof and shall include as exhibits (A) an amended offer to purchase Shares pursuant to the
Offer (the “Offer to Purchase”) and (B) forms of the related letter of transmittal and notice of guaranteed delivery; and (ii) subject to the
Company’s compliance with Section 1.2, cause the Offer to Purchase and related documents to be disseminated to holders of Shares. Parent
and Merger Sub shall use commercially reasonable efforts to cause such Tender Offer Statement on Schedule TO and all exhibits, amendments
and supplements thereto (collectively, the “Offer Documents”) and the filing and dissemination thereof to comply in all material respects with the
applicable requirements of the Exchange Act and the rules and regulations thereunder and with all other applicable Laws. The Company and its
legal counsel shall be given reasonable opportunity to review and comment on the Offer Documents (including all amendments and supplements
thereto) prior to the filing thereof with the SEC, and Parent and Merger Sub shall give due consideration to the additions, deletions or changes
thereto suggested by the Company and its legal counsel. Parent and Merger Sub shall promptly provide the Company and its legal counsel with
a copy of any written comments and a description of any oral comments received by Parent, Merger Sub or their legal counsel from the SEC or
its staff with respect to the Offer Documents. The Company and its legal counsel shall be given reasonable opportunity to review and comment
on Parent and Merger Sub’s proposed responses to the comments prior to the filing thereof with the SEC, and Parent and Merger Sub shall give
due consideration to all additions, deletions or changes thereto suggested by the Company and its legal counsel. Parent and Merger Sub shall
use commercially reasonable efforts to respond promptly to any such comments. If at any time prior to the Effective Time any information
relating to the Offer, the Merger, the Company, Parent, Merger Sub or any of their respective Affiliates, directors, or officers should be
discovered by the Company or Parent which should be set forth in an amendment or supplement to any of the Offer Documents, so that the
Offer Documents shall not contain any untrue


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statement of a material fact or 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 are made, not misleading, the party which discovers such information shall promptly notify the
other parties, and an appropriate amendment or supplement describing such information shall be filed with the SEC and disseminated to the
stockholders of the Company, as and to the extent required by the applicable requirements of the Exchange Act and the rules and regulations
thereunder or by other applicable Law. The Company shall promptly furnish to Parent and Merger Sub, upon the written request of either such
party, all information concerning the Company that may be required by applicable Law or reasonably requested in connection with any action
contemplated by this Section 1.1(f).

(g) If, between the date of this Agreement and the Acceptance Time, the outstanding Shares are changed into a different number or class of
shares by reason of any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, recapitalization,
recapitalization or other similar transaction, or if a record date with respect to any such event shall occur during such period, then the Offer Price
shall be appropriately adjusted.

1.2 Company Actions.

(a) Contemporaneously with the filing of the amendment to Schedule TO or as promptly as practicable thereafter (but in no event later than the
fifth (5th) Business Day after the date of this Agreement), the Company shall file with the SEC and (following or contemporaneously with the
dissemination of the Offer to Purchase and related documents) disseminate to holders of Shares an amendment to its
Solicitation/Recommendation Statement on Schedule 14D-9 (together with any amendments or supplements thereto, the “Schedule 14D-9”) that,
subject to Section 5.2, shall reflect the Company Board Recommendation. The Company shall use commercially reasonable efforts to
cause the Schedule 14D-9 and the filing and dissemination thereof to comply in all material respects with the applicable requirements of the
Exchange Act and the rules and regulations thereunder and with all other applicable Law. Parent and its legal counsel shall be given reasonable
opportunity to review and comment on the Schedule 14D-9 (including any amendment or supplement thereto) prior to the filing thereof with the
SEC, and the Company shall give due consideration to all additions, deletions or changes thereto suggested by Parent and its legal counsel.
The Company shall promptly provide Parent and its legal counsel with a copy of any written comments and a description of any oral comments
received by the Company or its legal counsel from the SEC or its staff with respect to the Schedule 14D-9. Parent and its legal counsel shall be
given reasonable opportunity to review and comment on the Company’s proposed responses to the comments prior to the filing thereof with the
SEC, and the Company shall give due consideration to all additions, deletions or changes thereto suggested by Parent and its legal counsel.
The Company shall use commercially reasonable efforts to respond promptly to any such comments. If at any time prior to the Effective Time,
any information relating to the Offer, the Merger, the Company, Parent, Merger Sub or any of their respective Affiliates, directors, or officers
should be discovered by the Company or Parent which should be set forth in an amendment or supplement to the Schedule 14D-9, so that the
Schedule 14D-9 shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or
necessary in order to make

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the statements therein, in light of the circumstances under which they are made, not misleading, the party which discovers such information shall
promptly notify the other parties, and an appropriate amendment or supplement describing such information shall be filed with the SEC and
disseminated to the stockholders of the Company, as and to the extent required by the applicable requirements of the Exchange Act and the
rules and regulations thereunder or by other applicable Law. Parent, Holding and Merger Sub shall promptly furnish to the Company upon the
Company’s written request all information concerning Parent, Holding, Merger Sub and the Offer that may be required or reasonably requested in connection with any action contemplated by this Section 1.2(a).

(b) The Company shall as promptly as practicable after the date of this Agreement provide to Parent, or cause to be provided to Parent, (i) a list of the Company’s stockholders as well as mailing labels and any available listing or computer file containing the names and addresses of all record holders of Shares and lists of securities positions of Shares held in stock depositories, in each case accurate and complete as of the most recent practicable date, and (ii) such additional information (including updated lists of stockholders, mailing labels and lists of securities positions) and such other assistance as Parent may reasonably request in connection with the Offer. Except as may be required by applicable Law or legal process, and except as may be necessary to disseminate the Offer Documents or as otherwise permitted by this Agreement, Parent and Merger Sub shall hold in confidence, in accordance with the terms of the Confidentiality Agreement and this Agreement, any information contained in any such labels, listings and files provided by the Company to Parent until the Effective Time.

1.3 Directors.

(a) After Merger Sub initially accepts for payment Shares validly tendered and not withdrawn pursuant to the Offer (the “Acceptance Time”) and at all times thereafter, Parent shall be entitled to elect or designate, to serve on the Company Board, the number of directors, rounded up to the next whole number, determined by multiplying: (i) the total number of directors on the Company Board (giving effect to any increase in the size of the Company Board effected pursuant to this Section 1.3(a)); by (ii) a fraction having a numerator equal to the aggregate number of Shares then beneficially owned by Parent, Holding or Merger Sub (including all Shares accepted for payment pursuant to the Offer), and having a denominator equal to the total number of Shares then issued and outstanding. Promptly following Parent’s request after the Acceptance Time, the Company shall cause Parent’s designees to be elected or appointed to the Company Board, including seeking and accepting resignations of incumbent directors and, if such resignations are not obtained, increasing the size of the Company Board. From and after the Acceptance Time, to the extent requested by Parent, the Company shall also, to the maximum extent permitted by applicable Law (including the rules of the Nasdaq Global Select Market), cause individuals designated by Parent to constitute the number of members, rounded up to the next whole number, on each committee of the Company Board that represents at least the same percentage as individuals designated by Parent represent on the Company Board. Notwithstanding the provisions of this Section 1.3, at all times prior to the Effective Time (as defined in Section 2.3), the Company, Parent and Merger Sub shall cause the Company Board to include, at all times prior to the Effective Time, at least three of the members of the Company Board, selected by the members of the Company Board, who were directors of the Company on the date of this Agreement (“Continuing Directors”), each of whom shall be an “independent director” as defined by Rule 4200(a)(15) of the Nasdaq Marketplace Rules and eligible to serve on the Company’s audit committee under the Exchange Act and Nasdaq rules; provided, however, that if at any time prior to the Effective Time there shall be less than three (3) Continuing Directors serving as directors of the Company for any reason, then the Company Board shall, subject to the following sentence, take all necessary action (including creating a committee of the Company Board) to cause an individual selected by the remaining Continuing Directors (or Continuing Director, if there shall be only one (1) Continuing Director remaining) who satisfies the foregoing independence requirements and who is not an officer, director, stockholder or designee of Parent or any of its Affiliates to be appointed to serve on the Company Board (and such individual shall be deemed to be a Continuing Director for all purposes under this Agreement).

(b) In connection with the performance of its obligations to cause Parent’s designees to be elected or appointed to the Company Board, each of the Company and Parent shall use its commercially reasonable efforts to promptly take all actions, and the Company shall cause to be included in the Schedule 14D-9 such information with respect to the Company and its officers and directors (including Parent’s designees), as Section 14(f) of the Exchange Act and Rule 14f-1 thereunder require (subject to the Company’s receipt of the information with respect to Parent and its nominees, officers, directors and affiliates required by Section 14(f) of the Exchange Act and Rule 14f-1 thereunder). Parent shall supply to the Company in writing and be solely responsible for any information with respect to itself and its nominees, officers, directors and Affiliates required by Section 14(f) and Rule 14f-1 under the Exchange Act.

(c) Following the election or appointment of Parent’s designees to the Company Board pursuant to Section 1.3(a) (the date of such election or appointment, the “Control Date”) and until the Effective Time (the “Interim Period”), each of the following actions may be effected only if there are on the Company Board one or more Continuing Directors and such action is approved by a majority of such Continuing Directors (or by such Continuing Director should there be only one): (i) action by the Company with respect to any amendment, supplement, modification, waiver or of any term or condition of this Agreement; (ii) termination of this Agreement by the Company; (iii) extension by the Company of the time for the performance of any of the obligations or other acts of Parent or Merger Sub; (iv) any waiver or assertion of any of the Company’s rights under this Agreement; (v) amendment to the Restated Certificate of Incorporation or Second Amended and Restated Bylaws of the Company; (vi) authorization of any agreement between the Company and any of its Affiliates, on the one hand, and Parent, Merger Sub or any of their Affiliates on the other hand, or (vii) any other consent or action by the Company with respect to the Offer, the Merger or any of the other Transactions. To the extent permitted under applicable Law, during the Interim Period, in addition to any requirements under the Company’s Restated Certificate of Incorporation and Second Amended and Restated Bylaws, any quorum of the Company Board for the purposes of any meeting thereof or transacting of business thereby with respect to the approval of any of the foregoing actions shall be deemed to require the attendance of at least one Continuing Director. The Continuing Directors shall have, and Parent shall cause the Continuing Directors to have, the authority to retain such counsel (which may include current counsel to the Company or the
Company Board) and other advisors with respect to the foregoing actions or otherwise relating to their service on the Company Board at the expense of the Company as reasonably determined by the Continuing Directors, and the authority to institute any action on behalf of the Company to enforce the performance of this Agreement. The Company shall indemnify and advance expenses to, and Parent shall cause the Company to indemnify and advance expenses to, the Continuing Directors in connection with their service as directors of the Company prior to the Effective Time to the fullest extent permitted by applicable Law and in accordance with the provisions of Section 6.8 hereof.

1.4 Top-Up Option.

(a) The Company grants to Parent and Merger Sub an irrevocable option (the “Top-Up Option”), exercisable only upon the terms and subject to the conditions set forth in this Agreement, to purchase from the Company an aggregate number of newly-issued Shares equal to the lesser of (i) the number of Shares that, when added to the number of Shares owned by Parent or Merger Sub or any other Subsidiaries of Parent at the time of exercise of the Top-Up Option, constitutes one share more than 90% of the sum of the Adjusted Outstanding Share Number plus such additional Shares that would be outstanding immediately after the issuance of all Shares subject to the Top-Up Option and (ii) the aggregate number of shares of Company Common Stock that the Company is authorized to issue under its Restated Certificate of Incorporation but that are not issued and outstanding (and are not subscribed for or otherwise committed to be issued under the Equity Compensation Plans, upon conversion of the Convertible Notes or otherwise) at the time of exercise of the Top-Up Option.

(b) The Top-Up Option may be exercised by Parent or Merger Sub, in whole but not in part, at any time at or after the Acceptance Time, and no exercise of the Top-Up Option shall be effective prior to the Acceptance Time; provided that the Top-Up Option shall terminate upon the earlier of (i) the fifth (5th) Business Day after the later of (x) the Acceptance Time and (y) the expiration of any “subsequent offering period”; and (ii) the termination of this Agreement in accordance with its terms. The aggregate purchase price payable for the Shares being purchased by Parent or Merger Sub pursuant to the Top-Up Option shall be determined by multiplying the number of such Shares by the Offer Price and shall be payable, at Parent’s election, in cash or by executing and delivering to the Company a promissory note having a principal amount equal to the aggregate purchase price to be paid pursuant to the Top-Up Option (the “Promissory Note”), or by any combination thereof. Any such Promissory Note shall be full recourse against Parent and Merger Sub and (i) shall bear interest at the rate of 5% per annum, (ii) shall mature on the six month anniversary of the date of execution and delivery of such Promissory Note and (iii) may be prepaid, in whole or in part, without premium or penalty.

(c) The obligation of the Company to deliver Shares upon exercise of the Top-Up Option is subject to the conditions that (i) no Order shall prohibit the exercise of the Top-Up Option or the delivery of the Shares pursuant to the Top-Up Option in respect of such exercise, (ii) upon exercise of the Top-Up Option, the number of Shares held of record by Parent, Holding and Merger Sub constitutes at least one (1) share more than ninety percent (90%) of the number of Shares that shall be outstanding immediately after the issuance of the Shares pursuant to the Top-Up Option, and (iii) Merger Sub has accepted for payment all Shares validly tendered in the Offer and not properly withdrawn.

(d) In the event Parent or Merger Sub wishes to exercise the Top-Up Option, Parent or Merger Sub shall deliver to the Company a notice setting forth (i) the number of Shares that Parent or Merger Sub hold of record immediately preceding the purchase of Shares pursuant to the Top-Up Option, and (ii) the place, date and time at which the closing of the purchase of such Shares by Parent or Merger Sub is to take place (which shall not be more than five (5) Business Days following the date of such notice). At the closing of the purchase of such Shares, Parent or Merger Sub shall cause to be delivered to the Company the consideration (in cash or by Promissory Note in accordance with Section 1.4(b)) required to be delivered in exchange for such Shares, and the Company shall cause to be issued to Parent or Merger Sub (as the case may be) a certificate representing such Shares or, at Parent or Merger Sub’s request or otherwise if the Company does not then have certificated Shares, the applicable number of uncertificated Shares represented by book-entry.

(e) Parent and Merger Sub acknowledge that the Shares acquired by Merger Sub pursuant to the Top-Up Option will not be registered under the Securities Act of 1933, as amended (the “Securities Act”), and will be issued in reliance upon an exemption thereunder for transactions not involving a public offering. Parent and Merger Sub represent and warrant to the Company that Merger Sub will be upon the purchase of the Shares pursuant to the Top-Up Option an “accredited investor” as defined in Rule 501 of Regulation D under the Securities Act. Merger Sub agrees that the Top-Up Option and the Shares to be acquired upon exercise of the Top-Up Option are being and will be acquired by Merger Sub for the purpose of investment and not with a view to, or for resale in connection with, any distribution thereof (within the meaning of the Securities Act). Any certificates evidencing the Shares acquired pursuant to the Top-Up Option shall include any legends required by applicable securities laws.

ARTICLE II

THE MERGER

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2.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, Merger Sub shall be merged with and into the Company at the Effective Time. Following the Effective Time, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation in the Merger (the “Surviving Corporation”) and shall succeed to and assume all the rights and obligations of Merger Sub in accordance with the DGCL. As a result of the Merger, the Surviving Corporation shall become a wholly-owned Subsidiary of Holding.

2.2 Closing. The closing of the Merger (the “Closing”) shall take place at 10:00 a.m. local time on a date to be specified by the parties, which shall be no later than the second Business Day after satisfaction or (to the extent permitted by this Agreement and applicable Law) waiver of the conditions set forth in Article VII of this Agreement (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or (to the extent permitted by this Agreement and applicable Law) waiver of those conditions), at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, unless another time, date or place is agreed to in writing by Parent and the Company; provided, however, that if all the conditions set forth in Article VII of this Agreement shall not have been satisfied or (to the extent permitted by this Agreement and applicable Law) waived on such second Business Day, then the Closing shall take place on the first Business Day on which all such conditions shall have been satisfied or (to the extent permitted by this Agreement and applicable Law) waived. The date on which the Closing occurs is referred to in this Agreement as the “Closing Date.” As used in this Agreement, the term “Business Day” shall mean any day other than a Saturday, Sunday or a day on which banks in New York City or Tokyo, Japan are authorized or obligated by Law or executive order to close.

2.3 Effective Time. Subject to the provisions of this Agreement, as promptly as practicable on the Closing Date, the parties shall file with the Secretary of State of the State of Delaware a certificate of merger (the “Certificate of Merger”) executed and acknowledged by the parties in accordance with the relevant provisions of the DGCL and, as promptly as practicable or after the Closing Date, shall make all other filings or recordings required under the DGCL. The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, or at such later date and time as Parent and the Company shall agree and shall specify in the Certificate of Merger (the date and time that the Merger becomes effective being the “Effective Time”).

2.4 Effects of The Merger. At and after the Effective Time, the Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

2.5 Certificate of Incorporation And Bylaws.

(a) At the Effective Time, the Restated Certificate of Incorporation of the Company, as amended, shall be amended and restated to read in its entirety as set forth in Exhibit A attached hereto, and, as so amended and restated shall be the Certificate of Incorporation of the Surviving Corporation (the “Certificate of Incorporation”) until thereafter amended in accordance with the DGCL and as provided in such Certificate of Incorporation.

(b) At the Effective Time, the By-Laws of the Company, as amended, shall be amended and restated to read in its entirety as set forth in Exhibit B attached hereto, and, as so amended and restated, shall be the By-Laws of the Surviving Corporation (the “By-Laws”) until thereafter amended in accordance with the DGCL and as provided in such By-Laws.

2.6 Directors. The directors of Merger Sub immediately prior to the Effective Time shall, from and after the Effective Time, be the initial directors of the Surviving Corporation, until the earlier of their, death, resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

2.7 Officers. The officers of the Company immediately prior to the Effective Time, from and after the Effective Time, shall be the officers of the Surviving Corporation, until the earlier of their, death, resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

2.8 Subsequent Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of the Company or Merger Sub acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either the Company or Merger Sub, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right,
EFFECT OF THE MERGER; EXCHANGE OF CERTIFICATES

3.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holders of any shares of capital stock of the Company or any shares of capital stock of Parent, Holding or Merger Sub:

(a) Conversion of Shares. Each Share issued and outstanding immediately prior to the Effective Time, other than (i) Shares to be canceled in accordance with Section 3.1(b) of this Agreement and (ii) the Appraisal Shares (as defined in Section 3.1(d) of this Agreement) (the “Excluded Shares”) shall be converted into the right to receive (upon compliance with the exchange procedures set forth in Section 3.2), in cash, an amount equal to the Offer Price, without interest (the “Merger Consideration”). At the Effective Time, all such Shares shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and the holder of any such Share shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration. The right of any holder of a Share to receive the Merger Consideration shall be subject to the amount of any withholding and/or deduction that is required under applicable Tax Law in accordance with Section 3.2(i) of this Agreement. The Merger Consideration shall be paid in the manner set forth in Section 3.2.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. Each Share that is owned by the Company, Parent, Holding, Merger Sub, or any direct or indirect Subsidiary of the Company or Parent immediately prior to the Effective Time shall automatically be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Common Stock of Merger Sub. All issued and outstanding shares of common stock, par value $0.001 per share, of Merger Sub shall be converted into and become 100,000,000 validly issued, fully paid and non-assessable shares of common stock, par value $0.01 per share, of the Surviving Corporation and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

(d) Appraisal Rights. Notwithstanding anything in this Agreement to the contrary, Shares issued and outstanding immediately prior to the Effective Time that are held by any holder who is entitled to demand and properly demands appraisal (the “Appraisal Shares”) of such Appraisal Shares pursuant to, and who complies in all respects with, the provisions of Section 262 of the DGCL (“Section 262”) shall not be converted into the right to receive the Merger Consideration as provided in Section 3.1(a) of this Agreement, but instead such holder shall be entitled to payment of the fair value of such Appraisal Shares in accordance with the provisions of Section 262. At the Effective Time, all Appraisal Shares shall no longer be outstanding, shall automatically be canceled and retired and shall cease to exist, and each holder of Appraisal Shares shall cease to have any rights with respect thereto, except the right to receive the fair value of such Appraisal Shares in accordance with the provisions of Section 262. Notwithstanding the foregoing, if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to appraisal under Section 262, or a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262, then the right of such holder to be paid the fair value of such holder’s Appraisal Shares under Section 262 shall cease and such Appraisal Shares shall be deemed to have been converted at the Effective Time into, and shall have become, the right to receive the Merger Consideration as provided in Section 3.1(a) of this Agreement, without interest. The Company shall serve prompt notice to Parent of any demands for appraisal of any Shares, and Parent shall have the right to participate in and direct all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of Parent (which consent shall not be unreasonably conditioned, withheld or delayed), voluntarily make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing.

3.2 Exchange of Shares.

(a) Paying Agent. The parties hereto agree to the appointment of Computershare (or such replacement as reasonably selected by Parent) to act as paying agent (the “Paying Agent”) for the payment of the Merger Consideration. At the Effective Time, Parent shall deposit, or cause the Surviving Corporation to deposit, with the Paying Agent, for the benefit of the holders of Certificates (as defined below), cash in an amount sufficient to pay the aggregate Merger Consideration required to be paid pursuant to Section 3.1(a) of this Agreement (such cash being hereinafter referred to as the “Exchange Fund”).

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(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, Parent shall cause the Paying Agent to mail to each holder of record of a Share (other than holders of Excluded Shares) (i) a form of letter of transmittal (which shall specify when delivery of Shares shall be effected, and, with respect to certificates representing Shares immediately prior to the Effective Time ("Certificates"), that the risk of loss and title to Certificates shall pass only upon proper delivery of the Certificates to the Paying Agent and which letter of transmittal shall be in customary form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of Certificates in exchange for the Merger Consideration. Each holder of record of a Share (other than holders of Excluded Shares) shall, upon the submission of a letter of transmittal, duly executed, and such other documents as may reasonably be required by the Paying Agent, be entitled to receive in exchange therefor the amount of cash which the number of Shares held by such holder shall have been converted into the right to receive pursuant to Section 3.1(a) of this Agreement, and any Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Shares which is not registered in the transfer records of the Company, payment of the Merger Consideration may be made to a person other than the person in whose name the Certificate so surrendered is registered if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment shall pay any transfer or other Taxes required by reason of the payment of the Merger Consideration to a person other than the registered holder of such Certificate or establish to the reasonable satisfaction of Parent that such Tax has been paid or is not applicable. Until surrendered as contemplated by this Section 3.2(b), each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration which the holder thereof has the right to receive in respect of such Certificate pursuant to the provisions of this Article III. No interest shall be paid or will accrue on any cash payable to holders of Shares pursuant to the provisions of this Article III.

(c) No Further Ownership Rights in Shares. All cash paid upon the surrender of Shares in accordance with the terms of this Article III shall be deemed to have been paid in full satisfaction of all rights pertaining to such Shares. At the close of business on the day on which the Effective Time occurs, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate is presented to the Surviving Corporation for transfer, it shall be canceled against delivery of cash to the holder thereof as provided in this Article III.

(d) Termination of the Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Certificates for one year after the Effective Time shall be delivered to Parent, upon demand, and any holders of the Certificates who have not theretofore complied with this Article III shall thereafter look only to Parent for, and Parent shall remain liable for, payment of their claim for the Merger Consideration.

(e) No Liability. None of Parent, Holding, Merger Sub, the Company, the Surviving Corporation or the Paying Agent shall be liable to any person in respect of any cash from the Exchange Fund properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any Certificate shall not have been surrendered prior to the date on which the applicable Merger Consideration would otherwise escheat to or become the property of any Governmental Entity, any such Merger Consideration shall, to the extent permitted by applicable Law, become the property of Parent, free and clear of all claims or interest of any person previously entitled thereto.

(f) Investment of Exchange Fund. The Paying Agent shall invest the cash comprising the Exchange Fund as directed by Parent on a daily basis provided, however, that any investment of such cash shall in all events be limited to direct short-term obligations of, or short-term obligations fully guaranteed as to principal and interest by, the U.S. government, in commercial paper rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively, or in certificates of deposit, bank repurchase agreements or banker’s acceptances of commercial banks with capital exceeding $10 billion (based on the most recent financial statements of such bank that are then publicly available), and that no such investment or loss thereon shall affect the amounts payable to holders of Shares pursuant to this Article III. Any interest and other income resulting from such investments shall be paid to Holding.

(g) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if reasonably required by Parent, the posting by such person of a bond in such reasonable amount as Parent may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent shall deliver in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect thereto.

(h) Adjustments. If at any time during the period between the date of this Agreement and the Effective Time, a change in the outstanding shares of capital stock of the Company shall occur by reason of any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, the Merger Consideration shall be adjusted appropriately.

(i) Withholding Rights. Parent, the Surviving Corporation or the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Shares, Company Options, Company RSUs or Company DSUs, as applicable, such amounts as Parent, the Surviving Corporation or the Paying Agent, as applicable, is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate Taxing Authority by Parent, the Surviving Corporation or the Paying Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Shares, Company Options, Company RSUs or Company DSUs, as applicable, in respect of which such deduction and withholding was made by such party.

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3.3 Associated Rights. References in Article III of this Agreement to Company Common Stock shall include, unless the context requires otherwise, the associated rights (the “Rights”) issued pursuant to the Rights Agreement, dated September 27, 2000 (the “Rights Agreement”), between the Company and The Bank of New York (the “Rights Agent”).

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Company. Except as set forth in (i) the Company SEC Reports (but excluding any disclosures in any section entitled “Risk Factors” or “Forward-Looking Statements” or similar headings, or any other disclosures that are general, cautionary, predictive or forward-looking in nature) or (ii) the disclosure letter delivered by the Company to Parent on or prior to the execution of this Agreement (the “Company Disclosure Letter”), the Company represents and warrants to Parent, Holding and Merger Sub as follows:

(a) Organization, Good Standing and Qualification. The Company and each of its Subsidiaries is duly organized, validly existing and in good standing (with respect to jurisdictions that recognize the concept of good standing) under the laws of its respective jurisdiction of organization and has all requisite power and authority to own and operate its properties and assets and to carry on its business as currently conducted, except for such failures to be so organized, existing and in good standing (with respect to such jurisdictions that recognize the concept of good standing) or to have such power and authority that would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect. The Company and each of its Subsidiaries is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of its properties and assets or conduct of its business requires such qualification, except for such failures to be so qualified or in good standing (with respect to such jurisdictions that recognize the concept of good standing) that would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(b) Capital Structure. The authorized capital stock of the Company consists of 205,000,000 shares, consisting of (i) 200,000,000 shares of common stock, par value $0.01 per share (“Company Common Stock”), and (ii) 5,000,000 shares of preferred stock, par value $0.01 per share (“Company Preferred Stock”). As of April 30, 2010, 61,201,596 shares of Company Common Stock were issued and outstanding and no shares of Company Preferred Stock were issued or outstanding. Each of the outstanding shares of capital stock or other securities of the Company has been, and each Share which may be issued in connection with any Company Option, Company RSU or Company DSU, upon conversion of the Company’s outstanding Convertible Notes or pursuant to the ESPPs, will be, when issued and paid for in accordance with the terms of such instrument, duly authorized, validly issued, fully paid and non-assessable. Each of the outstanding shares of capital stock or other securities of each of the Company’s Subsidiaries is duly authorized, validly issued, fully paid and non-assessable and is owned by the Company or a direct or indirect wholly-owned Subsidiary of the Company, free and clear of any lien, pledge, claim, option, charge, security interest, limitation, encumbrance and restriction of any kind (including any restriction on the right to vote, sell or otherwise dispose of such capital stock of other ownership interests). Other than as listed on Section 4.1(b) of the Company Disclosure Letter, the Company does not directly or indirectly own any securities or other beneficial ownership interests in any other entity (including through joint ventures or partnership arrangements), or have any investment in any other person. Section 4.1(b) of the Company Disclosure Letter lists, as of April 30, 2010, all preemptive or other

(c) Corporate Authority. The Company has the requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and, subject to obtaining the Stockholder Approval (if required by the DGCL),
to consummate, on the terms and subject to the conditions of this Agreement, the Merger. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Transactions have been duly and validly adopted and approved by the Company Board, and, subject to Section 5.2(c) of this Agreement, the Company Board has resolved to recommend that the stockholders of the Company accept the Offer and tender their Shares pursuant to the Offer and, to the extent required to consummate the Merger, has directed that this Agreement be submitted to the stockholders of the Company for their adoption and recommended such adoption, and no other corporate proceedings on the part of the Company or its stockholders are necessary to authorize the execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Merger, other than obtaining the Stockholder Approval, if required. Assuming due authorization, execution and delivery by each of Parent, Holding and Merger Sub, this Agreement is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity.

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(d) No Conflicts. The execution and delivery of this Agreement do not, and the performance of this Agreement and the consummation of the transactions contemplated hereby (the "Transactions") will not, constitute or result in (A) a breach or violation of, or a default under, the certificate of incorporation and bylaws or comparable governing instruments ("Organizational Documents") of the Company or any of its Subsidiaries, or (B) a breach or violation of, or a default under, the acceleration of any obligations, a right of consent or termination, the loss of any right or benefit, or the creation of a lien, pledge, security interest or other encumbrance on the assets of the Company or any Subsidiary of the Company (with or without notice, lapse of time or both) pursuant to any agreement, lease, contract, note, mortgage, indenture, arrangement or other obligation binding upon the Company or any Subsidiary of the Company or any Law or governmental or non-governmental permit or license to which the Company or any of its Subsidiaries is subject, except, in the case of clause (B) above, for such breaches, violations, defaults, accelerations, creations or changes that would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(e) Consents and Approvals. Neither the execution and delivery of this Agreement by the Company nor the consummation of the Transactions will result in a violation of any applicable United States or foreign, federal, state or local laws, statutes, ordinances, rules, regulations, judgments, orders, injunctions, decrees or agency requirements of any Governmental Entity ("Laws") by the Company or any of its Subsidiaries, except for any such violations that would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect. The execution and delivery of this Agreement by the Company and the consummation of the Transactions will not require any action or consent or approval of, or review by, or registration or filing by the Company or any of its Subsidiaries with any Governmental Entity, except for (i) the filing of the Proxy Statement with the SEC, and any other filings or notices pursuant to securities Laws and stock exchange rules in the United States, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, (iii) such filings or notices as may be required under any environmental, health or safety Law (including any rules and regulations of the FDA) in connection with the Offer or the Merger, (iv) the actions, consents or approvals set forth in Section 4.1(e) of the Company Disclosure Letter, and (v) actions, consents or approvals the failure of which to be obtained or made would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(f) SEC Filings: Sarbanes-Oxley Act.

(i) The Company has made available to Parent true and complete copies of (i) the Company’s annual reports on Form 10-K for its fiscal years ended December 31, 2009, 2008 and 2007, (ii) its proxy or information statements relating to meetings of the stockholders of the Company held (or actions taken without a meeting by such stockholders) since January 1, 2008, and (iii) all of its other reports, statements, schedules and registration statements filed or required to be filed with the U.S. Securities and Exchange Commission (the "SEC") since January 1, 2008 to the day immediately preceding the date of this Agreement (collectively, the “Company SEC Reports”). The Company has timely filed with the SEC all Company SEC Reports.

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(ii) As of its filing date (or, if amended or superseded by a filing prior to the date hereof, on the date of such filing), each Company SEC Report, and each filing made by the Company with the SEC subsequent to the date hereof and prior to the Acceptance Time (collectively, “Subsequent SEC Filings”) will comply, as to form in all material respects with the applicable requirements of the Securities Act and the Exchange Act, as the case may be.

(iii) As of its filing date (or, if amended or superseded by a filing prior to the date hereof, on the date of such filing), each Company SEC Report filed pursuant to the Exchange Act did not, and each Subsequent SEC Filing will not, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(iv) Each Company SEC Report, as amended or supplemented, if applicable, filed pursuant to the Securities Act, as of the date such registration statement or any post-effective amendment thereto became effective, did not, and each Subsequent SEC Filing, as of such dates, will not, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the
The Proxy Statement, if any, will comply as to form in all material respects with the requirements of the Exchange Act.

be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading.

aggregate, a Company Material Adverse Effect.

Stockholders' Meeting), contain any untrue statement of a material fact or omit to state any material fact required to

first mailed to the stockholders of the Company and at the time of the meeting of stockholders for the purpose of considering and taking action

knowledge of the Company, investigation by any Governmental Entity involving, the Company or any of its Subsidiaries or any of the Company

taking of any action referred to in Section 5.1(a), except as would be permitted thereby.

Merger (together with any supplements or amendments thereto, the "Proxy Statement"), will not, at the time filed with the SEC, at the date it is

agreement or deferred prosecution agreement, settlement or order of any Governmental Entity or arbitrator outstanding against, or, to the

has not been any change or event that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material

Adverse Effect and (ii) on or prior to the date of this Agreement, neither the Company nor any of its Subsidiaries has taken or authorized the

(v) Each Company SEC Report that was required to be accompanied by the certifications required to be filed or submitted by the Company's

principal executive officer and principal financial officer pursuant to the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") was, and each

Subsequent SEC Filing will be, accompanied by such certification and, at the time of filing or submission of each such certification, to the

knowledge of the Company, such certification was or is true and accurate and complied with or will comply with the Sarbanes-Oxley Act.

(vi) The financial statements of the Company included in the Company SEC Reports (A) have been prepared from, and are in accordance with, the

books and records of the Company, (B) at the time filed (and, in the case of registration statements and proxy statements, on the dates of

effectiveness and the dates of mailing, respectively, and, in the case of any such Company SEC Report amended or superseded by a filing prior to

date of this Agreement, then on the date of such amending or superseding filing) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (C) were prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP") applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto, or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC), and (D) fairly present in all material respects

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(subject, in the case of unaudited statements, to normal, recurring audit adjustments and, in the case of Company SEC Reports amended or

superseded by a filing prior to the date of this Agreement, such amending or superseding filing) the consolidated financial position of the

Company and the consolidated Subsidiaries of the Company as the dates thereof and the consolidated results of their operations and cash flows

for the periods then ended.

(vii) Since the Company’s filing of its Form 10-K for the fiscal year ended December 31, 2009 with the SEC, there have been no changes in the

Company’s system of internal control over financial reporting which changes would materially adversely affect the Company’s system of internal

control over financial reporting. To the knowledge of the Company, the Company's system of internal controls over financial reporting is effective

in all material respects.

(g) Information Supplied.

(i) None of the information supplied or to be supplied by or on behalf of the Company specifically for inclusion or incorporation by reference in the

Offer Documents will, at the time filed with the SEC or at the date first distributed or disseminated to the stockholders of the Company, contain

any untrue statement of a material fact or 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 are made, not misleading.

(ii) The Schedule 14D-9 will not, at the time the Schedule 14D-9 is filed with the SEC or at the time first distributed or disseminated to the

stockholders of the Company, contain any untrue statement of a material fact or 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 are made, not misleading. The Schedule

14D-9 will comply as to form in all material respects with the requirements of the Exchange Act. The proxy statement, if any, relating to the

Merger (together with any supplements or amendments thereto, the “Proxy Statement”), will not, at the time filed with the SEC, at the date it is

first mailed to the stockholders of the Company and at the time of the meeting of stockholders for the purpose of considering and taking action

upon this Agreement (the “Stockholders’ Meeting”), contain any untrue statement of a material fact or 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 are made, not misleading.

The Proxy Statement, if any, will comply as to form in all material respects with the requirements of the Exchange Act.

(iii) No representation or warranty is made by the Company with respect to the information supplied by or related to, or the sufficiency of

disclosures related to, Parent, Holding, Merger Sub or any Affiliate of Parent, Holding or Merger Sub.

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(h) Absence of Certain Changes or Events. Since December 31, 2009, except for liabilities incurred in connection with this Agreement, (i) there

has not been any change or event that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material

Adverse Effect and (ii) on or prior to the date of this Agreement, neither the Company nor any of its Subsidiaries has taken or authorized the

taking of any action referred to in Section 5.1(a), except as would be permitted thereby.

(i) Litigation. There is no suit, action, settlement or proceeding pending or, to the knowledge of the Company, threatened against or affecting the

Company or any of its Subsidiaries or any Company Benefit Plans, nor is there any judgment, decree, injunction, ruling, corporate integrity

agreement or deferred prosecution agreement, settlement or order of any Governmental Entity or arbitrator outstanding against, or, to the

knowledge of the Company, investigation by any Governmental Entity involving, the Company or any of its Subsidiaries or any of the Company

Benefit Plans, which, in any such case, if adversely determined or concluded would reasonably be expected to have, either individually or in the

aggregate, a Company Material Adverse Effect.
(j) Voting Requirements. The affirmative vote of holders of a majority of the outstanding Shares at the Stockholders’ Meeting or any adjournment or postponement thereof to adopt this Agreement (the “Stockholder Approval”) is the only vote of the holders of any class or series of capital stock of the Company may be necessary to adopt this Agreement and approve the Transactions, including the Offer and the Merger.

(k) Anti-Takeover Statutes. The Company and its Subsidiaries have taken all action necessary to exempt this Agreement, the Offer, the Merger and the other Transactions from the provisions of Section 203 of the DGCL, and such action is effective at the date of this Agreement. To the knowledge of the Company, no other state takeover statute is applicable to this Agreement, the Offer, the Merger and the other Transactions.

(l) Investment Banker Fees. Except for Centerview Partners LLC (“Centerview”) and Lazard Frères & Co. LLC (“Lazard”), there is no investment banker, broker, finder or other financial intermediary that has been retained by or is authorized to act on behalf of the Company or any of its Subsidiaries that would be entitled to any fee or commission in connection with the Transactions. The Company has provided Parent with a summary of the economic terms of the Company’s engagement letters with Centerview and Lazard applicable with respect to the Offer and the Merger.

(m) Opinions of Financial Advisors. The Company Board has received separate opinions of Centerview and Lazard to the effect that, as of the date of such opinion, the consideration to be received by the holders of Shares (other than Parent, Holding, Merger Sub and their respective Affiliates) pursuant to the Offer and the Merger, taken together, is fair from a financial point of view, to such holders.

(n) Stockholder Rights Agreement Amended. The Company and the Rights Agent have duly executed and delivered to Parent, Holding and Merger Sub an amendment to the Rights Agreement, and as a result of such amendment (which amendment is valid, binding and enforceable), among other things, (a) neither this Agreement nor any of the Transactions, including the consummation of the Offer or the Merger, will cause the Rights to become exercisable by the holders thereof, (b) none of Merger Sub, Parent, Holding or any of their respective Affiliates shall be deemed to be an Acquiring Person (as defined in the Rights Agreement) and (c) the Rights shall automatically terminate on and as of the Effective Time and be void and of no further force or effect, and the holders of the Rights shall thereafter have no rights under the Rights or the Rights Agreement. No Distribution Date (as defined in the Rights Agreement) has occurred.

(o) Intellectual Property.

(i) For purposes of this Agreement, “Intellectual Property” means all U.S. and foreign (A) trademarks, service marks, trade names, Internet domain names, and general intangibles of like nature, together with all goodwill related to the foregoing and including any registrations and applications for any of the foregoing; (B) patents and patent applications; (C) copyrights (including any registrations and applications therefor); and (D) trade secrets and other confidential information, know-how, inventions, processes, formulae, algorithms, models, and methodologies.

(ii) To the knowledge of the Company, the Company or its Subsidiaries own or have a right to use all Intellectual Property that is used in the Company’s business (the “Company Intellectual Property”), except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(iii) To the knowledge of the Company, except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect, (a) the conduct of the business of the Company does not infringe or otherwise violate any Intellectual Property of a third party, (b) no third party is infringing or otherwise violating any Intellectual Property owned by the Company, and (c) no such claims are pending or threatened in writing by or against the Company.

(iv) The Company and its Subsidiaries have taken commercially reasonable steps to protect the confidentiality of trade secrets and proprietary know-how and other confidential Company Intellectual Property, except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect. To the knowledge of the Company, there have been no breaches of confidentiality with respect to material trade secrets of the Company, except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(v) To the knowledge of the Company, (A) there are no liens, security interests or, excluding licenses or similar agreements, other encumbrances against any of the Company Intellectual Property, (B) all annuities fees for all patents and patent applications owned by the Company or its Subsidiaries within the Company Intellectual Property have been timely paid and are current, and all patents and patent applications owned by the Company or its Subsidiaries within the Company Intellectual Property are subsisting, except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect, (C) all maintenance fees for all trademark registrations and applications owned by the Company or its Subsidiaries included within the Company

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Intellectual Property have been timely paid and are current, and all trademark applications owned by the Company or its Subsidiaries and within the Company Intellectual Property are subsisting, and (D) the Company or one of its Subsidiaries has been recorded or is in the process of being recorded on the records of the United States Patent and Trademark Office ("USPTO") or appropriate foreign patent offices as the sole assignee of record of the patents and patent applications owned by the Company or its Subsidiaries and included within the Company Intellectual Property.

(vi) Except as would not be material to the business of the Company or its subsidiaries, (A) to the knowledge of the Company, there are no errors or disputes with respect to ownership or inventorship of the Company Intellectual Property and (B) the Company has not received notification that during the prosecution of the patents included within the Company Intellectual Property, any of the Company, its licensors, the inventors or any other assignees did not comply with the duty of candor and good faith in dealing with the USPTO (and appropriate foreign patent offices), including the duty to disclose to the USPTO (and all appropriate foreign patent offices) all information known to be material to patentability.

(p) Employee Benefits.

(i) All material benefit and compensation plans, programs, contracts, agreements, policies or arrangements covering current or former directors, consultants, independent contractors and/or employees of the Company and its Subsidiaries, including, but not limited to, "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and material deferred compensation, pension, retirement, employment, retention, termination, change of control, severance or similar plans, programs, contracts, policies, agreements or arrangements sponsored, maintained or contributed to by the Company or any of its Subsidiaries (collectively, the "Company Benefit Plans") as of the date of this Agreement, whether or not in writing, are listed on Section 4.1(p)(i) of the Company Disclosure Letter, and each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code (such plans, "Qualified Plans"). For purposes of this Agreement, any plan, program, contract, policy, agreement or arrangement that provides for severance, termination, retention, change in control benefits or deferred compensation shall be considered material. Neither the Company nor any of its Subsidiaries has any plan or commitment to adopt any new Company Benefit Plan or to materially modify any Company Benefit Plan. No person or entity, other than the Company’s Subsidiaries, is currently an ERISA Affiliate that maintains any plan that covers any current or former directors, consultants, independent contractors and/or employees of the Company and its Subsidiaries under plans, policies, arrangements or agreements that would be considered Company Benefit Plans.

(ii) All Company Benefit Plans have been and are in compliance in all material respects with all applicable Laws, including the Code and ERISA, and the terms of their governing instruments. Each Qualified Plan has received a favorable determination letter from the Internal Revenue Service, and the Company is not aware of any circumstances or events that would be reasonably expected to result in the loss of the qualification of such Qualified Plan under Section 401(a) of the Code. There is no pending or, to the knowledge of the Company, threatened litigation, audits or inquiries relating to the Company Benefit Plans, except as would not reasonably be expected to result in a material liability. Neither the Company nor any of its Subsidiaries has incurred or reasonably expects to incur a material Tax or penalty imposed by Section 4980F of the Code or Section 502 of ERISA. Neither the Company nor any of its Subsidiaries has engaged in a transaction with respect to any Company Benefit Plan that, assuming the taxable period of such transaction expired as of the date hereof, would subject the Company or any of its Subsidiaries to a material Tax or penalty imposed by either Section 4975 of the Code or Section 502 of ERISA.

(iii) No material liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by the Company or any Subsidiary with respect to any ongoing, frozen or terminated “single-employer plan” within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with the Company under Section 4001 of ERISA or Section 414 of the Code (an “ERISA Affiliate”). The Company and its Subsidiaries have not contributed, or been obligated to contribute, to a multiemployer plan under Subtitle E of Title IV of ERISA, a “multiple-employer plan” (within the meaning of Section 413(c) of the Code), a “multiple employer welfare arrangement” (within the meaning of Section 3(40) of ERISA) or a “funded welfare plan” (within the meaning of Section 419 of the Code) at any time within the past six years, and no notice of a “reportable event,” within the meaning of Section 4043 of ERISA, for which the 30-day reporting requirement has not been waived, has been required to be filed for any Pension Plan or by any ERISA Affiliate within the 12-month period ending on the date hereof or will be required to be filed in connection with the Transactions.

(iv) All contributions required to be made under the terms of any Company Benefit Plan as of the date hereof have been timely made, in all material respects, and all obligations in respect of each Company Benefit Plan have been properly accrued and reflected, in all material respects, on the most recent consolidated balance sheet filed or incorporated by reference in the Company SEC Reports to the extent required by U.S. GAAP.

(v) All Company Benefit Plans in which non-U.S. employees participate or that are not subject to United States Law have been and are in compliance in all material respects with applicable Law.
(vi) The consummation of the Transactions will not, except as expressly provided in this Agreement, either alone or in combination with another event, (i) entitle any current or former employee or officer of the Company or any Subsidiary to severance pay or any other payment or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer. Except as set forth in Section 4.1(p)(vi) of the Company Disclosure Schedule and as provided in the CIC Severance Plans or as provided by applicable Law, the employment of each employee of the Company and its Subsidiaries (except for employees of the Company’s United Kingdom subsidiaries) is terminable at will without cost or liability to the Company or any Subsidiary except for amounts earned or accrued prior to the time of termination.

(vii) The Company has complied in all material respects with all applicable Laws relating to employment and employment practices, terms and conditions of employment, wages and hours practices and standards, occupational safety and health requirements and unemployment insurance.

(viii) The Company is not a party to any collective bargaining or other labor contracts with respect to employees of the Company and its Subsidiaries. None of the employees of the Company or any of its Subsidiaries in the United States is represented by any labor organization and, to the knowledge of the Company, there are no ongoing efforts to organize such employees.

(ix) The Company’s Employee Stock Purchase Plan does not permit participants to increase their payroll deductions or purchase elections during an Offering (as such term is defined in the 1995 Employee Stock Purchase Plan), including the Offering currently in effect as of the date of this Agreement.

(q) Taxes.

(i) The Company and each of its Subsidiaries has timely filed or caused to be filed (subject to any valid extension of time within which to file) all material Tax Returns required to be filed and all such material Tax Returns are true, complete and correct in all material respects, (B) except with respect to Taxes for which an adequate reserve has been established in accordance with U.S. GAAP on the most recent consolidated financial statements included in the Company SEC Reports filed prior to the date of this Agreement, the Company and each of its Subsidiaries has timely paid, in all material respects, all material Taxes due with respect to such filed Tax Returns, (C) each of the Company and its Subsidiaries has, in all material respects, timely withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party, (D) all material deficiencies and assessments asserted with respect to Taxes as a result of any examinations or other audits by federal, state, local or foreign Tax authorities have been paid, fully settled or adequately provided for in the consolidated financial statements included in the Company SEC Reports filed prior to the date of this Agreement, and no material issue or claim in respect of Taxes has been asserted in writing by any Tax authority for any prior period, other than those heretofore paid or provided for in the Company SEC Reports filed prior to the date of this Agreement, (E) there are no outstanding agreements or waivers extending the statutory period of limitation applicable to any material Tax Return of the Company or any of its Subsidiaries, (F) neither the Company nor any of its Subsidiaries has constituted either a “distributing corporation” or a “controlled corporation” (within the meaning of Section 355(a)(1)(A) of the Code) with respect to a distribution of stock, occurring within the two years preceding the date of this Agreement, that was intended to qualify for tax-free treatment under Section 355 of the Code, (G) neither the Company nor any of its Subsidiaries is a party to any “listed transaction” as defined in Treasury Regulation Section 1.6011-4(b)(2), (H) with the exception of the affiliated group of which the Company is the parent within the meaning of Section 1504 of the Code, neither the Company nor any of its Subsidiaries (i) is or has ever been a member of an affiliated group filing a consolidated federal income Tax Return, (ii) is a party to or bound by any Tax allocation, sharing or indemnification agreement or other similar arrangement with any person that may involve a material amount of Taxes or (iii) has any material liability for the Taxes of any person (other than the Company and its Subsidiaries) under Treas. Reg. Section 1.1502-6 (or any similar provision of Law), as a transferee or successor, by contract, or otherwise, (I) neither the Company nor any of its Subsidiaries will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Time as a result of any (x) change in method of accounting for a taxable period ending on or prior to the Effective Time or (y) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax law) executed on or prior to the Effective Time, and (J) there are no material liens for Taxes with respect to any of the assets or properties of the Company or any of its Subsidiaries, other than statutory liens for Taxes not yet due and payable.

For purposes of this Agreement, “Tax” or “Taxes” means all taxes, levies or other like assessments, charges, fees or other assessments or impositions of any kind (including estimated taxes, charges and fees), including, without limitation, income, corporation, gross receipts, transfer, excise, property, sales, use, value-added, license, payroll, pay as you earn, withholding, social security and franchise or other governmental taxes or charges, imposed by the United States or any state, county, local or foreign government or subdivision or agency thereof; and such term shall include any interest, penalties or additions to tax attributable to such taxes and “Tax Returns” means returns, reports, forms or other documentation required to be filed with any Governmental Entity responsible for the imposition or collection of Taxes (and any amendments, supplements and supporting documentation thereto).
(r) Compliance with Laws; Regulatory Matters.

(ii) The conduct of business by the Company, its Subsidiaries and all persons in the Company Group is being conducted in compliance in all material respects with all applicable Laws, including (A) the Federal Food, Drug, and Cosmetic Act, as amended (the "FDCA") and the regulations promulgated thereunder (21 U.S.C. Sections 301 et seq.), (B) the Public Health Service Act (the "PHSA") and the regulations promulgated thereunder (42 U.S.C. Sections 301 et seq.); (C) the Veterans Health Care Act (38 U.S.C. Section 126); (D) federal Medicare and Medicaid statutes and regulations, and related state or local statutes and regulations, including the Federal Anti-Kickback Statute (42 U.S.C. Sections 1320a-7(b)); (E) any comparable foreign Laws for any of the foregoing; (F) the Federal False Claims Act (31 U.S.C. Section 3729 et seq.) or any similar federal and state laws; (G) state laws and regulations regarding the reporting of prices and promotional expenditures to healthcare professionals; and (H) Health Insurance Portability and Accountability Act; except for violations that would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(ii) No person within the Company Group is debarred under the Generic Drug Enforcement Act of 1992 or otherwise excluded from or restricted in any manner from participation in, any government program related to pharmaceutical products and, to the knowledge of the Company, no person within the Company Group employs or uses the services of any person who is debarred or otherwise excluded or restricted, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(iii) None of the Company and its Subsidiaries is subject to any pending or, to the knowledge of the Company, threatened, investigation by any Governmental Entity with respect to the manufacturing and sale of the Company’s products and product candidates, nor has any Governmental Entity indicated an intention to conduct the same, except for those the outcome of which would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(iv) None of the Company and its Subsidiaries, nor to the knowledge of the Company (1) any officer or employee of the Company and its Subsidiaries, (2) any authorized agent of the Company and its Subsidiaries or (3) any principal investigator or sub-investigator of any clinical investigation sponsored by the Company or its Subsidiaries has, in the case of each of (1) through (3) on account of actions taken for or on behalf of the Company or any of its Subsidiaries, been convicted of any crime under the FDCA; nor has any such principal investigator or sub-investigator been disqualified from receiving investigational drugs under 21 C.F.R. §312.70.

(v) The Company and each of its Subsidiaries has all permits, licenses, franchises, variances, exemptions, orders and other governmental authorizations, consents and approvals from Governmental Entities and made and maintained all establishment registrations and product listings ("Permits") that are necessary to conduct the Company’s business as currently conducted, except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect (such Permits, the "Company Permits"). All such Company Permits are valid and in full force and effect, except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect. Each of the Company and its Subsidiaries is, and at all times from January 1, 2008 through the date of this Agreement has been, in material compliance with the terms and requirements of such Company Permits. Since January 1, 2008, none of the Company and its Subsidiaries has received any written notice regarding (A) any actual or possible violation of or failure to comply with any term or requirement of any Company Permit that has not been cured, or (B) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Company Permit. No Governmental Entity has at any time since January 1, 2008 challenged in writing the right of any of the Company and its Subsidiaries to develop, manufacture, market, license, distribute, promote, offer or sell any products.

(vi) Each of the product candidates of the Company and its Subsidiaries is being, and at all times since January 1, 2008, as applicable, has been, developed, tested, manufactured and stored, as applicable, in substantial compliance in all material respects with all applicable Laws.

(vii) The Company has filed each periodic and annual report and all safety and adverse event reports required to be filed by any of the Company and its Subsidiaries with the United States Food and Drug Administration (the “FDA”) with respect to any products of the Company or its Subsidiaries or any similar state or foreign Governmental Entity since January 1, 2008, except when the failure to file any required report would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(viii) The Company has made available to Parent (A) accurate copies of each Investigational New Drug application ("IND") and New Drug Application ("NDA"), since January 1, 2008, including all supplements and amendments and (B) all correspondence received from the FDA since January 1, 2008 that concerns a product of the Company or its Subsidiaries, covered by an IND or NDA described in clause (A) above.

(ix) Since January 1, 2008, no clinical trial of a product of the Company or any of its Subsidiaries has been suspended, put on hold or terminated prior to completion by the FDA or any other Governmental Entity.

(x) Since January 1, 2008, neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any third party with responsibility for manufacturing any Company product or component thereof, has received a Form FDA-483 notice or similar notice with respect
to any production plants or facility involved in the manufacturing or production of any Company product. A true and correct copy of any item set forth on Section 4.1(r)(x) of the Company Disclosure Letter has been made available to Parent.

(s) No Undisclosed Liabilities. Except for liabilities and obligations (i) set forth, accrued or reserved in the audited consolidated balance sheet of the Company as of December 31, 2009 included in the Company SEC Reports (or referred to in the notes thereto), (ii) incurred in the ordinary course of business consistent with past practice since December 31, 2009, or (iii) that would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has any liabilities (whether accrued, contingent, absolute, determined, determinable or otherwise) of a nature required to be set forth or reflected in a consolidated balance sheet of the Company prepared in accordance with U.S. GAAP.

(t) Contracts.

(i) Except for this Agreement and except as set forth in the Company SEC Reports, as of the date hereof, neither the Company nor any of its Subsidiaries is a party to or bound by any “material contract” (as such term is defined in item 601(b)(10) of Regulation S-K of the SEC) (all Contracts of the type described in this Section 4.1(t)(i) being referred to herein as “Material Contracts”).

(ii) Each Material Contract is a legally binding arrangement of the Company or a Company Subsidiary and is in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect. None of the Company and its Subsidiaries or, to the knowledge of the Company, any other party thereto is in default or breach under the terms of any such Material Contract which default or breach would reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(u) Title to Properties. With respect to any material real property leased by the Company or any of its Subsidiaries and not subleased to a third party, the Company or such Subsidiary is in occupancy of such property pursuant to the terms of the lease governing such interest. Except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect, the Company and each of its Subsidiaries have good title to, or a valid leasehold interest in, all real property and other material properties and assets owned or leased by the Company or such Subsidiary, in each case free of all pledges, claims, liens, encumbrances and security interests of any kind or nature whatsoever.

(v) Environmental Matters.

(i) Except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect (A) no real property (including soils, groundwater, surface water, buildings or other structures thereon or thereunder) owned, operated, used or occupied by the Company or its Subsidiaries has been contaminated as a result of release, spill, discharge or disposal of any Hazardous Substance during or, to the knowledge of the Company, prior to, the ownership or operation or use by the Company or its Subsidiaries; (B) no real property formerly owned or operated or used by the Company or any of its Subsidiaries was contaminated as a result of release, spill, discharge or disposal of any Hazardous Substance during or, to the knowledge of the Company, prior to, the ownership or operation or use by the Company or its Subsidiaries; (C) neither the Company nor any of its Subsidiaries has received any written notice, demand, letter, claim or request for information from any Governmental Entity or other third party indicating that the Company or any of its Subsidiaries may be in material violation of or subject to material liability under any Environmental Law or arising from Hazardous Substances; (D) neither the Company nor any of its Subsidiaries is subject to any order, decree, injunction or other arrangement with any Governmental Entity or is a party to any indemnity or any other agreement with any third party under any Environmental Law or otherwise relating to any Hazardous Substances; and (E) the Company and its Subsidiaries have obtained in a timely manner, maintained in effect, and are in compliance with all Permits required by applicable Environmental Law, are listed, classified, characterized, defined or regulated as hazardous, biohazardous, dangerous, infectious, toxic, a pollutant or a contaminant, including without limitation petroleum, petroleum products or by-products, friable asbestos, biological agents, genetically engineered or modified materials, blood-borne pathogens, bacterial or fungal materials, medical waste, unused or “off-spec” products, any material or equipment containing radon or other radioactive materials or polychlorinated biphenyls.

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4.2 Representations and Warranties of Parent, Holding and Merger Sub. Except as set forth in the disclosure letter delivered to the Company by Parent on or prior to the execution of this Agreement (the "Parent Disclosure Letter"), Parent, Holding and Merger Sub represent and warrant to the Company as follows:

(a) Organization, Good Standing and Qualification. Each of Parent, Holding and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization. Each of Parent, Holding and Merger Sub has all requisite corporate power to own and operate its properties and assets and to carry on its business as currently conducted, except where the failure to have such power and authority would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect. Each of Parent, Holding and Merger Sub is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of its properties and assets or conduct of its business requires such qualification, except where the failure to be so qualified as a foreign corporation or in good standing would not be reasonably expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(b) Corporate Authority. Each of Parent, Holding and Merger Sub has the requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate, on the terms and subject to the conditions of this Agreement, the Transactions, including the Offer and the Merger. This Agreement has been duly authorized, executed and delivered by Parent, Holding and Merger Sub, and no other corporate proceedings on the part of Parent, Holding or Merger Sub are necessary to authorize or approve this Agreement or to consummate the Offer, the Merger or the other Transactions. Assuming due authorization, execution and delivery by the Company, this Agreement is a valid and legally binding agreement of Parent, Holding and Merger Sub, enforceable against each of Parent, Holding and Merger Sub in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity. The boards of directors of Parent, Holding and Merger Sub, and Holding in its capacity as sole stockholder of Merger Sub, have approved and adopted this Agreement and approved the Offer, the Merger and the other Transactions.

(c) No Conflicts. Neither the execution, delivery and performance of this Agreement by Parent, Holding and Merger Sub and the consummation by Parent, Holding and Merger Sub of the Offer, the Merger or the other Transactions nor compliance by Parent and Merger Sub with any of the provisions hereof will constitute or result in (i) a breach or violation of, or a default under the Organizational Documents of Parent, Holding, Merger Sub or of any of Parent’s Subsidiaries or (ii) a breach or violation of, or a default under, the acceleration of any obligations, the loss of any right or benefit or the creation of a lien, pledge, security interest or other encumbrance on the assets of the Parent, Holding, Merger Sub or any of Parent's Subsidiaries (with or without notice, lapse of time or both) pursuant to any contracts binding upon Parent, Holding, Merger Sub or any of Parent’s Subsidiaries or any Law or governmental

or non-governmental permit or license to which Parent, Holding, Merger Sub or any of Parent’s Subsidiaries is subject, except, in the case of clause (ii) above, for such breaches, violations, defaults, accelerations, losses or creations that would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(d) Information Supplied.

(i) None of the documents required to be filed by Parent, Holding or Merger Sub with the SEC in connection with the Offer or required to be distributed or otherwise disseminated to the Company’s stockholders after the date of this Agreement in connection with the Transactions, including the Offer Documents, will, at the date each is filed with the SEC, at the date distributed or otherwise disseminated to Company stockholders and at the time of the consummation of the Offer contain any untrue statement of a material fact or 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 are made, not misleading; provided that no representation or warranty is made by Parent, Holding or Merger Sub with respect to the information supplied by or related to, or the sufficiency of disclosures related to, the Company or any Company Subsidiary. The Offer Documents will comply as to form in all material respects with the requirements of the Exchange Act.

(ii) None of the information supplied or to be supplied by or on behalf of Parent, Holding or Merger Sub to Company specifically for inclusion or incorporation by reference in the Schedule 14D-9 will, at the date it is first filed with the SEC or on the date it is first mailed to the stockholders of the Company, contain any untrue statement of a material fact or 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 are made, not misleading. None of the information supplied or to be supplied by or on behalf of Parent, Holding or Merger Sub specifically for inclusion or incorporation by reference in the Proxy Statement, if any, will, at the date it is first filed with the SEC, on the date it is first mailed to the stockholders of the Company, or at the time of the Stockholders’ Meeting, contain any untrue statement of a material fact or 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 are made, not misleading.

(iii) No representation or warranty is made by Parent, Holding or Merger Sub with respect to the information supplied by or related to, or the sufficiency of disclosures related to, the Company or any Person within the Company Group.

(e) Interim Operations of Merger Sub. Merger Sub was formed solely for the purpose of engaging in the Transactions, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

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(f) Consents and Approvals. Neither the execution and delivery of this Agreement by Parent, Holding or Merger Sub nor the consummation of the Offer, the Merger, or the other Transactions will result in a violation of Law by Parent, Holding or Merger Sub, except for any such violations that would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect. The execution and delivery of this Agreement by Parent, Holding or Merger Sub and the consummation of the Offer, the Merger or the other Transactions will not require any material action or consent or approval of, or review by, or registration or filing by Parent, Holding or Merger Sub with any Governmental Entity, except for (i) any filings or notices pursuant to securities Laws and stock exchange rules in the United States, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, (iii) such filings or notices as may be required under any environmental, health or safety Law (including any rules and regulations of the FDA) in connection with the Offer or the Merger, and (iv) actions, consents or approvals that would not reasonably be expected to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(g) Capital Resources. Parent has or will have at the Acceptance Time and the Closing the funds necessary to consummate the Transactions, including payment in cash the aggregate Offer Price at the Acceptance Time and the aggregate Merger consideration on the Closing Date and to pay all related fees and expenses. Parent acknowledges that its obligations under this Agreement are not contingent or conditioned in any manner on obtaining any financing.

(h) Interested Stockholder. None of Parent, Holding, Merger Sub or any of their respective “affiliates” or “associates” is, or has been within the last three years, an “interested stockholder” of the Company as those terms are defined in Section 203 of the Delaware Law.

(i) Ownership of Shares. Except as disclosed in the Schedule TO, none of Parent, Holding or Merger Sub beneficially own (within the meaning of Section 13 of the Exchange Act and the rules and regulations promulgated thereunder), or will prior to the Acceptance Time beneficially own, any Shares, or is a party, or will prior to the Acceptance Time become a party, to any Contract, arrangement or understanding (other than this Agreement) for the purpose of acquiring, holding, voting or disposing of any Shares.

(j) Litigation. There is no suit, action or proceeding pending or, to the knowledge of Parent, threatened against Parent or any of its Subsidiaries that would, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. There is no Law, judgment, order, writ, injunction, decree or award (whether temporary, preliminary or permanent) enacted, issued, promulgated, enforced or entered into by any Governmental Entity outstanding against Parent or any of its Subsidiaries that would, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

(k) Brokers and Other Advisors. Except for Citigroup, no broker, investment banker, financial advisor or other person is entitled to any broker’s, finder’s or financial advisor’s fee or commission in connection with the Offer, the Merger and the other Transactions based upon arrangements made by or on behalf of Parent, Holding or Merger Sub.
(iii) except as required under agreements in existence (which, for those agreements not filed with the Company SEC Reports, the aggregate amounts involved are not material) or as required by applicable Law, neither the Company nor any of its Subsidiaries shall increase the compensation payable or that could become payable by the Company or any of its Subsidiaries, or pay or commit to pay any bonus or other form of compensation (including severance or termination pay and other benefits), to their respective directors or officers, or to their respective employees in a manner either not in the ordinary course of business consistent with past practice or global in nature (provided, that such employees may receive relocation and other benefits in connection with such employees’ relocation to, or commencement of employment at, the Company’s facility in Ardsley, New York, substantially consistent with the Company’s past practices regarding such relocation), or create or amend or terminate any of the Company Benefit Plans or any outstanding Company Options, Company RSUs, Company DSUs or the ESPPs or enter into any employment agreements or offer letters with current or new employees (other than offer letters with new employees who will not be directors or officers that contemplate (other than in the United Kingdom) “at will” employment without severance benefits (other than the CIC Severance Plans));

(iv) except for (x) dispositions of obsolete equipment or assets or dispositions of assets being replaced, in each case in the ordinary course of business consistent with past practice and (y) dispositions by the Company or its Subsidiaries of its assets in accordance with the terms of agreements filed or listed as exhibits to the Company SEC Reports, neither the Company nor any Subsidiary shall (i) directly or indirectly, sell, transfer, lease, pledge, mortgage, encumber or otherwise dispose of any material portion of its property or assets (including stock or other ownership interests of its Subsidiaries) or (ii) other than supplies in the ordinary course of business consistent with past practice, acquire any material amount of assets or capital stock of any other person;

(v) neither the Company nor any of its Subsidiaries shall make any material change in accounting principles, practices or methods which is not required by U.S. GAAP;

(vi) neither the Company nor any of its Subsidiaries shall issue, sell, pledge, dispose of or encumber any shares of, or securities convertible into or exchangeable or exercisable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of its capital stock of any class or any other property or assets, other than the issuance of Shares upon the exercise of Company Options, Company RSUs or Company DSUs, upon the conversion of Convertible Notes or pursuant to the ESPPs, in each case, that are outstanding on the date of this Agreement and otherwise in accordance with their terms;

(vii) neither the Company nor any of its Subsidiaries (as applicable) shall, except as provided for in the Company’s 2010 capital expenditure budget, a true and correct copy of which has previously been provided to Parent, incur individually or in the aggregate any material capital expenditures;

(viii) neither the Company nor any of its Subsidiaries shall make any material loans, advances or capital contributions to, or investments in, any other person, other than advances of employee expenses in the ordinary course of business consistent with past practice;

(ix) neither the Company nor any of its Subsidiaries shall cancel or terminate without reasonable substitute policy therefor any material insurance policy naming the Company as a beneficiary or a loss payee;

(x) neither the Company nor any of its Subsidiaries shall commence or settle any lawsuit, threat of any lawsuit or proceeding or other investigation by or against the Company or any Subsidiary of the Company or relating to any of their businesses, properties or assets, other than settlements entered into in the ordinary course of business consistent with past practice that require only the payment of monetary damages not exceeding $1,000,000 by the Company and its Subsidiaries, or waive, release or assign any material rights or claims;

(xi) neither the Company nor any of its Subsidiaries shall incur any indebtedness for borrowed money or guarantee any such indebtedness of another person, issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of the Company or any of its Subsidiaries, guarantee any debt securities of another person, enter into any “keep well” or other agreement to maintain any financial statement condition of any other person (other than any wholly-owned Subsidiary of it) or enter into any arrangement having the economic effect of any of the foregoing, or incur any material lien on any assets or property;

(xii) neither the Company nor any of its Subsidiaries shall (i) enter into, modify or amend any material agreement with respect to its Intellectual Property or with respect to the intellectual property of any third party, or enter into any collaboration, co-marketing or co-promotion agreement regarding any of the Company’s compounds or Products or (ii) directly or indirectly sell, license or otherwise transfer or encumber in whole or in part (and not agree directly or indirectly to sell, license or otherwise transfer or encumber in whole or in part) any rights or assets related to or in connection with the Commercial Product other than (x) sales of inventory of the Commercial Product in the ordinary course consistent with past practice or (y) as provided in, and only to the extent required by, agreements to which the Company is a party and which have been filed or listed as an exhibit to a Company SEC Report on or prior to February 26, 2010;

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(xiii) neither the Company nor any of its Subsidiaries shall enter into, modify or amend in a manner adverse to the Company, or terminate any Material Contract or waive, release or assign any material rights or claims thereunder, in each case, in a manner adverse to the Company, other than any entry into, modification, amendment or termination of any such Material Contract in the ordinary course of business consistent with past practice;

(xiv) neither the Company nor any Subsidiary shall, to the extent the effect of doing so would be to materially increase the present or future Tax liability or to materially decrease the present or future Tax assets, of the Company or any of its Subsidiaries (i) make or change any Tax election; (ii) except as required by applicable Law, file any amended Tax Return; (iii) enter into any closing agreement with respect to Taxes; (iv) settle any Tax claim or assessment; (v) surrender any right to claim a refund of Taxes; or (vi) consent to any extension or waiver of the limitations period for the assessment of any Tax;

(xv) neither the Company nor any Subsidiary shall adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any Subsidiary (other than the Merger);

(xvi) neither the Company nor any Subsidiary will take or permit any action that would reasonably be expected to result in any of the conditions to the Merger set forth in Article VII or any of the conditions to the Offer set forth in Annex I not being satisfied or that could materially delay the consummation of, or materially impair the ability of the Company to consummate, the Transactions in accordance with the terms of this Agreement;

(xvii) neither the Company nor any Subsidiary shall enter into, amend, modify or supplement any agreement with any officer or director; and

(xviii) neither the Company nor any of its Subsidiaries shall authorize or enter into an agreement to do anything prohibited by this Section 5.1.

(b) Conduct of Business of Parent, Holding and Merger Sub. Each of Parent, Holding and Merger Sub agrees that, between the date of this Agreement and the Acceptance Time, it shall not take any action that it knows would reasonably be expected to result in any of the conditions to the Offer set forth in Annex I not being satisfied.

5.2 No Solicitation.

(a) The Company agrees that, following the date of this Agreement and prior to the earlier of the Acceptance Time or the date on which this Agreement is terminated pursuant to Article VIII hereof, neither it nor any of its Subsidiaries shall, and that it shall use its reasonable efforts to cause its and each of its Subsidiaries’ officers, directors, employees, advisors and agents and representatives (collectively, “Representatives”) not to, directly or indirectly, (i) knowingly solicit or initiate any Alternative Transaction Proposal (as defined in Section 5.2(f)(ii)), (ii) provide any information or data to any person relating to or in connection with an Alternative Transaction Proposal (except to disclose the existence of the provisions of this Section 5.2), (iii) engage in any discussions or negotiations concerning an Alternative Transaction Proposal, or otherwise knowingly take any action to facilitate or encourage any effort or attempt to make or implement an Alternative Transaction Proposal (including providing the approval required under the Rights Agreement or Section 203 of the DGCL, amending the Rights Agreement, or failing to enforce or amending any standstill or similar agreement), (iv) approve, recommend, agree to or accept, or propose publicly to approve, recommend, agree to or accept, any Alternative Transaction Proposal, (v) approve, endorse or recommend, agree to or accept, or propose to approve, endorse, recommend, agree to or accept, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement related to any Alternative Transaction Proposal or (vi) except as permitted pursuant to Section 5.2(d), withdraw, modify or otherwise change in a manner adverse to Parent or the Merger Sub the Company Board Recommendation. The Company agrees that it and its Representatives will immediately cease and cause to be terminated any existing activities, discussions or negotiations with any persons conducted heretofore with respect to any Alternative Transaction Proposal (except with respect to the Transactions) and request the destruction or return of any information provided under any nondisclosure or similar agreements with any party other than the Confidentiality Agreement.

(b) As promptly as practicable (and in any event within twenty-four (24) hours) after receipt of any Alternative Transaction Proposal or any request for nonpublic information or any inquiry relating in any way to, or that could reasonably be expected to result in, an Alternative Transaction Proposal, the Company shall provide Parent with written notice of the material terms and conditions of such Alternative Transaction Proposal, request or inquiry, including the identity of the person or group of persons making such Alternative Transaction Proposal (the “Acquiring Person”) and copies of any related correspondence and written material provided to the Company and written summaries of any related material oral communications. In addition, the Company shall provide Parent as promptly as possible (and in any event within twenty-four (24) hours) with written notice setting forth all such information as is reasonably necessary to keep Parent informed in all material respects of all communications regarding, and the status and details (including copies of any correspondence and written material provided to the Company and material amendments or proposed material amendments) of, any such Alternative Transaction Proposal, request or inquiry.
(c) Notwithstanding anything to the contrary contained in Section 5.2(a), in the event that, prior to the Acceptance Time, the Company receives an unsolicited, bona fide written Alternative Transaction Proposal not resulting from a breach of Section 5.2(a) which is determined (in accordance with Section 5.2(f)(iii)) to be, or, in the good faith determination of the Company Board, is reasonably likely to become, a Superior Proposal (as defined in Section 5.2(f)(iii)), it may then take the following actions (but only if and to the extent that (x) the Company Board has concluded in good faith, after consultation with its outside legal counsel, that the failure to do so would be inconsistent with its fiduciary obligations under applicable Law and (y) the Company has given Parent at least two (2) Business Days prior written notice of its intention to take such actions and of the identity of the Acquiring Person making such Alternative Transaction Proposal and the material terms and conditions of such Alternative Transaction Proposal (including copies of all documents relating thereto)):

(i) Furnish nonpublic information to the Acquiring Person making such Alternative Transaction Proposal, provided that (i) prior to furnishing any such nonpublic information, the Company receives from such Acquiring Person an executed confidentiality agreement containing terms at least as restrictive with respect to such Acquiring Person as the terms contained in the Confidentiality Agreement and (ii) simultaneously with providing such Acquiring Person with any material not previously provided to Parent, provide Parent with such materials; and

(ii) Engage in discussions or negotiations with such Acquiring Person with respect to such Alternative Transaction Proposal.

(d) Notwithstanding anything in this Agreement to the contrary, at any time prior to the Acceptance Time, the Company Board may, if it concludes in good faith (after consultation with its outside legal advisors) that the failure to do so would be inconsistent with its fiduciary duties under applicable Law, withdraw, modify or change the Company Board Recommendation in a manner adverse to Parent and Merger Sub (a “Change of Recommendation”); provided that prior to any such Change of Recommendation, the Company shall have given Parent and Merger Sub prompt written notice advising them of the decision of the Company Board to take such action and the reasons therefore, including, in the event the decision relates to an Alternative Transaction Proposal, the material terms and conditions of the Alternative Transaction Proposal; and provided further that in the event the decision relates to an Alternative Transaction Proposal: (i) the Company shall have given Parent and Merger Sub two (2) Business Days after delivery of such notice to propose revisions to the terms of this Agreement (or make another proposal) and if Parent and Merger Sub propose to revise the terms of this Agreement, including any changes to the financial terms of such Alternative Transaction Proposal, shall require a new notice and a new two (2) Business Day period for negotiations; and (ii) the Company Board shall have determined in good faith, after considering the results of such negotiations and giving effect to the proposals made by Parent and Merger Sub, if any (the “Revised Proposal”), that such Alternative Transaction Proposal constitutes a Superior Proposal and in any event that failure to do so would be inconsistent with its fiduciary duties under applicable Law. In the event the Company Board does not make the determination referred to in clause (ii) of this paragraph and thereafter determines to withdraw, modify or change the Company Board Recommendation pursuant to this Section 5.2(d), the procedures referred to above shall apply anew and shall also apply to any subsequent withdrawal, amendment or change.

(e) Nothing in this Agreement shall prohibit the Company from (i) issuing a “stop, look and listen” communication pursuant to Rule 14d-9(f) promulgated under the Exchange Act (after providing prior written notice thereof to the Parent) or (ii) taking and disclosing to its stockholders any position contemplated by Rule 14e-2(a) and Rule 14d-9 promulgated under the Exchange Act or from making any disclosure to the Company’s stockholders (in each case under this clause (ii), that is not a Change of Recommendation, except as permitted pursuant to Section 5.2(d)) if the Company Board (after consultation with its legal advisors), concludes that its failure to do so would be inconsistent with its fiduciary duties under applicable Law.

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

(i) “Alternative Transaction” with respect to the Company, shall mean any of the following transactions: (i) any transaction or series of related transactions with one or more third persons involving: (A) any purchase from such party or other acquisition (whether direct or indirect, or by way of a merger, share exchange, consolidation, business combination, consolidation or other transaction) by any person or “group” of persons (as defined under Section 13(d) of the Exchange Act and the rules and regulations thereunder) of more than a 17.5% interest in the total outstanding voting securities of such party or any of its Subsidiaries (including through securities convertible, exercisable or exchangeable into voting securities) or any tender offer or exchange offer that if consummated would result in any person or group of persons beneficially owning 17.5% or more of the total outstanding voting securities of such party or any of its Subsidiaries or any merger, consolidation, business combination or similar transaction involving such party or any of its Subsidiaries, or (B) any sale, lease exchange, transfer, license, acquisition or disposition of more than 17.5% of the assets of such party and its Subsidiaries, taken as a whole, or (ii) any liquidation or dissolution of such party;

(ii) “Alternative Transaction Proposal” shall mean any offer, inquiry, proposal or indication of interest (whether binding or non-binding and whether or not in writing) to the Company or its stockholders relating to an Alternative Transaction; and
ARTICLE VI

ADDITIONAL AGREEMENTS

6.1 Proxy Statement; Stockholders’ Meeting.

(a) Unless the Merger is to be consummated in accordance with Section 253 of the DGCL as contemplated by Section 2.9, as soon as practicable following consummation of the Offer and the expiration of any Subsequent Offering Period, the Company and Parent shall prepare and the Company shall file with the SEC the Proxy Statement, and the Company shall use commercially reasonable efforts to respond as promptly as practicable to any comments of the SEC with respect thereto and to cause the Proxy Statement to be mailed to the stockholders of the Company as promptly as practicable following consummation of the Offer and the expiration of any Subsequent Offering Period. The Company shall promptly notify Parent upon the receipt of any comments from the SEC or the staff of the SEC, or any request from the SEC or the staff of the SEC for amendments or supplements to the Proxy Statement, and shall provide Parent with copies of all correspondence between the Company and its Representatives, on the one hand, and the SEC and the staff of the SEC, on the other hand.

(b) Unless the Merger is to be consummated in accordance with Section 253 of the DGCL as contemplated by Section 2.9, the Company shall, as soon as practicable following the consummation of the Offer (and the expiration of any Subsequent Offering Period) and receipt of confirmation (either express or through the lapse of time) that the SEC has no comments or no further comments to the Proxy Statement, establish a record date for, duly call, give notice of, convene and hold the Stockholders’ Meeting solely for the purpose of obtaining the Stockholder Approval. Subject to Section 5.2(d) of this Agreement, the Company shall, (i) through the Company Board, recommend to its stockholders adoption of this Agreement, unless the Merger is to be consummated in accordance with Section 253 of the DGCL as contemplated by Section 2.9, (ii) include such recommendation in the Proxy Statement and (iii) use commercially reasonable efforts to solicit from the stockholders of the Company proxies in favor of the approval and adoption of this Agreement.

(c) Unless the Merger is to be consummated in accordance with Section 253 of the DGCL as contemplated by Section 2.9, Holding and Merger Sub shall, and Holding shall cause Merger Sub, and any of its Affiliates that own Shares, to, vote all Shares owned by Holding or Merger Sub or their respective Affiliates (including all Shares purchased pursuant to the Offer, including Shares purchased in any Subsequent Offering Period), or with respect to which Holding, Merger Sub or any of their respective Affiliates otherwise has, directly or indirectly, sole voting power, in favor of adoption of this Agreement and in approval of the Merger and against any proposal that is inconsistent herewith. Neither Holding nor Merger Sub shall transfer, sell or otherwise dispose of any of such Shares prior to the Effective Time (except transfers to controlled Affiliates).

6.2 Access to Information; Confidentiality. To the extent permitted by applicable Law, the Company agrees that upon reasonable notice it shall (and shall cause its Subsidiaries to) afford Parents’ representatives reasonable access, during normal business hours from and after the date of this Agreement until the earliest of (a) such time as designees of Parent first constitute at least a majority of the Company Board pursuant to Section 1.3(a) and (b) the Effective Time, to its officers, employees, auditors, properties, offices, books, contracts and records, provided, however, that the Company shall not be required to violate any of the terms of any of its existing confidentiality or other agreements, but shall use all commercially reasonable efforts to obtain waivers of all such terms and provided further, that in such event the Company will describe to Parent the information not being disclosed and shall use commercially reasonable efforts to provide substitute disclosure. Except for disclosures expressly permitted by the terms of the Confidentiality Agreement, Parent shall hold, and shall cause its Representatives to hold, all information received from the Company, directly or indirectly, in confidence in accordance with the Confidentiality Agreement until the Effective Time. No investigation pursuant to this Section 6.2 or information provided, made available to, delivered to or otherwise reviewed by Parent or Merger Sub shall affect any representation or warranty of the Company or conditions or rights of Parent or Merger Sub contained in this Agreement.

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6.3 Filing; Other Actions; Notification.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the parties agrees to use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things, necessary, proper or advisable on its part to consummate and make effective, in the most expeditious manner practicable, the Offer, the Merger and the other Transactions, including using commercially reasonable efforts to accomplish the following: (i) the taking of all acts necessary to cause the Offer Conditions to be satisfied as promptly as practicable, (ii) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Entities and the making of all necessary registrations and filings (including filings with Governmental Entities) and the taking of all steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity, including the filings set forth on Section 6.3 of the Company Disclosure Letter, and (iii) the obtaining of all necessary consents, approvals or waivers from third parties. In connection with and without limiting the foregoing, the Company and Parent shall (i) promptly, but in no event later than ten (10) Business Days after the date hereof, make their respective filings and thereafter make any other required submissions under the European Community Merger Regulation and any other applicable filings or notifications under the antitrust, competition or similar laws of any foreign jurisdiction (the “Foreign Filings”) and (ii) promptly (but in no event later than ten (10) Business Days after the date hereof) file any regulatory applications (the “Regulatory Applications”) required to be filed in connection with the Offer, the Merger and the other Transactions and respond as promptly as practicable to any additional requests for information received from any Governmental Entity by any party. Each party shall cooperate with the other party to the extent necessary to assist the other party in the preparation of the Foreign Filings and the Regulatory Applications and, if requested, to promptly amend or furnish additional information thereunder. The parties acknowledge that on March 3, 2010 Parent, Holding and Merger Sub made their filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”) with respect to the Transactions and on March 12, 2010 the Company made its filings under the HSR Act with respect to the Transaction, and that the waiting period under the HSR Act applicable to the Offer expired on March 18, 2010 and that, to their respective knowledge, no Foreign filings are required. Each of Parent, Holding, Merger Sub and the Company agrees to use its respective commercially reasonable efforts to promptly make any other required submissions under the HSR Act with respect to the Transactions.

(b) The Company and the Company Board shall (1) take all action necessary to ensure that no state takeover statute or similar statute or regulation is or becomes applicable to this Agreement, the Offer, the Merger or any of the other Transactions and (2) if any state takeover statute or similar statute becomes applicable to this Agreement, the Offer, the Merger or any of the other transactions contemplated by this Agreement, take all action reasonably necessary to ensure that the Offer, the Merger and the other Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on this Agreement, the Offer, the Merger and the other Transactions.

(c) Parent shall, and shall cause its Subsidiaries to, take all actions necessary to obtain the consents and approvals contemplated by this Section 6.3, including selling, divesting or otherwise disposing of assets to the extent necessary to obtain such consents and approvals; provided, however, that Parent and its Subsidiaries shall not be required to sell, divest or otherwise dispose of (A) any assets of Parent or any of its Subsidiaries to the extent that the sale, divestiture or other disposition of such assets would be materially adverse to Parent and its Subsidiaries, taken as a whole (assuming for this purpose, that the Merger has already been consummated) or (B) any material rights relating to any Company Material Adverse Effect and Parent shall give prompt written notice to the Company of any Parent Material Adverse Effect.

(d) The Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with the Offer Documents and the Schedule 14D-9 and Proxy Statement, if any, as the case may be, or any other statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Merger, the other Transactions and the Commercial Product.

(e) Subject to applicable Laws and as required by any Governmental Entity, the Company and Parent each shall keep the other apprised of the status of matters relating to completion of the Offer, the Merger and the other Transactions, including promptly furnishing the other with copies of notices or other communications received by Parent or the Company, as the case may be, or any of its Subsidiaries, from any third party and/or any Governmental Entity with respect to the Offer (including the satisfaction of any condition thereto), the Merger and the other Transactions.

(f) Each party shall give the other party prompt notice of the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, as the case may be, could reasonably be expected to cause any condition set forth in Annex I to not be satisfied at any time from the date of this Agreement to the date Merger Sub purchases Shares pursuant to the Offer. The Company shall give prompt written notice to Parent of any Company Material Adverse Effect and Parent shall give prompt written notice to the Company of any Parent Material Adverse Effect. Notwithstanding anything in this Agreement to the contrary, no such notification or failure to notify shall affect the representations, warranties or covenants of the parties or the conditions to the obligations of the parties hereunder. The Company and Parent shall, to the extent permitted by Law, promptly provide the other with copies of all filings made by such party with any Governmental Entity in connection with this Agreement and the Transactions, other than the portions of such filing that include confidential or proprietary information not directly related to the transactions contemplated by this Agreement.

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6.4 Approval of Compensation Actions. Prior to the Acceptance Time, the Compensation Committee of the Company Board (comprised solely of "independent directors" as determined in accordance with Rule 14d-10(d)(2) under the Exchange Act) shall, to the extent not previously taken, take all actions necessary or appropriate to approve and/or ratify all payments that have been made since February 1, 2009 or are to be made and all benefits that have been granted since February 1, 2009 or are to be granted pursuant to employment compensation, severance and other employee benefits plans of the Company, including the Company Benefit Plans (the "Benefit Arrangements"), as an "employment compensation, severance or other employee benefit arrangement" within the meaning of Rule 14d-10(d)(2) under the Exchange Act, in order to satisfy the requirements of the non-exclusive safe harbor with respect to such Benefit Arrangements in accordance with Rule 14d-10(d)(2) under the Exchange Act. A true and correct copy of any resolutions of the Compensation Committee of the Board reflecting any approvals and actions referred to in this Section 6.4 will be provided to Parent prior to the Acceptance Time.

6.5 Employee Matters.

(a) From the Changeover Time through the first anniversary of the Effective Time, Parent shall cause the Company, the Surviving Corporation and their respective Affiliates to provide each individual who is employed by the Company or any Company Subsidiary immediately before the Changeover Time who continues employment with Parent or the Surviving Corporation (or any Affiliate thereof) following the Effective Time (each, a "Company Employee") with (i) base compensation, bonus and incentive opportunities that are no less favorable in the aggregate than the base compensation, bonus and incentive opportunities (including value attributable to equity based compensation generally, without giving effect to the Transactions) provided to such Company Employee immediately prior to the Acceptance Time, and (ii) employee benefits that are substantially comparable in the aggregate to those provided to such Company Employee immediately prior to the Changeover Time. Except to the extent necessary to avoid the duplication of benefits, Parent shall cause the Company, the Surviving Corporation and their respective Affiliates to recognize the service of each Company Employee with the Company or a Subsidiary (or a predecessor) prior to the Changeover Time as if such service had been performed with Parent or its Affiliates for all purposes under the Company Benefit Plans maintained by the Company or the Surviving Corporation or their respective Affiliates after the Changeover Time and any employee benefit plans and programs of Parent or the Surviving Corporation or their respective Affiliates (the "Parent Plans") in which the Company Employee participates after the Changeover Time (excluding, for the avoidance of doubt, benefit accrual under any defined benefit pension plans), in each case to the same extent such Company Employee’s service was recognized by the Company or a Subsidiary under the corresponding Company Benefit Plan in which such Company Employee participated immediately before the Changeover Time. In addition, and without limiting the generality of the foregoing, each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all Parent Plans to the extent necessary to avoid the duplication of benefits, and coverage that is replaced under the Benefit Arrangements in accordance with Rule 14d-10(d)(2) under the Exchange Act. A true and correct copy of any resolutions of the Compensation Committee of the Board reflecting any approvals and actions referred to in this Section 6.4 will be provided to Parent prior to the Acceptance Time.

(b) With respect to any welfare plan maintained by the Company or the Surviving Corporation or their respective Affiliates in which Company Employees are eligible to participate after the Changeover Time, the Company, the Surviving Corporation and their respective Affiliates shall (i) waive all limitations as to pre-existing conditions, exclusions and waiting periods and actively-at-work requirements with respect to participation and coverage requirements applicable to such employees and their eligible dependents and beneficiaries, to the extent such limitations were waived, satisfied or did not apply to the applicable employee or eligible beneficiary under the corresponding welfare Company Benefit Plan in which he or she participated immediately prior to the Changeover Time, and (ii) provide each Company Employee and his or her eligible dependents and beneficiaries with credit for any co-payments and deductibles paid prior to the Effective Time in satisfying any analogous deductible or out-of-pocket requirements to the extent applicable under any such plan and to the same extent such credit was provided to him or her under the corresponding welfare Company Benefit Plan in which he or she participated immediately prior to the Changeover Time, in each case without duplication of benefits.

(c) From and after the Changeover Time, Parent shall cause the Company, the Surviving Corporation and their respective Affiliates to honor all of the Company Benefit Plans that are employment, severance, retention and termination plans, policies, programs, agreements and arrangements (including any change in control severance agreement between the Company and any Company Employee) maintained by the Company or any Subsidiary of the Company that have either been filed as exhibits to the Company SEC Reports or have otherwise been disclosed in Section 6.5(c) of the Company Disclosure Letter or are otherwise not material in the aggregate, in each case in accordance with their terms and shall honor all administrative interpretations previously made under any such plan or agreement. Each of the Company and Parent hereby acknowledge and agree that the consummation of the Offer will constitute a "Change in Control" or "Change of Control" (as such term is defined under each of the Company Benefit Plans) for all purposes under such Company Benefit Plans.

(d) With respect to the annual performance period in which the Acceptance Time occurs, the Company shall and, after the Changeover Time, Parent shall cause the Company or the Surviving Corporation, as the case may be, and their respective Affiliates to pay to each individual who is
employed by the Company or any Company Subsidiary at the Acceptance Time, and who is a participant in such plan, as soon as practicable following the Acceptance Time, or in any event within the period required by Section 409A of the Code, such that it qualifies as a “short-term deferral” pursuant to Section 1.409A-1(b)(4) of the Department of Treasury Regulations, a bonus payment equal to such Company Employee’s target bonus under such plan, pro-rated for the portion of the annual performance period occurring prior to the Acceptance Time.

(e) Notwithstanding anything herein to the contrary, Parent, Merger Sub and the Company acknowledge and agree that none of the provisions contained in this Agreement (i) shall be treated as an amendment or other modification of any Company Benefit Plan or other employee benefit plan, agreement or other arrangement, (ii) shall (except as set forth in Section 6.5(c)) limit the right of Parent, the Company or their respective Affiliates to amend, terminate or otherwise modify any Company Benefit Plan or Parent Plan following the Changeover Time or (iii) shall be construed to create a right with any employee of the Company or any of its Affiliates to employment with Parent, the Surviving Corporation or any of their respective Affiliates.

(f) The Company agrees that as soon as reasonably practical following the date of this Agreement, it will issue a notification and notice of cancellation of options in the form agreed with Parent to all holders of options under the UK Savings Related Share Option Scheme.

6.6 Indemnification; Advancement of Expenses; Exculpation and Insurance.

(a) Each of Parent, Holding and the Surviving Corporation agrees that, to the fullest extent permitted under applicable Law, all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including any matter in connection with the Transactions), now existing in favor of the current or former directors, officers or employees of the Company or any of its Subsidiaries or fiduciaries of the Company or any of its Subsidiaries under benefit plans of the Company and its Subsidiaries (collectively, the “Indemnified Parties”), as provided in the Organizational Documents or other indemnification agreements that have been filed as exhibits to the Company SEC Reports in effect as of the date hereof shall survive the Merger and shall continue in full force and effect in accordance with their terms.

(b) From and after the Changeover Time, the Parent shall cause the Surviving Corporation to indemnify and hold harmless each Indemnified Party, and any person who becomes an Indemnified Party between the date hereof and the Effective Time, against any costs or expenses (including reasonable attorneys’ fees), judgments, fines, losses, claims, damages or liabilities incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of matters existing or occurring at or prior to the Effective Time relating to the Indemnified Party’s service as a director, officer, employee or agent of the Company or the Surviving Corporation or the Indemnified Party’s service at the request of the Company or the Surviving Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, whether asserted or claimed prior to, at or after the Effective Time (including any matters arising in connection with the Transactions), to the fullest extent permitted by applicable Law (and Parent shall cause the Surviving Corporation to advance expenses as incurred to the fullest extent permitted under applicable Law, provided that if required by applicable Law, the person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such person is not entitled to indemnification).

(c) For a period of six (6) years from and after the Effective Time, Parent shall cause the Surviving Corporation to maintain in effect (A) the current provisions regarding indemnification of and the advancement of expenses to Indemnified Parties contained in the Organizational Documents (or comparable organizational documents) of each of the Company and its Subsidiaries and (B) any indemnification agreements of the Company and its Subsidiaries with or for the benefit of any Indemnified Parties existing on the date hereof. For purposes of the foregoing: (i) in the event any claim is asserted within the six-year period during which the Surviving Corporation is required to maintain the indemnification arrangements of the Company and its Subsidiaries, (A) all such rights in respect of any such claim shall continue until disposition thereof and (B) the Indemnified Party shall be entitled to advancement of expenses within five (5) Business Days following receipt of any such claim for expenses involving such Indemnified Party; and (ii) any determination required to be made with respect to whether an Indemnified Party’s conduct complies with the standards set forth under the DGCL.

(d) The Company shall obtain, on or prior to the Acceptance Time, a six year “tail” prepaid policy on terms and conditions no less advantageous to the Indemnified Parties, or any other person entitled to the benefit of this Section 6.6 as applicable, than the existing directors’ and officers’ liability insurance and fiduciary insurance maintained by the Company, covering, without limitation, claims arising from facts or events that occurred on or before the Effective Time, including the transactions contemplated hereby; provided, that, the cost of such six year “tail” prepaid policy shall not exceed 300% of the current annual premiums paid by the Company for its existing directors’ and officers’ liability insurance.
Parent shall cause the Surviving Corporation after the Effective Time, to maintain such policy in full force and effect, for its full term, and to continue to honor its respective obligations thereunder. From and after the Acceptance Time, neither Parent, the Surviving Corporation nor the Company shall take any action that would prejudice the rights of, or otherwise impede recovery by, the beneficiaries of any insurance policy contemplated by this Section 6.6(d), whether in respect of claims arising before or after the Effective Time.

(e) The obligations of Parent, Holding and the Surviving Corporation under this Section 6.6 shall not be terminated or modified by such parties in a manner so as to adversely affect any of the Indemnified Parties, or any other person entitled to the benefit of this Section 6.6, to whom this Section 6.6 applies without the consent of the affected Indemnified Party or such other person, as the case may be. If the Surviving Corporation or any of their respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation, as the case may be, shall assume all of the obligations set forth in this Section 6.6.

(f) The provisions of this Section 6.6 are (i) intended to be for the benefit of, and will be enfoceable by, each of the Indemnified Parties and each other person entitled to the benefit of this Section 6.6, his or her heirs and his or her Representatives and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract or otherwise.

6.7 Public Announcements. The Company and Parent each shall consult with the other prior to issuing any press releases or otherwise making public announcements with respect to the Offer, the Merger and the other Transactions and prior to making any filings with any third party and/or any Governmental Entity with respect thereto, except as may be required by Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or national market system on which such party’s securities are listed or traded, in which case the party required to make the release or announcement shall consult with the other to the extent practicable. The parties agree that the initial press release to be issued with respect to the Transactions shall be in a form mutually agreed to by the parties.

6.8 Section 16 Matters. Prior to the Effective Time, the Company shall be permitted to take any such steps as may be reasonably necessary or advisable to cause any dispositions of Shares (including derivative securities with respect to Shares) resulting from the Transactions by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company, to be exempt under Rule 16b-3 promulgated under the Exchange Act, such steps to be taken in accordance with the No Action Letter dated January 12, 1999, issued by the SEC to Skadden, Arps, Slate, Meagher & Flom LLP.

6.9 Convertible Notes. Parent shall cause the Surviving Corporation to honor the obligations of the Company pursuant to the terms of the Convertible Notes, including, if applicable, by providing any required notice under the indentures governing the Convertible Notes as a result of the Transactions to the holders of such Convertible Notes and paying to the holders of such Convertible Notes any amounts that become payable thereunder or by taking such other action as may be required under the terms thereof. In furtherance of the foregoing, if necessary, Parent shall cause the Surviving Corporation to execute one or more supplemental indentures and such other documents, instruments and agreements as may be necessary under the indentures governing the Convertible Notes evidencing the Surviving Corporation’s commitments under this Section 6.9.

6.10 Options, Restricted Stock, RSUs, DSUs and ESPP.

(a) Stock Options. At the Acceptance Time, each outstanding option to purchase Shares ("Company Option") under any employee stock option or compensation plan or arrangement of the Company or otherwise (other than the ESPPs), but including, without limitation, the 1997 Incentive and Non-Qualified Stock Option Plan, the 1999 Incentive and Non-Qualified Stock Option Plan, the Amended and Restated Stock Incentive Plan, the Non-Qualified Stock Option Plan for Former Employees of Gilead Sciences, Inc. and the Stock Incentive Plan for Pre-Merger Employees of Eyetech Pharmaceuticals, Inc. (collectively, the "Equity Compensation Plans"), shall be by virtue of the occurrence of the Acceptance Time and without any action on the part of any holder of any Company Option be cancelled and the holder thereof will receive a cash payment with respect thereto equal to the product obtained by multiplying (a) the excess, if any, of the Offer Price over the exercise price per share of such Company Option, by (b) the number of Shares issuable upon exercise of such Company Option (the “Option Cash Payment”). Parent and the Surviving Corporation or the Company, as applicable, shall use their respective commercially reasonable best efforts to cause the cash payments required pursuant to this Section 6.10(a) to be paid as soon as practicable after the Acceptance Time in accordance with the currently existing payroll practices of the Company. All amounts payable pursuant to this Section 6.10(a) shall be subject to and reduced by the amount of any withholding and/or deduction that is required under applicable Tax Law in accordance with Section 3.2(i) of this Agreement. As of the Acceptance Time, all Company Options shall no longer be outstanding and shall automatically cease to exist, and each holder of a Company Option shall cease to have any rights with respect thereto, except the right to receive the Option Cash Payment. In order to effect the provisions of this Section 6.10(a), the Company shall be permitted to fully accelerate the vesting of all Company Options at such time prior to the Acceptance Time as shall be determined by the Company in its sole discretion.
(b) Restricted Stock. Each award entitling the recipient to receive, upon vesting, Shares granted under an Equity Compensation Plan, that is outstanding immediately prior to the Acceptance Time shall become fully vested on an accelerated basis immediately prior to the Acceptance Time.

(c) Restricted Stock Units. Each restricted stock unit award entitling the recipient to receive, upon vesting, Shares granted under an Equity Compensation Plan ("Company RSU"), that is outstanding immediately prior to the Acceptance Time shall, by virtue of the Acceptance Time and without any action on the part of any holder of any Company RSU, be cancelled, as of the Acceptance Time, in exchange for the lump sum cash payment, without interest, equal to the product obtained by multiplying (x) the Offer Price by (y) the number of Shares underlying such Company RSU.

(d) Deferred Stock Units. Each deferred stock unit award entitling the recipient to receive, upon the date elected by the recipient, Shares granted under an Equity Compensation Plan ("Company DSU"), that is outstanding immediately prior to the Acceptance Time shall, as of the Acceptance Time and without any action on the part of any holder of any Company DSU, be fully vested and converted into the right to receive from Parent or Merger Sub, a lump sum cash payment, without interest, equal to the product obtained by multiplying (x) the Offer Price by (y) the number of Shares underlying such Company DSU.

(e) Employee Stock Purchase Plans. The Company shall cause each outstanding purchase right under the Company’s 1995 Employee Stock Purchase Plan (the “US ESPP”) to be exercised for the purchase of Shares at the price per share determined pursuant to the US ESPP on the last Business Day immediately prior to the Acceptance Time. The Company shall take all necessary action to provide that no person will have any further right to purchase Shares under the US ESPP following the Acceptance Time and that the US ESPP shall be suspended with respect to new offerings effective as of the date of this Agreement and terminate effective immediately following the final purchase under the US ESPP described herein.

(f) Any notices or other communications provided pursuant to this Section 6.10 will be provided to Parent in advance of its distribution.

6.11 Delisting. Parent, Merger Sub and the Company shall each cooperate in taking, or causing to be taken, all actions necessary under applicable Laws and rules and policies of the NASDAQ Stock Market to delist the Shares from the NASDAQ Stock Market, and to terminate the registration of the Shares under the Exchange Act, in each case, effective as of the Effective Time.

6.12 Stockholder Litigation. The Company shall give Parent the opportunity to participate in the defense or settlement of any stockholder litigation against the Company and/or its directors or executive officers relating to the Transactions, whether commenced prior to or after the execution and delivery of this Agreement. The Company shall not settle or offer to settle any litigation commenced prior to or after the date of this Agreement against the Company or any of its directors or executive officers by any stockholder of the Company relating to this Agreement, whether commenced prior to or after the Acceptance Time and without any action on the part of any holder of any Company DSU, be fully vested and converted into the right to receive from Parent or Merger Sub, a lump sum cash payment, without interest, equal to the product obtained by multiplying (x) the Offer Price by (y) the number of Shares underlying such Company RSU.

ARTICLE VII

CONDITIONS PRECEDENT

7.1 Conditions to Each Party’s Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or (to the extent permitted by Law) waiver on or prior to the Closing Date of the following conditions:

(a) Stockholder Approval. The Stockholder Approval shall have been obtained, if and to the extent required by applicable Law.

(b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other judgment or order issued by a court of competent jurisdiction or other Governmental Entity of competent jurisdiction ("Order") shall be in effect making the Merger illegal or otherwise prohibiting consummation of the Merger.

(c) Acceptance of the Offer. Merger Sub (or Parent or Holdings on Merger Sub’s behalf) shall have accepted for payment and paid for all of the Shares validly tendered pursuant to the Offer and not properly withdrawn in accordance with the terms hereof and thereof (provided that this Section 7.1(c) shall not be a condition to Parent and Merger Sub’s obligations if Merger Sub shall have failed to purchase such Shares pursuant
TERMINATION, AMENDMENT AND WAIVER

8.1 Termination. This Agreement may be terminated and the Offer and the Merger may be abandoned by action taken or authorized by the board of directors of the terminating party or parties, whether before or after the receipt of Stockholder Approval:

(a) by mutual written consent of Parent and the Company at any time prior to the Effective Time;

(b) by either Parent or the Company:

(i) if a court of competent jurisdiction or other Governmental Entity having authority over Parent, Merger Sub, the Company or any of its Subsidiaries shall have issued a final and nonappealable Restraint having the effect of permanently restraining, enjoining or otherwise prohibiting the Offer or the Merger, provided, however, that the party to this Agreement seeking to terminate this Agreement pursuant to this Section 8.1(b)(i) shall have used reasonable best efforts to prevent the entry of and to remove such Restraint;

(ii) if the Acceptance Time shall not have occurred on or prior to the Outside Date; provided, however, that a party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(b)(ii) if the failure of the Acceptance Time to occur on or prior to the Outside Date is primarily due to the failure of such party (or a Subsidiary of such party) to fulfill any of its obligations under this Agreement;

(iii) if the Offer (as it may have been extended pursuant to Section 1.1) expires as result of the non-satisfaction of any Offer Condition or is terminated or withdrawn pursuant to its terms in accordance with this Agreement without any Shares being purchased thereunder; provided, however, that the right to terminate this Agreement under Section 8.1 shall not be available to any party if the expiration or the termination or withdrawal of the Offer pursuant to its terms without any Shares being purchased thereunder is primarily due to the failure of such party (or a Subsidiary of such party) to fulfill any of its obligations under this Agreement;

(c) by the Company, if:

(i) Parent, Holding or Merger Sub shall have breached or failed to perform, in any material respect, any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform (A) would give rise to the failure of a condition set forth in Section 7.1 or Annex I of this Agreement that has not been waived by Parent and (B) is incapable of being cured (or is not cured) by Parent within thirty (30) calendar days following receipt of written notice of such breach or failure to perform from the Company, provided, however, that the failure of any such condition to be capable of satisfaction is not the result of a material breach of this Agreement by the Company;

(ii) Parent or Merger Sub, in violation of the terms of this Agreement, fails to (A) amend the Offer as provided in Section 1.1 hereof by May 21, 2010 or (B) promptly purchase validly tendered Shares pursuant to the Offer; or

(iii) If at any time prior to the Acceptance Time, the Company Board concludes in good faith (after consultation with its legal and financial advisors) that an Alternative Transaction Proposal that did not result from a breach of Section 5.2(a) constitutes a Superior Proposal, except that the Company may not terminate this Agreement pursuant to this Section 8.1(c)(iii) unless and until (i) the Company shall have given Parent and Merger Sub prompt written notice advising them of (x) the decision of the Company Board to terminate this Agreement and (y) the material terms and conditions of the Alternative Transaction Proposal (including all materials required by Section 5.2), (ii) the Company shall have given Parent and Merger Sub two (2) Business Days after delivery of each such notice to propose revisions to the terms of this Agreement (or make another proposal) and if Parent and Merger Sub propose to revise the terms of this Agreement, the Company shall have negotiated in good faith with Parent and Merger Sub with respect to such proposed revisions or other proposal, (iii) the Company Board has concluded in good faith, after consultation with its outside legal counsel, that (A) the failure to accept such Alternative Transaction Proposal would be inconsistent with its fiduciary obligations under applicable Law and (B) after considering the results of such negotiations and giving effect to the proposals made by Parent and Merger Sub, if any, such Alternative Transaction Proposal constitutes a Superior Proposal, (iv) contemporaneously with such termination, the Company enters into a definitive acquisition, merger or similar agreement upon the terms and conditions described in the notice delivered pursuant to clause (i)(y) above to effect the Superior Proposal and (v) the Company has paid to Parent the amount specified and within the time period specified in Section 8.3.

(d) by Parent if:

(i) since the date of this Agreement and prior to the Acceptance Time, a Company Material Adverse Effect shall have occurred and, if such Company Material Adverse Effect is reasonably capable of being cured, such Company Material Adverse Effect shall not have been cured within
thirty (30) calendar days following written notice thereof by the Parent or (B) the Company shall have breached or failed to perform, in any material respect, any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach or failure to perform (x) would give rise to the failure of a condition set forth in Annex I of this Agreement and (y) is incapable of being cured (or is not cured) by the Company within thirty (30) calendar days following receipt of written notice of such breach or failure to perform from Parent or Merger Sub, provided, however, that the failure of any such condition to be capable of satisfaction is not the result of a material breach of this Agreement by Parent or Merger Sub; or

(ii) at any time prior to the Acceptance Time, the Company Board (A) effects a Change of Recommendation, or (B) publicly approves or recommends any Alternative Transaction Proposal.

8.2 Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 8.1 of this Agreement, this Agreement shall forthwith become void and be of no further force or effect, without any liability or obligation on the part of Parent, Holding, Merger Sub or the Company under this Agreement, other than the provisions of the penultimate sentence of Section 6.2 (Access to Information; Confidentiality), this Section 8.2, Section 8.3 and Article IX of this Agreement, which provisions shall survive such termination, provided, however, that the termination of this Agreement shall not relieve any party from the material breach of any of its representations, warranties, covenants or agreements set forth in this Agreement.

8.3 Termination Fee.

In the event that (x) the Company terminates this Agreement pursuant to Section 8.1(c)(iii), (y) (A) prior to the Acceptance Time and after the date hereof, any person shall have made an Alternative Transaction Proposal, which proposal has not been withdrawn and thereafter this Agreement is terminated by any party pursuant to either (1) Section 8.1(b)(ii) or (2) Section 8.1(b)(iii) due to a failure of the Minimum Condition or of the condition specified in Item 7 of Annex I to be satisfied prior to the Outside Date, and (B) within nine (9) months after such termination of this Agreement, an Alternative Transaction Proposal shall have been consummated or any definitive agreement with respect to an Alternative Transaction Proposal shall have been entered into, or (z) this Agreement is terminated by Parent pursuant to Section 8.1(d)(ii), then the Company shall pay Parent a fee, in immediately available funds, in the amount of one hundred twenty-five million dollars ($125,000,000) (the “Termination Fee”) immediately prior to and as a condition of such termination, in the case of a termination described in clauses (x) above, or upon the consummation of or entering into a definitive agreement with respect to any transaction referenced in clause (y)(B) above, in the event of a termination described in clause (y)(A) above or within two (2) Business Days in the event of a termination described in clause (z) above. For the purposes of the foregoing, the term “Alternative Transaction Proposal” shall have the meaning assigned to such term in Section 5.2(ii)(i) of this Agreement except that the references to “17.5%” in the definition of “Alternative Transaction Proposal” in Section 5.2(ii)(i) of this Agreement shall be deemed to be references to “50%.” In no event shall the Company be required to pay the Termination Fee on more than one occasion. The Company acknowledges that the agreements contained in this Section 8.3 are an integral part of the Transactions and that, without these agreements, Parent, Holding and Merger Sub would not enter into this Agreement. Parent, Holding and Merger Sub each agree and acknowledge that notwithstanding anything in this Agreement to the contrary (including Section 8.2), in the event that any Termination Fee is paid to Parent, Holding or Merger Sub in accordance with this Section 8.3, the payment of such Termination Fee shall be the sole and exclusive remedy of such parties, its Subsidiaries, shareholders, Affiliates, officers, directors, employees and Representatives against the Company or any of its Representatives or Affiliates

for, and upon such payment of the Termination Fee, Parent, Holding or Merger Sub or any other such person shall not have the right to seek to recover any other money damages or seek any other remedy based on a claim in law or equity with respect to, (1) any loss suffered, directly or indirectly, as a result of the failure of the Offer or the Merger to be consummated, (2) the termination of this Agreement, (3) any liabilities or obligations arising under this Agreement, or (4) any claims or actions arising out of or relating to any breach, termination or failure of or under this Agreement, and upon payment of any Termination Fee in accordance with this Section 8.3, neither the Company, nor any Representative or Affiliate of the Company shall have any further liability or obligation to the other parties relating to or arising out of this Agreement or the transactions contemplated hereby.

8.4 Amendment. Subject to Section 1.3 of this Agreement and the provisions of applicable Law, at any time before or after the Stockholder Approval, the parties to this Agreement may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties; provided, however, that after the Stockholder Approval, there shall not be made any amendment that by Law requires further approval by the stockholders of the Company without the further approval of such stockholders.

8.5 Extension; Waiver. Subject to Section 1.3, at any time prior to the Effective Time, the parties may (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) to the extent permitted by Law, waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (c) subject to the provisos of Section 8.4 of this Agreement, waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of

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its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

ARTICLE IX

GENERAL PROVISIONS

9.1 Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the earliest of the Acceptance Time, the Effective Time or except as provided in Section 8.2 of this Agreement, the termination of this Agreement pursuant to Article VIII. This Section 9.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Acceptance Time, the Effective Time or termination of this Agreement pursuant to Article VIII.

9.2 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, on the third Business Day after being mailed by registered or certified mail (postage prepaid, return receipt requested) or on the next Business Day after being sent by reputable overnight courier (delivery prepaid), in each case, to the parties at the following addresses, or on the date sent and confirmed by electronic transmission to the teletypewriter number specified below (or at such other address or teletypewriter number for a party as shall be specified by notice given in accordance with this Section 9.2):

(a) If to Parent, Holding or Merger Sub:

Astellas Pharma Inc.
2-3-11, Nihonbashi-Honcho, Chuo-ku
Tokyo 103-8411, Japan
Facsimile: +81-3-5201-6614
Attention: Masafumi Nogimori, Director, President & CEO
masafumi.nogimori51@jp.astellas.com
Astellas US Holding, Inc.
Three Parkway North
Deerfield, IL 60015
Facsimile: 847-317-7297
Attention: Seigo Kashii, Director, President & CEO
seigo.kashii@us.astellas.com
Ruby Acquisition, Inc.
Three Parkway North
Deerfield, IL 60015
Facsimile: 847-317-7297
Attention: Seigo Kashii, Director, President & CEO
seigo.kashii@us.astellas.com
with a copy to:
Astellas Pharma Inc.
2-3-11, Nihonbashi-Honcho, Chuo-ku
Tokyo 103-8411, Japan

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Facsimile: +81-3-3244-5811
Attention: Kazunori Okimura, Vice President, Legal
kazunori.okimura@jp.astellas.com
Astellas US Holding, Inc.
Three Parkway North
Deerfield, IL 60015
Facsimile: (847) 317-7288
Attention: Linda F. Friedman, Esq., General Counsel
linda.friedman@us.astellas.com
Ruby Acquisition, Inc.
Three Parkway North
Deerfield, IL 60015
Facsimile: (847) 317-7288
Attention: Linda F. Friedman, Esq., General Counsel
linda.friedman@us.astellas.com

and

Morrison & Foerster LLP
1290 Avenue of the Americas
New York, New York 10104
Facsimile: (212) 468-7900
Attention: Michael O. Braun, Esq.

(b) If to the Company:
OSI Pharmaceuticals, Inc.
420 Saw Mill River Road
Ardsley, New York 10502
Facsimile: 877.613.7384
Attention: Barbara A. Wood, Esq.

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, New York 10036
Facsimile: (212) 735-3300

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Attention: Roger S. Aaron, Esq.

Robert B. Pincus, Esq.

Steven J. Daniels, Esq.

9.3 Definitions. For purposes of this Agreement;

(a) “Affiliate” of any person means another person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise;

(b) “capital stock” or “shares of capital stock” means (i) with respect to a corporation, as determined under the laws of the jurisdiction of organization of such entity, capital stock or such shares of capital stock; (ii) with respect to a partnership, limited liability company, or similar entity, as determined under the laws of the jurisdiction of organization of such entity, units, interests, or other partnership or limited liability company interests; or (iii) any other equity ownership or participation;

(c) “Commercial Product” means any pharmaceutical composition or product containing erlotinib as an active ingredient (including Tarceva®) in all dosage forms and all presentations and for all indications;

(d) “Company Group” means the Company and all of its Subsidiaries and Affiliates;

(e) “Company Material Adverse Effect” means any change, effect, event, violation, inaccuracy, circumstance, effect, occurrence, state of facts or development (any such item, an “Effect”) which, considered individually, or in the aggregate with all other Effects, is or would reasonably be expected to be or to become materially adverse to, or has had or would reasonably be expected to have a material adverse effect on (i) the business, operations, condition (financial or otherwise), assets (tangible or intangible) or liabilities (fixed, contingent or otherwise) of the Company and its Subsidiaries taken as a whole or (ii) the consummation of the Offer, the Merger or the other Transactions contemplated by or the Company’s other obligations under this Agreement; provided that, with respect to clause (i) above, none of the following Effects, either alone or in combination, shall be deemed to constitute a Company Material Adverse Effect: (A) changes affecting the United States economy or any United States securities market in general (which changes or developments, in each case, do not disproportionately affect the Company in any material respect), (B) changes or developments in the pharmaceutical industries in which the Company participates (which changes or developments, in each case, do not disproportionately affect the Company in any material respect), (C) changes resulting from political instability, acts of terrorism or war (which changes or developments, in each case, do not disproportionately affect the Company in any material respect), (D) changes primarily caused by the announcement of this Agreement or actions taken by the Company that are required by this Agreement, (E) any change in Company’s stock price or trading volume (it being understood that the facts or occurrences giving rise to or contributing to such change in stock price or trading volume may be taken into account in determining whether there has been or will be, a Company Material Adverse Effect), (F) the determination by, or delay of a determination by, the FDA or its European or other foreign equivalent, or any panel or advisory body empowered or appointed thereby, with respect to the approval, non-approval or disapproval of any of the Company’s products, (G) the result of any clinical trial of the products of the Company or any of its competitors, or (H) any failure, in and of itself, by the Company to meet any internal or published projections, forecasts or revenue or earnings predictions for any period ending on or after the date of this Agreement (it being understood that the facts or occurrences giving rise to or contributing to such failure may be taken into account in determining whether there has been or will be, a Company Material Adverse Effect);

(f) “Confidentiality Agreement” means the Nondisclosure Agreement, dated March 29, 2010, by and between Parent and the Company, as may be amended;

(g) “Contract” means, contracts, agreements (including, without limitation, any employment, severance, change in control, or other similar agreement with employees and/or directors of the Company), guarantees, notes, mortgages, indentures, leases or licenses;

(h) “Convertible Notes” means, collectively, the 2% Convertible Senior Subordinated Notes due 2025 of the Company and the 3% Convertible Senior Subordinated Notes due 2038;

(i) “ESPP” means the US ESPP and the Company’s Savings-Related Share Option Scheme;

(j) “Governmental Entity” means any Federal, state, local or foreign government, any court, administrative, regulatory or other governmental agency, commission or authority or any non-governmental self-regulatory agency, commission or authority, including domestic or foreign stock
exchanges and securities regulatory bodies;

(k) “Outside Date” means the day which is one hundred and twenty (120) days after the date of this Agreement;

(l) “Parent Material Adverse Effect” means any change, effect, event, occurrence, state of facts or development which individually or in the aggregate would reasonably be expected to prevent or materially impede, interfere with, hinder or delay the consummation by Parent or Merger Sub of the Transactions;

(m) “person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other entity; and

(n) a “Subsidiary” of any person means another person, an amount of the voting securities, other voting rights or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first person.

9.4 Expenses. All fees, costs and expenses incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such fees, costs and expenses.

9.5 [Intentionally Omitted].

9.6 Headings. The headings and captions contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.7 Severability. If any term or other provision of this Agreement, or any portion thereof, is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms and provisions of this Agreement, or remaining portion thereof, shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any such term or other provision, or any portion thereof, is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the Transactions are consummated to the fullest extent possible.

9.8 Entire Agreement; No Third-Party Beneficiaries. This Agreement (together with the Exhibits attached hereto, the Company Disclosure Letter and Parent Disclosure Letter) constitutes the entire agreement of the parties hereto and supersedes all prior agreements and undertakings, both written and oral, between or among the parties, or any of them, with respect to the subject matter hereof. This Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns, and nothing herein express or implied is intended to, or shall be construed to, provide or create any legal or equitable rights or benefits to any person other than the parties hereto, other than, (a) following the consummation of the Merger, the rights of holders of Shares under the provisions of Article III and the rights of the Indemnified Parties under Section 6.6 (which are intended to be for the benefit of the persons covered thereby and may be enforced by such persons); and (b) the right of the Company, on behalf of its stockholders, to pursue damages suffered by its stockholders, optionholders and other securityholders as a group in the event of Parent’s or Merger Sub’s failure to consummate the Merger in breach of this Agreement, which right is hereby acknowledged and agreed by Parent and Merger Sub.

9.9 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, directly or indirectly, by any party hereto without the prior written consent of the other parties hereto. This Agreement shall not be assignable by operation of law or otherwise.

9.10 Failure or Delay Not Waiver; Remedies Cumulative. No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

9.11 Specific Performance. Each party hereto acknowledges that money damages would be both incalculable and an insufficient remedy for any breach of this Agreement by such party and that any such breach would cause Parent, Holding and Merger Sub, on the one hand, and the Company, on the other hand, irreparable harm. Accordingly, each party hereto also agrees that, in the event of any breach or threatened breach of the provisions of this Agreement by such party, Parent, Holding and Merger Sub, on the one hand, and the Company, on the other hand, shall be entitled to equitable relief without the requirement of posting a bond or other security, including in the form of injunctions and orders for specific performance, in addition to all other remedies available to such other parties at law or in equity.

9.12 Governing Law; Jurisdiction Waiver of Jury Trial.

(a) This Agreement shall be governed by the laws of the State of Delaware, its rules of conflict of laws notwithstanding. Each party hereby agrees and consents to be subject to the jurisdiction of the Court of Chancery of the State of Delaware in and for New Castle County, or if the
Court of Chancery lacks jurisdiction over such dispute, in any state or federal court having jurisdiction over the matter situated in the New Castle County, Delaware, in any suit, action or proceeding seeking to interpret, enforce or apply any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transactions. Each party

9.12 Waiver. (a) Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of or relating to this Agreement, the Transactions and the other Sections of this Agreement reasonably apparent on its face. Each party unconditionally and irrevocably waives and agrees not to plead or claim in any suit that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this Agreement, the Transactions, each party certifies and acknowledges that (i) no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver, (ii) each such party understands and has considered the implications of this waiver, (iii) each such party makes this waiver voluntarily, and (iv) each such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 9.12(b).

9.13 Counterparts. This Agreement may be executed in counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9.14 Interpretation. As used in this Agreement, (x) the term “including” means “including, without limitation” and “including, but not limited to,” (y) the word “or” is not exclusive, unless the context otherwise requires and (z) the words “to the knowledge of the Company” means the actual knowledge after reasonable inquiry of the officers of the Company. All references to this Agreement “dollars” or “$” shall mean United States Dollars. The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. The parties acknowledge that each party has participated in the drafting of and has been represented by counsel in connection with this Agreement and the Transactions. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in any portions of this Agreement against the party that drafted it has no application and is expressly waived.

9.15 Disclosure Generally. All of the Company Disclosure Letter and the Parent Disclosure Letter are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any section of the Company Disclosure Letter or the Parent Disclosure Letter, as applicable, shall be deemed to refer to this entire Agreement, including all sections of the Company Disclosure Letter or the Parent Disclosure Letter, as applicable; provided, however, that information furnished in any particular section of the Company Disclosure Letter or the Parent Disclosure Letter, as applicable, shall be deemed to be included in another Section of the Company Disclosure Letter or the Parent Disclosure Letter, as applicable, only to the extent a matter in such Section of the Company Disclosure Letter or the Parent Disclosure Letter, as applicable, is disclosed in such a way as to make its relevance to the information called for by such other Section of this Agreement reasonably apparent on its face.

9.16 Dismissal of Litigation; Withdrawal of Stockholder Proposal. Each of the parties shall promptly enter into stipulations staying all litigation currently pending between them or their respective Affiliates, or commenced by or on behalf of any of them in connection with the Offer, and the parties shall cause such stipulations to be filed promptly after the date of this Agreement. Each of the parties shall also promptly following the Control Date, enter into and file stipulations dismissing with prejudice all such litigation and releasing all claims against the other parties hereto (and their Affiliates and Representatives) based on any action or omission that occurred prior to the date of such stipulations as of the date such stipulations are filed. In addition, promptly following the Control Date, Holding shall withdraw its proposal of a slate of nominees to stand for election as directors of the Company contained in a letter dated March 19, 2010. Notwithstanding the foregoing, if this Agreement is terminated in accordance with Article VIII, after such termination nothing herein shall prevent either party (or its Affiliates or Representatives) from pursuing any such litigation or any other litigation against any other party hereto (or its Affiliates or Representatives) or from making any proposal at any meeting of Company stockholders.

[SIGNATURE PAGES FOLLOW]
IN WITNESS WHEREOF, the undersigned parties hereto have caused this Agreement and Plan of Merger to be executed as of the date first
written above.

OSI PHARMACEUTICALS, INC.
By: /s/ Colin Goddard
Name: Colin Goddard
Title: Chief Executive Officer

ASTELLAS PHARMA INC.
By: /s/ Masafumi Nogimori
Name: Masafumi Nogimori
Title: Director, President & CEO

ASTELLAS US HOLDING, INC.
By: /s/ Seigo Kashii
Name: Seigo Kashii
Title: Director, President & CEO

RUBY ACQUISITION, INC.
By: /s/ Seigo Kashii
Name: Seigo Kashii
Title: Director, President & CEO

[SIGNATURE PAGE TO MERGER AGREEMENT]

ANNEX I

CONDITIONS TO THE OFFER

Notwithstanding any other provisions of the Offer and in addition to Merger Sub's rights to extend, amend or terminate the Offer in accordance
with the provisions of the Merger Agreement and applicable Law, Merger Sub shall not be required to accept for payment or, subject to any
applicable rules and regulations of the SEC including Rule 14e-1(c) promulgated under the Exchange Act, pay for any validly tendered Shares
and may delay the acceptance for payment of or, subject to the restrictions referred to above, the payment for, any validly tendered Shares, if (a)
the Minimum Condition shall not have been satisfied at the Acceptance Time or (b) any of the following conditions exist or has occurred and is
continuing at the Acceptance Time:

1. there shall be pending any suit, action or proceeding by any Governmental Entity of competent jurisdiction against Parent, Holding, Merger
Sub, the Company or any Company Subsidiary challenging the acquisition by Parent or Merger Sub of any Shares pursuant to the Offer, seeking
to make illegal, restrain or prohibit the making or consummation of the Offer or the Merger or which otherwise would reasonably be expected to
result in a Company Material Adverse Effect or would materially adversely affect or diminish the benefits Parent would receive relating to the
Commercial Product upon consummation of the transactions contemplated by this Agreement;

2. there shall be any statute, rule, regulation or order enacted, entered, enforced, promulgated or which is deemed applicable pursuant to an
authoritative interpretation by or on behalf of a Government Entity of competent jurisdiction to the Offer, the Merger or any other transaction
contemplated by the Merger Agreement, or any other action shall be taken by any Governmental Entity that (x) is, in the reasonable judgment of
Parent and Merger Sub, reasonably expected to result, directly or indirectly, in any of the consequences referred to in paragraph 1 above, or (y)
has the effect of making the Offer, the Merger or any other transaction contemplated by the Merger Agreement illegal or which has the effect of
prohibiting or otherwise preventing the consummation of the Offer, the Merger or any other transaction on the terms contemplated by the Merger
Agreement;

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3. (i) any representation or warranty of the Company contained in the second, sixth (but only as to the aggregate number of Shares issuable pursuant to the plans and arrangements referred to) and seventh sentences of Section 4.1(b) (in each case as updated by the last sentence of Section 4.1(b)) shall not be true and correct in all but de minimis respects at any time from and after the date of this Agreement (except for any such representation or warranty made as of a specified date, which shall not be true and correct in all but de minimis respects as of such date), (ii) any of the representations and warranties of the Company contained in Sections 4.1(j) [Voting Requirements], (k) [Anti-Takeover Statutes] or (n) [Stockholder Rights Agreement Amended] shall not be true and correct in all material respects at any time from and after the date of this Agreement, or (iii) any other representation or warranty of the Company contained in the Agreement (without giving effect to any references to any Company Material Adverse Effect or

material qualifications and other qualifications based upon the concept of materiality or similar phrases contained therein) shall fail to be true and correct in any respect as of the date of the Merger Agreement or as of the Acceptance Time with the same force and effect as if made on and as of such date, except for representations and warranties that relate to a specific date or time (which need only be true and correct as of such date or time), except where such failure to be true or correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Company Material Adverse Effect;

4. the Company shall have breached or failed, in any material respect, to perform or to comply with any material agreement or covenant to be performed or complied with by it under the Merger Agreement that is required to be performed prior to such date and such breach or failure shall not have been cured;

5. since the date of the Merger Agreement, any fact(s), circumstance(s), event(s), change(s), effect(s) or occurrence(s) shall have occurred, which has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

6. Merger Sub shall have failed to receive a certificate of the Company, executed by the Chief Executive Officer and the Chief Financial Officer of the Company, dated as of the Acceptance Time, to the effect that the conditions set forth in paragraphs 3 and 4 of this Annex I have not occurred;

7. the Company shall have directly or indirectly sold, licensed or otherwise transferred or encumbered in whole or in part (or have agreed directly or indirectly to sell, license or otherwise transfer or encumber in whole or in part) any rights or assets relating to or in connection with the Commercial Product, other than (x) sales of inventory of the Commercial product in the ordinary course consistent with past practice or (y) as provided in, and only to the extent, if any, required by, agreements to which the Company is a party and which have been filed by the Company with the SEC on or prior to February 26, 2010; or

8. the Merger Agreement shall have been terminated in accordance with its terms.

The foregoing conditions (including those set forth in clauses (a) and (b) of the initial paragraph) are for the benefit of Parent, Holding and Merger Sub and may be asserted by Parent, Holding and Merger Sub in their reasonable discretion and may be waived by Parent, Holding or Merger Sub, in their reasonable discretion, in whole or in part at any time and from time to time, in each case subject to the terms of the Merger Agreement. Any reference in this Annex I or the Merger Agreement to a condition or requirement being satisfied shall be deemed to be satisfied if such condition or requirement is waived in accordance with the prior sentence hereto. The foregoing conditions shall be in addition to, and not a limitation of, the rights of Parent, Holding and Merger Sub to extend, terminate, amend and/or modify the Offer pursuant to the terms and conditions of the Merger Agreement. The failure by Parent, Holding or Merger Sub at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

The capitalized terms used in this Annex I and not defined in this Annex I shall have the meanings set forth in the Agreement and Plan of Merger to which this Annex I is attached.

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EXHIBIT A

Surviving Corporation Certificate of Incorporation

ARTICLE I

The name of this corporation is OSI Pharmaceuticals, Inc. (the “Corporation”).

ARTICLE II

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ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

The total number of shares of stock which the Corporation is authorized to issue is 205,000,000 shares, consisting of 200,000,000 shares of Common Stock ("Common Stock"), having a par value of $0.01 per share, and 5,000,000 shares of Preferred Stock having a par value of $0.01 per share.

ARTICLE V

The Board of Directors is authorized to adopt, amend or repeal the Bylaws of the Corporation, except as otherwise provided therein. Election of directors need not be by ballot.

ARTICLE VI

The Corporation reserves the right to adopt, repeal, rescind or amend in any respect any provisions contained in this Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, and all rights conferred on stockholders herein are granted subject to this reservation.

ARTICLE VII

SECTION 1. RIGHT TO INDEMNIFICATION. Each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative ("Proceeding"), by reason of the fact that he, or a person of whom he is the legal representative, is or was the director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (or, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that the Corporation shall indemnify any such person seeking indemnity in connection with a Proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Section 1 shall be a contract right and shall include the right to be paid by the Corporation expenses incurred in defending any such Proceeding in advance of its final disposition; provided, however, that if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of such Proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Section or otherwise.

SECTION 2. NON-EXCLUSIVITY OF RIGHTS. The rights conferred on any person by Section 1 shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, by-laws, agreement, vote of stockholders or disinterested directors, or otherwise.

SECTION 3. LIMITATION OF LIABILITY OF DIRECTORS. 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 (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

SECTION 4. INSURANCE. The Corporation may maintain insurance, at its expense, to protect itself and any such director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.
EXHIBIT B
Surviving Corporation By-Laws

ARTICLE I
OFFICES

Section 1.1 Principal Office. The Board of Directors shall fix the location of the principal executive office of the Corporation at any place within or outside the State of Delaware.

Section 1.2 Additional Offices. The Board of Directors (the “Board”) may at any time establish branch or subordinate offices at any place or places.

ARTICLE II
MEETING OF STOCKHOLDERS

Section 2.1 Place of Meeting. All meetings of the stockholders for the election of directors shall be held at the principal office of the Corporation, at such place as may be fixed from time to time by the Board or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board and stated in the notice of the meeting. Meetings of stockholders for any purpose may be held at such time and place within or without the State of Delaware as the Board may fix from time to time and as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2.2 Annual Meeting. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board and stated in the notice of the meeting. At such annual meetings, the stockholders shall elect a Board and transact such other business as may properly be brought before the meetings.

Section 2.3 Special Meetings. Special meetings of the stockholders may be called for any purpose or purposes, unless otherwise prescribed by the statute or by the Certificate of Incorporation, at the request of the Board, the Chairman of the Board, the President or the holders of shares entitled to cast not less than ten percent (10%) of the votes at the meeting or such additional persons as may be provided in the Certificate of Incorporation or these Bylaws. Such request shall state the purpose or purposes of the proposed meeting. Upon request in writing that a special meeting of stockholders be called for any proper purpose, directed to the Chairman of the Board, the President, a Vice President or the Secretary by any person (other than the Board) entitled to call a special meeting of stockholders, the person forthwith shall cause notice to be given to the stockholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, such time not to be less than ten (10) nor more than sixty (60) days after receipt of the request. Such request shall state the purpose or purposes of the proposed meeting.

Section 2.4 Notice of Meetings. Written notice of stockholders’ meetings, stating the place, date and time of the meeting and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days prior to the meeting.

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, date and time thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, date and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

(a) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of Delaware General Corporation Law, the certificate of incorporation, or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent, and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subparagraph (e) shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to
Section 2.5 Business Matter of a Special Meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.6 List of Stockholders. The officer in charge of the stock ledger of the Corporation or the transfer agent shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, at a place within the city where the meeting is to be held, which place, if other than the place of the meeting, shall be specified in the notice of the meeting. The list shall also be produced and kept at the place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present in person thereat.

Section 2.7 Organization and Conduct of Business. The Chairman of the Board or, in his or her absence, the President of the Corporation or, in their absence, such person as the Board may have designated or, in the absence of such a person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as Chairman of the meeting. In the absence of the Secretary of the Corporation, the Secretary of the meeting shall be such person as the Chairman appoints.

The Chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her in order.

Section 2.8 Quorum and Adjournments. Except where otherwise provided by law or the Certificate of Incorporation or these Bylaws, the holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented in proxy, shall constitute a quorum at all meetings of the stockholders. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to have less than a quorum if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If, however, a quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat who are present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented.

Section 2.9 Voting Rights. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder.

Section 2.10 Majority Vote. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation or of these Bylaws, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 2.11 Record Date for Stockholder Notice and Voting. For purposes of determining the stockholders entitled to notice of any meeting or to vote, or entitled to receive payment of any dividend or other distribution, or entitled to exercise any right in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting nor more than sixty (60) days before any other action.

Section 2.12 Proxies. Every person entitled to vote for directors or on any other matter shall have the right to do so either in person or by one or more agents authorized by a written proxy signed by the person and filed with the Secretary of the Corporation. A proxy shall be deemed signed.
if the stockholder’s name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder’s attorney-in-fact. A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, before the vote pursuant to that proxy, by a writing delivered to the Corporation stating that the proxy is revoked or by a subsequent proxy executed by, or attendance at the meeting and voting in person by, the person executing the proxy; or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Corporation before the vote pursuant to that proxy is counted; provided, however, that no proxy shall be valid after the expiration of eleven months from the date of the proxy, unless otherwise provided in the proxy.

Section 2.13 Inspectors of Election. Before any meeting of stockholders, the Board may appoint any person other than nominees for office to act as inspectors of election at the meeting or its adjournment. If no inspectors of election are so appointed, the Chairman of the meeting may, and on the request of any stockholder or a stockholder’s proxy shall, appoint inspectors of election at the meeting. The number of inspectors shall be either one (1) or three (3). If inspectors are appointed at a meeting on the request of one or more stockholders or proxies, the holders of a majority of shares or their proxies present at the meeting shall determine whether one (1) or three (3) inspectors are to be appointed. If any person appointed as inspector fails to appear or fails or refuses to act, the Chairman of the meeting may, and upon the request of any stockholder or a stockholder’s proxy shall, appoint a person to fill that vacancy.

Section 2.14 Action Without Meeting by Written Consent. All actions required to be taken at any annual or special meeting may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings or stockholders are recorded.

ARTICLE III

DIRECTORS

Section 3.1 Number; Qualifications. The authorized number of the directors shall not be less than one (1) nor more than twenty-one (21). The exact number may be fixed from time to time within such limit by a duly adopted resolution of the Board or stockholders. All directors shall be elected at the annual meeting or any special meeting of the stockholders, except as provided in Section 3.2 hereof, and each director so elected shall hold office until the next annual meeting or any special meeting or until his or her successor is elected and qualified or until his or her earlier death, resignation, or removal. Directors need not be stockholders.

Section 3.2 Resignation and Vacancies. A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation or removal of any director, or if the authorized number of directors be increased. Vacancies may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, unless otherwise provided in the Certificate of Incorporation. The stockholders may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors.

Any director may resign at any time by giving written notice to the Board. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the director is a party. If resignation of a director is tendered to take effect at a future time, the Board shall have power to elect a successor to take office when the resignation is to become effective. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 3.3 Removal of Directors. Unless otherwise restricted by statute, the Certificate of Incorporation or these Bylaws, any director or the entire Board may be removed, with or without cause, by the holders of at least a majority of the shares entitled to vote at an election of directors.

Section 3.4 Powers. The business of the Corporation shall be managed by or under the direction of the Board which may exercise all such powers of the Corporation and do all such lawful acts and things which are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders, or prohibited to the Board.

Without prejudice to these general powers, and subject to the same limitations, the directors shall have the power to:

(i) Select and remove all officers, agents, and employees of the Corporation; prescribe any powers and duties for them that are consistent with law, with the Certificate of Incorporation, and with these Bylaws; fix their compensation; and require from them security for faithful service;
(ii) Confer upon any office the power to appoint, remove and suspend subordinate officers, employees and agents;

(iii) Change the principal executive office or the principal business office in the State of Delaware or any other state from one location to another, cause the Corporation to be qualified to do business in any other state, territory, dependency or country and conduct business within or without the State of Delaware; and designate any place within or without the State of Delaware for the holding of any stockholders meeting, or meetings, including annual meetings;

(iv) Adopt, make, and use a corporate seal; prescribe the forms of certificates of stock; and alter the form of the seal and certificates;

(v) Authorize the issuance of shares of stock of the Corporation on any lawful terms, in consideration of money paid, labor done, services actually rendered, debts or securities canceled, tangible or intangible property actually received;

(vi) Borrow money and incur indebtedness on behalf of the Corporation, and cause to be executed and delivered for the Corporation’s purposes, in the corporate name, promissory notes, bonds, debentures, deeds of trust mortgages, pledges, hypothecation and other evidences of debt and securities;

(vii) Declare dividends from time to time in accordance with law,

(viii) Adopt from time to time such stock option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and

(ix) Adopt from time to time regulations not inconsistent with these Bylaws for the management of the Corporation’s business and affairs.

Section 3.5 Place of Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware.

Section 3.6 Annual Meetings. The annual meetings of the Board shall be held immediately following the annual meeting of stockholders, and no notice of such meeting shall be necessary to the Board, provided a quorum shall be present. The annual meetings shall be for the purposes of organization, and an election of officers and the transaction of other business.

Section 3.7 Regular Meetings. Regular meetings of the Board may be held without notice at such time and place as may be determined from time to time by the Board.

Section 3.8 Special Meetings. Special meetings of the Board may be called by the Chairman of the Board, the President, a Vice President, the Secretary or a majority of the Board upon one (1) day’s notice to each director.

Section 3.9 Quorum and Adjournments. At all meetings of the Board, a majority of the directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may otherwise be specifically provided by law or the Certificate of Incorporation. If a quorum is not present at any meeting of the Board, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting at which the adjournment is taken, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved of by at least a majority of the required quorum for that meeting.

Section 3.10 Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.11 Telephone Meetings. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any member of the Board or any committee may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.12 Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.13 Fees and Compensation of Directors. Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by resolution of the Board of Directors. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.
Section 3.14 Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and also of its subsidiary corporations, domestic or foreign. Such inspection by a director may be made in person or by agent or attorney and includes the right to copy and obtain extracts.

ARTICLE IV

COMMITTEES OF DIRECTORS

Section 4.1 Executive Committee. The Board of Directors may, by resolution passed by a majority of the whole Board, appoint an Executive Committee of not less than one member, each of whom shall be a director. The Executive Committee to the extent permitted by law shall have and may exercise, when the Board of Directors is not in session, all powers of the Board in the management of the business and affairs of the corporation, including, without limitation, the power and authority to declare a dividend or to authorize the issuance of stock, except such committee shall not have the power or authority to amend the Certificate of Incorporation, to adopt an agreement or merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all of substantially all of the corporation’s property and assets, to recommend to the stockholders the corporation a dissolution of the corporation or a revocation of a dissolution, or to amend these Bylaws.

Section 4.2 Other Committees. The Board may, by resolution passed by a majority of the entire Board, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committee, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board.

Section 4.3 Term. The members of all committees of the Board of Directors shall serve a term coexistent with that of the Board of Directors which shall have appointed such committee. The Board, subject to the provisions of subsections 4.1 and 4.2 of this Article 4, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee; provided that no committee shall consist of less than one member. The membership of a committee member shall terminate on the date of his death or voluntary resignation, but the Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 4.4 Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Article 4 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter; special meetings of any such committee may be held at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time after the meeting and will be waived by any director by attendance thereat. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

ARTICLE V

OFFICERS

Section 5.1 Officers Designated. The officers of the Corporation shall be chosen by the Board and shall be a President, a Secretary and a Treasurer. The Board may also choose a Chairman of the Board, a Deputy President, one or more Vice Presidents, and one or more assistant Secretaries and assistant Treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 5.2 Appointment of Officers. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or 5.5 hereof, shall be appointed by the Board, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.
Section 5.3 Subordinate Officers. The Board may appoint, and may empower the president to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board may from time to time determine.

Section 5.4 Removal and Resignation of Officers. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5.5 Vacancies in Offices. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointment to that office.

Section 5.6 Compensation. The salaries of all officers of the Corporation shall be fixed from time to time by the Board and no officer shall be prevented from receiving a salary because he or she is also a director of the Corporation.

Section 5.7 The Chairman of the Board. The Chairman of the Board, if such an officer be elected, shall, if present, perform such other powers and duties as may be assigned to him from time to time by the Board. If there is no President, the Chairman of the Board shall also be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 5.8 hereof.

Section 5.8 The President. Subject to such supervisory powers, if any, as may be given by the Board to the Chairman of the Board, if there be such an officer, the President shall be the Chief Executive Officer of the Corporation, shall preside at all meetings of the stockholders and in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board, shall have general and active management of the business of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. He or she shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation.

Section 5.9 The Vice President. The Vice President (or in the event there be more than one, the Vice Presidents in the order designated by the directors, or in the absence of any designation, in the order of their election), shall, in the absence of the President or in the event of his or her disability or refusal to act, perform the duties of the President, and when so acting, shall have the powers of and be subject to all the restrictions upon the President. The Vice President(s) shall perform such other duties and have such other powers as may from time to time be prescribed for them by the Board, the President, the Chairman of the Board or these Bylaws.

Section 5.10 The Secretary. The Secretary shall attend all meetings of the Board and the stockholders and record all votes and the proceedings of the meetings in a book to be kept for that purpose and shall perform like duties for the standing committees, when required. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and special meetings of the Board, and shall perform such other duties as may from time to time be prescribed by the Board, the Chairman of the Board or the

President, under whose supervision he or she shall act. The Secretary shall have custody of the seal of the Corporation, and the Secretary, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and, when so affixed, the seal may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature. The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation’s transfer agent or registrar, as determined by resolution of the Board, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same and the number and date of cancellation of every certificate surrendered for cancellation.

Section 5.11 The Treasurer. The Treasurer shall have the custody of the Corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and the Board, at its regular meetings, or when the Board so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation.

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ARTICLE VI

[INTENTIONALLY OMITTED]

ARTICLE VII

STOCK CERTIFICATES

Section 7.1 Certificates for Shares. The shares of the Corporation shall be represented by certificates or shall be uncertificated. Certificates shall
be signed by, or in the name of the Corporation by, the Chairman of the Board, or the President or the Deputy President or a Vice President and
by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation.

Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written
notice containing the information required by the DGCL or a statement that the Corporation will furnish without charge to each stockholder who
so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series
thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 7.2 Signatures on Certificates. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or
registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or
registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer
agent or registrar at the date of issue.

Section 7.3 Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate of shares duly endorsed
or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new
certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Upon receipt of proper transfer
instructions from the registered owner of uncertificated share, such uncertificated shares shall be canceled and issuance of new equivalent
uncertificated shares or certificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of
the Corporation.

Section 7.4 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the
owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a percent registered on its books
as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any
other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 7.5 Record Date. In order that the Corporation may determine the stockholders of record who are entitled to receive notice of, or to vote
at, any meeting of stockholders or any adjournment thereof or to express consent to corporate action in writing without a meeting, or entitled to
receive payment of any dividend or other distribution or allotment of any rights, or to exercise any rights in respect of any change, conversion, or
exchange of stock or for the purpose of any lawful action, the Board may fix, in advance, a record date which shall not be more than sixty (60)
nor less than ten (10) days prior to the date of such meeting, nor more than sixty (60) days prior to the date of any other action. A determination
of stockholders of record entitled to notice or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided,
however, that the Board may fix a new record date for the adjourned meeting.

Section 7.6 Lost, Stolen or Destroyed Certificates. The Board may direct that a new certificate or certificates be issued to replace any certificate
or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by
the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing the issue of a new certificate or certificates, the
Board may, in its discretion and as a condition precedent to the issuance thereof require the owner of the lost, stolen or destroyed certificate or
certificates, or his or her legal representative, to advertise the same in such manner as it shall require, and/or to give the Corporation a bond in
such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to
have been lost, stolen or destroyed.

ARTICLE VIII

NOTICES

Section 8.1 Notice. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to
be given to any director or stockholder it shall not be construed to mean personal notice, but such notice may be given in writing, by mail,
addressed to such director or stockholder, at his or her address as it appears on the records of the Corporation, with postage thereon prepaid,
and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram or telephone.

Section 8.2 Waiver. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IX
GENERAL PROVISIONS

Section 9.1 Dividends. Dividends upon the capital stock of the Corporation, subject to any restrictions contained in the DGCL or the provisions of the Certificate of Incorporation, if any, may be declared by the Board at any regular or special meeting. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 9.2 Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 9.3 Annual Statement. The Board shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

Section 9.4 Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 9.5 Corporate Seal. The Board may provide a suitable seal, containing the name of the Corporation, which seal shall be in charge of the Secretary. If and when so directed by the Board or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 9.6 Execution of Corporate Contracts and Instruments. The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

ARTICLE X
AMENDMENTS

In addition to the right of the stockholders of the Corporation to make, alter, amend, change, add to or repeal the Bylaws of the Corporation, the Board shall have the power (without the assent or vote of the stockholders) to make, alter, amend, change, add to or repeal the Bylaws of the Corporation.
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