
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): January 22, 2014

EXELIXIS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

000-30235
(Commission
File Number)

04-3257395
(IRS Employer
Identification No.)

210 East Grand Ave.
South San Francisco, California 94080
(Address of principal executive offices, and including zip code)

(650) 837-7000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-
-

Item 1.01 Entry into a Material Definitive Agreement.

On January 22, 2014, Exelixis, Inc. (the “Company”) entered into a Third Amendment (the “Amendment”) to the Note Purchase Agreement, dated as of June 2, 2010 (the “Note Purchase Agreement”), by and among the Company, Deerfield Private Design Fund, L.P. (“DPDF”) and Deerfield Private Design International, L.P. (“DPDI”) to provide the Company with an option to extend to July 1, 2018 from July 1, 2015 the maturity date of the indebtedness incurred by the Company under the Note Purchase Agreement. The Company is under no obligation to exercise the extension option.

Under the terms of the extension option, the Company has the right to require Deerfield Partners, L.P. and Deerfield International Master Fund, L.P. (collectively, the “New Deerfield Purchasers,” and together with DPDF and DPDI, “Deerfield”) to acquire \$100 million principal amount of the secured convertible notes issued under the Note Purchase Agreement (the “Notes”) and extend the maturity date thereof to July 1, 2018 from July 1, 2015. In order to exercise the extension option, the Company must provide a notice of exercise to Deerfield prior to March 31, 2015. In connection with the Amendment, on January 22, 2014 the Company issued to the New Deerfield Purchasers two-year warrants (the “Warrants”) to purchase an aggregate of 1,000,000 shares of the Company’s common stock (the “Common Stock”) at an exercise price of \$9.70 per share.

Amendments to Notes

If the Company exercises the extension option under the Amendment, the Notes would mature on July 1, 2018 and bear interest on and after July 2, 2015 at the rate of 7.5% per annum to be paid in cash, quarterly in arrears, and 7.5% per annum to be paid in kind, quarterly in arrears, for a total interest rate of fifteen percent (15%) per annum.

The Amendment provides that the Company’s existing obligation to make annual mandatory prepayments equal to 15% of certain revenues (the “Development/Commercialization Revenue”) from collaborative agreements, licenses, joint ventures, partnerships or other collaborative arrangements (“Development/Commercialization Agreements”) received by the Company during the prior fiscal year will apply in each of 2016, 2017 and 2018 if the Company exercises the extension option under the Amendment. However, the Company will only be obligated to make any such annual mandatory prepayment after exercise of the extension option if the New Deerfield Purchasers provide notice to the Company of their election to receive the prepayment. Mandatory prepayments relating to Development/Commercialization Revenue will continue to be subject to a maximum annual prepayment amount of \$27.5 million. The definition of “Development/Commercialization Revenue” was amended to expressly exclude any sale or distribution of drug or pharmaceutical products in the ordinary course of the Company’s business, and any proceeds from any Intellectual Property Sales (as further described below).

As a result of the Amendment, the Company is required to notify the applicable Deerfield entities of certain sales, assignments, grants of exclusive licenses or other transfers of the Company’s intellectual property pursuant to which the Company transfers all or substantially all of its legal or economic interests (as defined in the Amendment, “Intellectual Property Sale”) and such Deerfield entities may elect to require the Company to prepay the principal amount of the Notes in an amount equal to (i) 100% of the cash proceeds of any Intellectual Property Sale relating to cabozantinib and (ii) 50% of the cash proceeds of any other Intellectual Property Sale.

The Amendment provides that the Company may voluntarily prepay the principal amount of the Notes as follows (the amount at which the Company repays in each case below is referred to as the “Prepayment Price”):

- Prior to July 1, 2015: The Company may prepay all of the principal amount of the Notes at any time at a prepayment price equal to the outstanding principal amount, plus accrued and unpaid interest through the date of such prepayment, plus all interest that would have accrued on the principal amount of the Notes between the date of such prepayment and the applicable maturity date of the Notes if the outstanding principal amount of the Notes as of such prepayment date had remained outstanding through the applicable maturity date, plus all other accrued and unpaid obligations; and
- If the Company exercises the extension option under the Amendment: The Company may prepay all of the principal amount of the Notes at a prepayment price equal to 105% of the outstanding principal amount of the Notes, plus all accrued and unpaid interest through the date of such prepayment, plus, if prior to July 1, 2017, all interest that would have accrued on the principal amount of the Notes between

the date of such prepayment and July 1, 2017, if the outstanding principal amount of the Notes as of such prepayment date had remained outstanding through July 1, 2017, plus all other accrued and unpaid obligations.

Subject to limitations set forth in the Note Purchase Agreement, the Company will continue to have the right to convert all or a portion of the Notes into, or satisfy all or any portion of the Prepayment Price or mandatory prepayment amounts by delivering, freely tradeable shares of the Common Stock. Additionally, in lieu of making any payment of accrued and unpaid interest in respect of the Notes in cash, subject to limitations set forth in the Note Purchase Agreement, the Company may elect to satisfy any such payment by the issuance of freely tradable shares of the Common Stock, as further described in the Company's Current Report filed on Form 8-K on June 3, 2010, and subject to a cap on the number of shares of Common Stock issuable equal to 33,889,596 shares following the exercise of the extension option and the extension of the maturity date for the Notes.

The description of the Amendment and the Notes in this Current Report on Form 8-K does not purport to be complete and is qualified in its entirety by reference to the complete Amendment, a copy of which is included as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference, and the Note Purchase Agreement, a copy of which was included as Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended July 2, 2010, as well as the prior amendments to the Note Purchase Agreement, copies of which were filed as exhibits to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 6, 2012 and the Company's Quarterly Report on Form 10-Q for the quarter ended September 27, 2013.

Warrants

The Warrants have an exercise price of \$9.70 per share. If the Company exercises the extension option under the Amendment, the exercise price will be reset to the lower of (x) the existing exercise price and (y) 120% of the volume weighted average price of the Common Stock for the ten trading days immediately following the date of such extension election. The Warrants are exercisable for a term of two years, subject to a two year extension if the Company exercises its extension option under the Amendment, and contain certain limitations that prevent the holder of the Warrants from acquiring shares upon exercise of a Warrant that would result in the number of shares beneficially owned by the holder to exceed 9.98% of the total number of shares of Common Stock then issued and outstanding. The number of shares for which the Warrants are exercisable and the associated exercise prices are subject to certain adjustments as set forth in the Warrants. In addition, upon certain changes in control of the Company, to the extent the Warrants are not assumed by the acquiring entity, or upon certain defaults under the Warrants, the holder has the right to net exercise the Warrants for shares of Common Stock, or, in certain circumstances, be paid an amount in cash, equal to the Black-Scholes value of the Warrants.

In connection with the issuance of the Warrants, the Company entered into a Registration Rights Agreement, dated as of January 22, 2014, pursuant to which the Company has agreed to file, no later than February 21, 2014, a registration statement with the Securities and Exchange Commission (the "SEC") covering the resale of the shares of Common Stock issuable upon exercise of the Warrants (the "Warrant Shares").

The description of the Warrants and the Registration Rights Agreement in this Current Report on Form 8-K does not purport to be complete and is qualified in its entirety by reference to the form of Warrant and the Registration Rights Agreement, copies of which are included as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information in Item 1.01 above is incorporated by reference into this Item 3.02. The Company relied on the exemption from registration contained in Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act"),

for the issuance of the Warrants and expects to rely on such exemption for any issuance of Warrant Shares. The Warrants and the Warrant Shares have not been registered under the Securities Act or state securities laws and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from the registration requirements.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Form of Warrant
4.2	Registration Rights Agreement, dated as of January 22, 2014, by and among Exelixis, Inc., Deerfield Partners, L.P. and Deerfield International Master Fund, L.P.
10.1	Third Amendment, dated as of January 22, 2014, to Note Purchase Agreement, dated as of June 2, 2010, by and among Exelixis, Inc., Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Master Fund, L.P.
10.2	Form of Note (included in Exhibit 10.1)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: January 22, 2014

EXELIXIS, INC.

/s/ James B. Bucher

James B. Bucher

Vice President, Corporate Legal Affairs and Secretary

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1	Form of Warrant
4.2	Registration Rights Agreement, dated as of January 22, 2014, by and among Exelixis, Inc., Deerfield Partners, L.P. and Deerfield International Master Fund, L.P.
10.1	Third Amendment, dated as of January 22, 2014, to Note Purchase Agreement, dated as of June 2, 2010, by and among Exelixis, Inc., Deerfield Private Design Fund, L.P., Deerfield Private Design International, L.P., Deerfield Partners, L.P. and Deerfield International Master Fund, L.P.
10.2	Form of Note (included in Exhibit 10.1)

THIS WARRANT, THE SECURITIES ISSUABLE UPON EXERCISE HEREOF AND ANY FAILURE PAYMENT SHARES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF OR EXERCISED UNLESS (I) A REGISTRATION STATEMENT REGISTERING SUCH SECURITIES UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS SHALL HAVE BECOME EFFECTIVE, OR (II) THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO IT THAT SUCH TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OR QUALIFICATION UNDER APPLICABLE STATE SECURITIES LAWS, OR (III) SUCH SECURITIES ARE SOLD PURSUANT TO RULE 144 OR RULE 144A.

AN INVESTMENT IN THESE SECURITIES INVOLVES A HIGH DEGREE OF RISK. HOLDERS MUST RELY ON THEIR OWN ANALYSIS OF THE INVESTMENT AND ASSESSMENT OF THE RISKS INVOLVED.

Warrant to Purchase
Shares

Warrant Number

**Warrant to Purchase Common Stock
of
EXELIXIS, INC.**

THIS CERTIFIES that _____ or any subsequent holder hereof has the right to purchase from EXELIXIS, INC., a Delaware corporation (the "Company"), _____ fully paid and nonassessable shares, of the Company's common stock, \$0.001 par value per share ("Common Stock"), subject to adjustment as provided herein, at a price equal to the Exercise Price as defined in Section 3 below, at any time during the Term (as defined below).

Holder agrees with the Company that this Warrant to Purchase Common Stock of the Company (this "Warrant" or this "Agreement") is issued and all rights hereunder shall be held subject to all of the conditions, limitations and provisions set forth herein.

1. Date of Issuance and Term.

This Warrant shall be deemed to be issued on January 22, 2014 ("Date of Issuance"). This Warrant was issued in conjunction with that certain third amendment (the "Amendment"), dated January 22, 2014, between the Company, Deerfield Private Design International, L.P., Deerfield Private Design Fund, L.P., Deerfield International Limited and Deerfield Partners, L.P., to the Note Purchase Agreement, dated June 2, 2010, between the Company, Deerfield Private Design Fund, L.P. and Deerfield Private Design International, L.P. (as amended, including by the Amendment, the "Note Purchase Agreement") and that certain Registration Rights Agreement, dated January 22, 2014 (the "Registration Rights Agreement") by and among Deerfield International Limited and Deerfield Partners, L.P. The term of this Warrant (the "Term") begins on the Date of Issuance and ends at 5:00 p.m., New York City time, on the Ending Date (as defined below). For purposes herein, "Ending Date" shall mean, (i) at any time prior to the time that the Company has sent notice of an "Extension Election" under Section 2.10 of the Note Purchase Agreement (the "Election Time"), the date that is two (2) years after the Date of Issuance and (ii) from and after the Election Time, on the date that is four (4) years after the Date of Issuance.

Notwithstanding anything herein to the contrary, the Company shall not issue to the Holder, and the Holder may not acquire, a number of shares of Common Stock upon exercise of this Warrant to the extent that, upon such exercise, the number of shares of Common Stock then beneficially owned by the Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 9.98% of the total number of shares of Common Stock then issued and outstanding (the "9.98% Cap"), provided, however, that the 9.98% Cap shall not apply with respect to the issuance of shares of Common Stock pursuant to a Cashless Major Exercise (as defined below) in connection with a Major Transaction (as defined below) covered by the provisions of Section 5(c)(i)(A)(2) below in which the Company is not the surviving entity (a "Qualified Change of Control Transaction"), and, provided, further, that the 9.98% Cap shall only apply to the extent that the Common Stock is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act. For purposes hereof, "group" has the

meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the Securities and Exchange Commission (the “SEC”), and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. Upon the written request of the Holder, the Company shall, within two (2) Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding.

“Affiliate” means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”). With respect to a Holder of Warrants, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder.

“Business Day” means a day on which banks are open for business in The City of New York and San Francisco.

“Grace Period” shall have the meaning set forth in the Registration Rights Agreement.

“Holder” means Deerfield Private Design International, L.P. and any transferee or assignee pursuant to the terms of this Warrant.

“Initial Filing Deadline” shall have the meaning set forth in the Registration Rights Agreement.

“Initial Registration Deadline” shall have the meaning set forth in the Registration Rights Agreement.

“Initial Registration Statement” shall have the meaning set forth in the Registration Rights Agreement.

“Registrable Securities” shall have the meaning set forth in the Registration Rights Agreement.

“Registration” shall have the meaning set forth in the Registration Rights Agreement.

“Registration Period” shall have the meaning set forth in the Registration Rights Agreement.

“Registration Statement” shall have the meaning set forth in the Registration Rights Agreement.

“Trading Day” means any day on which the Common Stock is traded for at least two hours on NASDAQ, or on the principal securities exchange or other securities market on which the Common Stock is then being traded.

2. Exercise.

(a) *Manner of Exercise.* During the Term, this Warrant may be Exercised as to all or any lesser number of full shares of Common Stock covered hereby (the “Warrant Shares” or the “Shares”) by sending to the Company the Exercise Form attached hereto as Exhibit A (the “Exercise Form”) duly completed and executed, together with the full Exercise Price (as defined below, which may be satisfied by a Cash Exercise, a Cashless Exercise, a Cashless Major Exercise or a Cashless Default Exercise, each as defined below) for each share of Common Stock as to which this Warrant is Exercised, at the office of the Company, Exelixis, Inc., 210 East Grand Avenue, South San Francisco, CA 94080, Attention: Finance Department; E-mail: dburke@exelixis.com, with a copy thereof to be sent via facsimile and email to: (650) 837-7179; E-mail: simonton@exelixis.com, jbucher@exelixis.com, and stockadministration@exelixis.com, or at such other offices or agencies as the Company may designate in writing, by overnight mail, facsimile or electronic mail (the delivery of the Exercise Form together with the payment of the Exercise Price, if applicable, hereinafter called the “Exercise” of this Warrant).

(b) *Date of Exercise.* If any portion of the Exercise Price is satisfied by a Cash Exercise (as defined below), the “Date of Exercise” of the Warrant shall be defined as the later of (A) the date that the Exercise Form attached hereto as Exhibit A, completed and executed, is sent by facsimile and electronic mail to the Company, as provided in Section 2(a), provided that the original Warrant (if the Warrant has been exercised in full) and Exercise Form are received by the Company as soon as practicable thereafter and (B) the date that the Exercise Price, if applicable in a Cash Exercise, is received by the Company. If no portion of the Exercise Price is satisfied by a Cash Exercise, the “Date of Exercise” of the Warrant shall be defined as the date that the Exercise Form, completed and executed, is sent by facsimile and electronic mail to the Company, as provided in Section 2(a), provided that the original Warrant (if the Warrant has been exercised in full) and Exercise Form are received by the Company, as soon as practicable thereafter. The Holder shall not be required

to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Exercise Form is delivered to the Company. Execution and delivery of an Exercise Form with respect to a partial Exercise shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

(c) Delivery of Common Stock Upon Exercise. Within three (3) Trading Days after any Date of Exercise, or in the case of a Cashless Major Exercise or a Cashless Default Exercise (each as defined in Section 5(c)(i) below), within the period provided in Section 5(c)(iv) or Section 3(a)(iv), as applicable (the “Delivery Period”), the Company shall issue and deliver (or cause its transfer agent (the “Transfer Agent”) to so issue and deliver) in accordance with the terms hereof to or upon the order of the Holder that number of shares of Common Stock (“Exercise Shares”) for the portion of this Warrant exercised as shall be determined in accordance herewith. Upon the Exercise of this Warrant or any part thereof, the Company shall, at its own cost and expense, take all reasonable steps, including obtaining and delivering, an opinion of counsel to assure that the Transfer Agent shall issue stock certificates in the name of Holder (or its nominee) or such other persons as designated by Holder and in such denominations to be specified at Exercise representing the number of shares of Common Stock issuable upon such Exercise.

(d) Delivery Failure. In addition to any other remedies which may be available to the Holder, in the event that the Company fails for any reason to effect delivery of the Exercise Shares by the end of the Delivery Period, the Holder will be entitled to revoke all or part of the relevant Exercise Form by delivery of a notice to such effect to the Company whereupon the Company and the Holder shall each be restored to their respective positions immediately prior to the delivery of such notice, except that the liquidated damages described herein shall be payable through the date notice of revocation or rescission is given to the Company.

(e) Legends.

(i) Restrictive Legend. The Holder understands that this Warrant, the Exercise Shares and the Failure Payment Shares (as defined in Section 10 hereof) have not been registered on the Date of Issuance, under the Securities Act. The Holder understands that until such time as (i) this Warrant has been registered under the Securities Act and/or (ii) the Exercise Shares and/or the Failure Payment Shares, as applicable, have been registered under the Securities Act as contemplated by the Registration Rights Agreement, or otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, (A) this Warrant will bear a restrictive legend in substantially the form set forth on the first page of this Warrant (and a stop-transfer order may be placed against transfer of such securities) and (B) the Exercise Shares and the Failure Payment Shares will bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such securities):

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULES 144 OR 144A UNDER SAID ACT OR PURSUANT TO A PRIVATE SALE EFFECTED UNDER APPLICABLE FORMAL OR INFORMAL SEC INTERPRETATION OR GUIDANCE, SUCH AS A SO-CALLED “4(1) AND A HALF” SALE, SUBJECT TO DELIVERY OF AN OPINION, AS PROVIDED IN THE WARRANT.

“THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN REGISTRATION RIGHTS AGREEMENT DATED AS OF JANUARY [], 2014, AS AMENDED FROM TIME TO TIME. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY.”

(ii) Removal of Restrictive Legends. This Warrant and certificates evidencing the Exercise Shares and any Failure Payment Shares shall not contain any legend restricting the transfer thereof (including any legend set forth above in subsection 2(e)(i)): (A) while a registration statement (including a Registration Statement) covering the sale or resale of such security is effective under the Securities Act, or (B) following any sale of such Warrant, Exercise Shares and/or Failure Payment Shares pursuant to Rule 144, or (C) if such Warrant, Exercise Shares and/or Failure Payment Shares are eligible for sale under Rule 144(b) (1), or (D) if such legend is not

required under any other applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) and the Company shall have received an opinion of counsel to the Holder in form reasonably acceptable to the Company to such effect, which opinion shall, at the request of the Company, be delivered to the Transfer Agent as well (collectively, the “Unrestricted Conditions”). If the Unrestricted Conditions are met, the Company shall cause its counsel to issue a legal opinion to the Transfer Agent if required by the Company’s transfer agent to effect the issuance of the Exercise Shares or any Failure Payment Shares, as applicable, without a restrictive legend or removal of the legend hereunder. If the Unrestricted Conditions are met at the time of issuance of this Warrant, the Exercise Shares and/or any Failure Payment Shares, then this Warrant, the Exercise Shares and/or any Failure Payment Shares, as applicable, shall be issued free of all legends. The Company agrees that at such time as the Unrestricted Conditions are met or such legend is otherwise no longer required under this Section 2(e), it will, no later than three (3) Trading Days following the delivery (the “Unlegended Shares Delivery Deadline”) by the Holder to the Company or the Transfer Agent of this Warrant and a certificate representing Exercise Shares or Failure Payment Shares, as applicable, issued with a restrictive legend (such third Trading Day, the “Legend Removal Date”), deliver or cause to be delivered to such Holder this Warrant and/or a certificate (or electronic transfer) representing such shares that is free from all restrictive and other legends.

(iii) Sale of Unlegended Shares. Holder agrees that the removal of the restrictive legend from this Warrant and any certificates representing securities as set forth in Section 2(e) above is predicated upon the Company’s reliance that the Holder will sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Warrant, any Exercise Shares and/or any Failure Payment Shares pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein.

(f) Cancellation of Warrant. This Warrant shall be canceled upon the full Exercise of this Warrant or upon full redemption of this Warrant. As soon as practical after the Date of Exercise, Holder shall be entitled to receive Common Stock for the number of shares purchased upon such Exercise of this Warrant as set forth in Section 2(c), and if this Warrant is not Exercised in full, Holder shall be entitled, if requested and upon physical surrender of this Warrant, to receive a new Warrant (containing terms identical to this Warrant other than the number of shares of Common Stock represented thereby) representing any unexercised portion of this Warrant in addition to such Common Stock; provided, however, as set forth in Section 2(b), the Holder shall not be required to physically surrender this Warrant if the Warrant is not exercised in full and the holder does not request a new Warrant representing any unexercised portion of this Warrant.

(g) Holder of Record. Each person in whose name any Warrant for shares of Common Stock is issued shall, for all purposes, be deemed to be the Holder of record of such shares on the Date of Exercise of this Warrant, irrespective of the date of delivery of the Common Stock purchased upon the Exercise of this Warrant or the date such Common Stock is credited to the Holder’s DTC account, as the case may be. Nothing in this Warrant shall be construed as conferring upon Holder any rights as a stockholder of the Company; provided, however, that in the event of a Cashless Major Exercise in respect of a Qualified Change of Control Transaction, the Holder shall be deemed to have become the holder of record of the shares issuable upon such exercise immediately prior to the consummation of such Qualified Change of Control Transaction.

(h) Delivery of Electronic Shares. In lieu of delivering physical certificates representing the Common Stock issuable upon Exercise or legend removal or representing Failure Payment Shares, provided the Company’s Transfer Agent is participating in the Depository Trust Company (“DTC”) Fast Automated Securities Transfer (“FAST”) program, upon written request of the Holder, the Company shall use its commercially reasonable efforts to cause its Transfer Agent to electronically transmit the Common Stock issuable to the Holder by crediting the account of the Holder’s prime broker with DTC through its Deposit Withdrawal Agent Commission (DWAC) system. The time periods for delivery and penalties described herein shall apply to the electronic transmittals described herein. Any delivery not effected by electronic transmission shall be effected by delivery of physical certificates.

(i) Buy-In. In addition to any other rights available to the Holder, if the Company fails to cause its Transfer Agent to transmit to the Holder a certificate or certificates, or electronic shares through DWAC, representing the Exercise Shares pursuant to an Exercise on or before the Delivery Period (other than a failure caused by any incorrect or incomplete information provided by Holder to the Company hereunder, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder’s brokerage firm otherwise purchases shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Exercise Shares which the Holder anticipated receiving upon such Exercise (a “Buy-In”), then the Company shall (1) pay in cash to the Holder the amount by which (x) the Holder’s total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (A) the number of Exercise Shares that the Company was required to

deliver to the Holder in connection with the Exercise at issue times and (B) the price at which the sell order giving rise to such purchase obligation was executed, and (2) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Exercise Shares for which such Exercise was not honored or deliver to the Holder certificate(s) representing the number of shares of Common Stock that would have been issued had the Company timely complied with its Exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted Exercise to cover the sale of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under subsection (1) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In, together with applicable confirmations and other evidence reasonably requested by the Company. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon Exercise of the Warrant as required pursuant to the terms hereof.

3. Payment of Warrant Exercise Price.

(a) *Exercise Price.* The Exercise Price ("Exercise Price") shall initially equal \$9.70; provided, however, that, from and after the tenth (10th) Trading Day following the Election Time, the Exercise Price shall be equal to the lesser of (x) the Exercise Price in effect immediately prior to such time and (y) 120% of the Volume Weighted Average Price (as defined below) of the Common Stock for the ten (10) Trading Days immediately following the date on which the Election Time has occurred; provided, however, that the Exercise Price shall not be below \$0.001 per share. The Exercise Price hereunder shall be subject to adjustment pursuant to the terms hereof, including but not limited to Section 5 below.

Payment of the Exercise Price may be made by either of the following, or a combination thereof, at the election of Holder:

(i) *Cash Exercise:* The Holder may exercise this Warrant in cash, bank or cashier's check or wire transfer (a "Cash Exercise"); or

(ii) *Cashless Exercise.* The Holder, at its option, may exercise this Warrant in a cashless exercise transaction. In order to effect a Cashless Exercise, the Holder shall send to the Company at its principal office the Exercise Form, in the manner set forth in Section 2(a) above, indicating that the Holder is exercising the Warrant pursuant to a cashless election, in which event the Company shall issue Holder a number of shares of Common Stock computed using the following formula (a "Cashless Exercise"):

$$X = Y (A-B)/A$$

where: X = the number of shares of Common Stock to be issued to Holder.

Y = the number of shares of Common Stock for which this Warrant is being Exercised.

A = the Market Price of one (1) share of Common Stock (for purposes of this Section 3(a)(ii), where "Market Price," as of any date, means the Volume Weighted Average Price (as defined herein) of the Company's Common Stock during the ten (10) consecutive Trading Day period immediately preceding the date in question.

B = the Exercise Price.

As used herein, the "Volume Weighted Average Price" for any security as of any date means the volume weighted average sale price on The NASDAQ Global Select Market or The NASDAQ Global Market ("NASDAQ") as reported by, or based upon data reported by, Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to and hereafter designated by holders of a majority in interest of the Warrants and the Company ("Bloomberg") or, if NASDAQ is not the principal trading market for such security, the volume weighted average sale price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or, if no volume weighted average sale price is reported for such security, then the last closing trade price of such security as reported by Bloomberg, or, if no last closing trade price is reported for such security by Bloomberg, the average of the bid prices of any market makers for such security that are listed in the over the counter market by the Financial Industry Regulatory Authority, Inc. or in the "pink sheets" by the Pink OTC Market, Inc.. If the Volume Weighted Average Price cannot be calculated for such security on such date in the manner provided above, the volume weighted average price shall be the fair market value as determined in good faith by the Company's board of directors.

(iii) *Cashless Major Exercise*. To the extent the Holder shall exercise this Warrant or any portion thereof as a Cashless Major Exercise pursuant to Section 5(c)(i) below, the Holder shall send to the Company the Exercise Form, in the manner set forth in Section 2(a) above, indicating that the Holder is exercising this Warrant (or such portion thereof) pursuant to a Cashless Major Exercise, in which event the Company shall issue a number of shares of Common Stock equal to the Black-Scholes Value (as defined in Section 5(c)(iii) below) of the remaining unexercised portion of this Warrant (or such applicable portion being exercised) divided by the closing price of the Common Stock on the principal securities exchange or other securities market on which the Common Stock is then traded on the Trading Day immediately preceding the date on which the applicable Major Transaction is consummated.

(iv) *Cashless Default Exercise*. To the extent the Holder exercises this Warrant as a Cashless Default Exercise pursuant to Section 11(b)(i) below, the Holder shall send to the Company the Exercise Form, in the manner set forth in Section 2(a) above, indicating that the Holder is exercising this Warrant pursuant to a Cashless Default Exercise, in which event, unless the Company has exercised its right to effect a Mandatory Redemption in accordance with Section 11(b)(i), the Company shall issue to the Holder, within five (5) Trading Days of the delivery of such Exercise Form, a number of shares of Common Stock (which shares shall be valued at the Volume Weighted Average Price for the five (5) Trading Days prior to the applicable Default Notice) equal to the Black-Scholes value (determined by use of the Black-Scholes Option Pricing Model using the criteria set forth on Schedule 1 hereto) of the remaining unexercised portion of this Warrant on the date of delivery of such Exercise Form..

4. Transfer and Registration.

(a) *Transfer Rights*. Subject to the provisions of Section 8 of this Warrant, this Warrant may be transferred on the books of the Company, in whole or in part, in person or by attorney, upon surrender of this Warrant properly completed and endorsed. This Warrant shall be canceled upon such surrender and, as soon as practicable thereafter, the person to whom such transfer is made shall be entitled to receive a new Warrant or Warrants as to the portion of this Warrant transferred, and Holder shall be entitled to receive a new Warrant as to the portion hereof retained.

(b) *Registrable Securities*. The Exercise Shares have registration rights pursuant to the Registration Rights Agreement.

5. Adjustments Upon Certain Events.

(a) *Participation*. The Holder, as the holder of this Warrant, shall be entitled to receive such dividends paid and distributions of any kind (other than the payment of any stock dividend covered by the provisions of Section 5(b) below) made to the holders of Common Stock of the Company to the same extent as if the Holder had Exercised this Warrant into Common Stock (without regard to any limitations on exercise herein or elsewhere and without regard to whether or not a sufficient number of shares are authorized and reserved to effect any such exercise and issuance) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

(b) *Recapitalization or Reclassification*. If the Company shall at any time effect a stock split, payment of stock dividend, recapitalization, reclassification or other similar transaction of such character that the shares of Common Stock shall be changed into or become exchangeable for a larger or smaller number of shares, then upon the effective date thereof, the number of shares of Common Stock which Holder shall be entitled to purchase upon Exercise of this Warrant shall be increased or decreased, as the case may be, in direct proportion to the increase or decrease in the number of shares of Common Stock by reason of such stock split, payment of stock dividend, recapitalization, reclassification or similar transaction, and the Exercise Price shall be, in the case of an increase in the number of shares, proportionally decreased and, in the case of decrease in the number of shares, proportionally increased. The Company shall give Holder the same notice it provides to holders of Common Stock of any transaction described in this Section 5(b).

(c) Rights Upon Major Transaction.

(i) *Major Transaction*. To the extent that any Major Transaction (or portion thereof) will not be treated as an Assumption pursuant to the next following paragraph, then (1) in the case of a Cash-Out Major Transaction and in the case of a Mixed Major Transaction to the extent of the percentage of the cash consideration in the Mixed Major Transaction (determined in accordance with the definition of a Mixed Major Transaction below), the Holder shall have the right to require the Company to redeem the Holder's outstanding Warrants (or the applicable portion in a Mixed Major Transaction) in accordance with Section 5(c)(iii) below and (2) in the case of all other Major Transactions and in the case of a Mixed Major Transaction to the extent of the percentage of the consideration represented by securities of a Successor Entity in the Mixed Major Transaction, the Holder shall have the right to exercise this Warrant as a Cashless Major Exercise. For the avoidance of doubt, in no event shall the Holder have the right to treat a Major Transaction as an

Assumption unless the Company has elected to treat such Major Transaction as an Assumption pursuant to the next following paragraph. Notwithstanding anything herein to the contrary, and except as set forth in the next sentence, the Holder may elect to waive its rights under this Section 5(c)(i) with respect to any Major Transaction in which event none of the provisions contained in this Section 5(c)(i) shall apply. In the event of a Major Transaction in which all shares of Common Stock are cancelled and converted into the right to receive cash and/or securities of Another Entity (as defined below), then, any portion of this Warrant that is neither redeemed, assumed or exercised pursuant to the terms of this Warrant prior to the closing of such Major Transaction, shall (A) automatically and immediately convert into shares of Common Stock, and shall be deemed to have been exercised pursuant to a Cashless Exercise, immediately prior to the consummation of such Major Transaction if the aggregate consideration to be received for the Common Stock in such Major Transaction is greater than the aggregate Exercise Price for such shares, or (B) be cancelled and terminated without further action by the Holder or the Company upon consummation of such Major Transaction if the aggregate consideration to be received for the Common Stock in the Major Transaction is less than the aggregate Exercise Price for such shares.

In the event of a Qualified Major Transaction, the Company shall have the right to cause such Qualified Major Transaction (or the applicable portion of a Qualified Major Transaction that is a Mixed Major Transaction) to be treated as an Assumption in accordance with Section 5(c)(ii) below with respect (but only with respect) to the percentage of this Warrant then owned by the Holder equal to the percentage of the consideration to be paid in the Major Transaction represented by the securities of a Successor Entity (determined as set forth in the definition of "Mixed Major Transaction" below).

Consummation of each of the following events shall constitute a "Major Transaction":

(A) a consolidation, merger, exchange of shares, recapitalization, reorganization, business combination or other similar event (in each case other than an event provided for in Section 5(b) above and other than a merger effected for purposes of changing the Company's state of incorporation), (1) following which the holders of Common Stock immediately preceding such consolidation, merger, exchange, recapitalization, reorganization, combination or event either (a) no longer hold a majority of the shares of Common Stock or (b) no longer have the ability to elect a majority of the board of directors of the Company or (2) as a result of which shares of Common Stock shall be changed into (or the shares of Common Stock become entitled to receive) the same or a different number of shares of the same or another class or classes of stock or securities of another entity (collectively, a "Change of Control Transaction");

(B) the sale or transfer of assets in one transaction or a series of related transactions for a purchase price (excluding any consideration allocable to any Excluded Transaction or Intellectual Property Sale (as defined below) relating to cabozantinib) of more than (1) \$400 million (the "Aggregate Consideration") or (2) 50% of the Company's Market Capitalization (as defined below); or

(C) the consummation of a purchase, tender or exchange offer made to the holders of outstanding shares of Common Stock, such that following such purchase, tender or exchange offer a Change of Control Transaction shall have occurred.

If the maximum aggregate consideration payable in a transaction or series of related transactions described in Section 5(c)(i)(B)(1) above (i) includes contingent payments related to future events, and (ii) exceeds the Aggregate Consideration (without applying any discounts or valuation procedures described below), then for purposes of determining whether the Aggregate Consideration has been reached, the net present value of such contingent payments shall be determined prior to the public announcement of such transaction by a qualified third-party valuation firm retained by the Company selected from a list of such firms previously agreed upon between the Company and the initial Holder hereof.

Notwithstanding the foregoing, none of the following (an "Excluded Transaction") shall constitute a Major Transaction :

(x) entering into any collaborative arrangement, licensing agreement, joint venture or partnership providing for the research, development or commercial exploitation of compounds, products or services that provides for the payments received therefrom or the Company's income or profits to be shared with another Person, including, without limitation, (1) the grant, to an entity engaged in the pharmaceutical or biotechnology industry, of a license or option to obtain a license to any of the Company's intellectual property or other assets, provided that the Company or a wholly owned subsidiary of the Company (and not any third party or any of the Company's stockholders) directly receives from such entity all consideration paid or payable by such entity in consideration of such grant (other than any payments made by such third party in satisfaction of obligations of the Company or its wholly-owned subsidiaries), which consideration may, but need not, include (without limitation) upfront, milestone, royalty and profit-sharing payments, and (2) the grant of a license or option to obtain a license to, or the sale or other transfer of, the Company's intellectual property or other assets to any entity that intends to research and develop or commercialize products or services covered by such

intellectual property or embodying or arising from such other assets, whether directly or through the Company or another entity, provided that the Company or a wholly owned subsidiary of the Company (and not any third party or any of the Company's stockholders) retains the right or has the obligation to reacquire such intellectual property or other assets at a price no more than an amount that reasonably reflects the value of such assets or intellectual property or to terminate such license or option;

(y) the incurrence, grant or existence of, or any sale or transfer of any assets in connection with, any Permitted Lien (as defined in the Note Purchase Agreement); and

(z) Product Sales (as defined below)

, provided, however, notwithstanding any provision of this definition to the contrary, an Intellectual Property Sale (as defined below) shall not constitute an Excluded Transaction.

For purposes hereof:

"Another Entity" shall mean an entity in which the holders of a majority of the shares of Common Stock of the Company immediately prior to the consummation of a Major Transaction do not hold a majority of the equity securities in such entity.

"Cashless Default Exercise" shall mean an exercise of this Warrant as a "Cashless Default Exercise" in accordance with Section 3(a)(iv) and 11(b) hereof.

"Cashless Major Exercise" shall mean an exercise of this Warrant or portion thereof as a "Cashless Major Exercise" in accordance with Section 3(a)(iii) and 5(c)(i) hereof.

"Cash-Out Major Transaction" means a Major Transaction in which the consideration payable to holders of Common Stock in connection with the Major Transaction consists solely of cash.

"Exclusive License" means, with respect to any drug or pharmaceutical product, any license to the intellectual property relating to such drug or pharmaceutical product with a term greater than, or substantially equal to the remaining expected useful life, or, if applicable, patent life of such intellectual property (unless terminable prior to such time without material penalty or premium by the licensor) and which provides for exclusive rights to develop, commercialize, sell, market and promote such drug or product within the United States, Europe and/or Japan; provided that an "Exclusive License" shall not include (a) any license solely to sell, offer for sale, promote and/or distribute any such drug or product on an exclusive basis within any particular geographic region or territory in consideration for sales based payments to the Company, (b) any licenses, which may be exclusive, solely to manufacture any such drug or product, and (c) any license, solely to manufacture, use, promote, offer for sale and/or sell any authorized generic version of such drug or product.

"Eligible Market" means the over the counter Bulletin Board, the New York Stock Exchange, Inc., the NYSE Arca, the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market or the NYSE MKT LLC.

"Intellectual Property Sale" means any sale, assignment, the grant of any Exclusive License or other transfer of the right, title or interest of the Company or any of its subsidiaries in intellectual property, as a result of which the Company or its subsidiary transfers all or substantially all of its legal or economic interests, in such intellectual property in a transaction whereby the predominate consideration received for transferred interests in such intellectual property to be received upfront as compared to any retained or reversionary interests in such intellectual property and any rights of the Company or any of its subsidiaries to royalties, milestones, profit sharing and other future payments in respect of such intellectual property; provided that an Intellectual Property Sale does not include (a) the assignment, cancellation, abandonment or other disposition of intellectual property that is, in the reasonable judgment of the Company, no longer economically practicable to maintain or useful for the sale of the applicable drug or product or in the conduct of the business of the Company and its subsidiaries, taken as a whole and which does not have material value, or (b) any license or sublicense that is not an Exclusive License.

"Product Sales" means the sale or distribution by the Company or any of its subsidiaries of drug or pharmaceutical products in the ordinary course of the Company's or such subsidiary's business.

"Market Capitalization" means the product of (x) the number of issued and outstanding shares of Common Stock as of the Trading Day immediately preceding the date of the execution of the definitive agreement relating to a Major Transaction described in clause (B) of the definition thereof, multiplied by (y) the per share closing price of the Common Stock on such Trading Day.

“Mixed Major Transaction” means a Major Transaction in which the consideration payable to holders of Common Stock consists partially of cash and partially of securities of a Successor Entity. If the Successor Entity is a Publicly Traded Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be equal to the percentage that the value of the aggregate anticipated number of shares of the Publicly Traded Successor Entity to be issued to holders of Common Stock of the Company represents of the aggregate value of all consideration, including cash consideration, in such Mixed Major Transaction, as such values are set forth in any definitive agreement for the Mixed Major Transaction that has been executed at the time of the first public announcement of the Major Transaction or, if no such value is determinable from such definitive agreement, based on the closing market price for shares of the Publicly Traded Successor Entity on its principal securities exchange on the Trading Day preceding the first public announcement of the Mixed Major Transaction. If the Successor Entity is a Private Successor Entity, the percentage of consideration represented by securities of such Successor Entity shall be determined in good-faith by the Company’s board of directors.

A “Parent Entity” of a Person means an entity that, directly or indirectly, controls the applicable Person.

“Person” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

“Private Successor Entity” means a Successor Entity that is not a Publicly Traded Successor Entity.

“Publicly Traded Successor Entity” means a Successor Entity that is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market (as defined above).

“Qualified Major Transaction” means (i) a Major Transaction where the consideration payable to holders of Common Stock in connection with the Major Transaction consists in whole or in part of securities of a Publicly Traded Successor Entity or (ii) a Major Transaction where any non-cash portion of the consideration payable to holders of Common Stock in connection with the Major Transaction consists of securities of a Private Successor Entity, which such Private Successor Entity shall be approved of in writing by the Holder.

A “Successor Entity” shall be as defined in Section 5(c)(ii) below.

(ii) *Assumption.* The Company shall not enter into or be party to a Major Transaction that is to be treated as an Assumption pursuant to Section 5(c)(i), unless any Person purchasing the Company’s assets or Common Stock, or any successor entity resulting from such Major Transaction, or if the Common Stock is convertible in such Major Transaction into shares of capital stock of its Parent Entity, its Parent Entity (in each case, a “Successor Entity”), assumes in writing all of the obligations of the Company under this Warrant (or applicable portion thereof subject to Assumption under Section 5(c)(i) above) and the Registration Rights Agreement in accordance with the provisions of this Section 5(c)(ii), and delivers to each holder of Warrants in exchange for such Warrants (or applicable portion) a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Warrants, including, without limitation, an instrument representing the appropriate number of shares of the Successor Entity, having substantially similar exercise rights as the Warrants (including but not limited to a similar Exercise Price and similar Exercise Price adjustment provisions based on the price per share or conversion ratio to be received by the holders of Common Stock in the Major Transaction) and containing the other rights set forth herein and substantially similar registration rights as provided by the Registration Rights Agreement. Upon the occurrence of any Major Transaction treated as an Assumption hereunder, any Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Major Transaction, the provisions of this Warrant and the Registration Rights Agreement (or substantially similar instruments, if applicable) referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of, the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of the Major Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise or redemption of this Warrant at any time after the consummation of the Major Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the exercise of the Warrants (or applicable portion thereof) prior to such Major Transaction, such shares of common stock (or their equivalent) of the Successor Entity, as adjusted in accordance with the provisions of this Warrant. The provisions of this Section shall apply similarly and equally to successive Major Transactions and shall be applied without regard to any limitations on the exercise of this Warrant including any applicable beneficial ownership limitations. Any assumption of Company obligations under this paragraph shall be referred to herein as an “Assumption”.

(iii) *Notice; Major Transaction Redemption Right; Notice of Cashless Major Exercise.* At least thirty (30) days prior to the consummation of any Major Transaction, but, in any event, within five Trading Days following the first to occur of (x) the date of the public announcement of such Major Transaction if such announcement is made before 4:00 p.m., New York City time, or (y) the day following the public announcement of such Major Transaction if such announcement is made on and after 4:00 p.m., New York City time, the Company shall deliver written notice thereof via facsimile and overnight courier to the Holder (a “Major Transaction Notice”), which such Major Transaction Notice shall, if applicable, indicate whether the Company desires to have the Warrant treated as an Assumption in accordance with the provisions of Section 5(c)(i) above. Other than in respect of all or a portion of the Warrant that is to be treated as an Assumption or is eligible for a Cashless Major Exercise (without taking into consideration the 9.98% Cap) in accordance with Section 5(c)(i), at any time during the period beginning after the Holder’s receipt of a Major Transaction Notice and ending five (5) Trading Days prior to the scheduled consummation of such Major Transaction (the “MT Rights Period”), the Holder may require the Company to redeem (a “Redemption Upon Major Transaction”) all or any portion of this Warrant not treated as an Assumption or eligible for a Cashless Major Exercise (without taking into consideration the 9.98% Cap) by delivering written notice thereof (“Major Transaction Redemption Notice”) to the Company, which Major Transaction Redemption Notice shall indicate the portion of the principal amount (the “Redemption Principal Amount”) of the Warrant that the Holder is electing to have redeemed. The outstanding portion of this Warrant to the extent subject to redemption pursuant to this subsection (iii) (the “Redeemable Shares”) shall be redeemed by the Company at a price (the “Major Transaction Warrant Redemption Price”) payable in cash equal to the “Black Scholes Value” of the Redeemable Shares determined by use of the Black Scholes Option Pricing Model using the criteria set forth in Schedule 1 hereto (the “Black Scholes Value”).

To the extent the Holder shall elect to effect a Cashless Major Exercise in respect of a Major Transaction, the Holder shall deliver its Exercise Form in accordance with Section 3(a)(iii), within the MT Rights Period.

(iv) *Escrow; Payment of Major Transaction Warrant Redemption Price.* Following the receipt of a Major Transaction Redemption Notice or a Cashless Major Exercise from the Holder, the Company shall not effect a Major Transaction that is being treated as a redemption or eligible for a Cashless Major Exercise in accordance with subsection (iii) above, unless it either obtains the written agreement of the Successor Entity that payment of the Major Transaction Warrant Redemption Price and/or applicable Exercise Shares shall be made to the Holder upon consummation of such Major Transaction or it shall first place into an escrow account with an independent escrow agent, at least three (3) Trading Days prior to the closing date of the Major Transaction (the “Major Transaction Escrow Deadline”), an amount in cash or shares of Common Stock, as applicable, equal to the Major Transaction Warrant Redemption Price and/or applicable Exercise Shares. Concurrently upon closing of such Major Transaction, the Company shall pay or shall instruct the escrow agent to pay the Major Transaction Warrant Redemption Price and/or to deliver the applicable Exercise Shares to the Holder. For purposes of determining the amount required to be placed in escrow pursuant to the provisions of this subsection (iv) and without affecting the amount of the actual Major Transaction Warrant Redemption Price and/or the applicable Exercise Shares, the calculation of the price referred to in clause (1) of the first column of Schedule 1 hereto with respect to Stock Price shall be determined based on the Closing Market Price (as defined herein) of the Common Stock on the Trading Day immediately preceding the date that the funds and/or shares, as applicable, are deposited with the escrow agent.

Redemptions and/or Major Cashless Exercises required by this Section 5(c) shall be made in accordance with the provisions of Section 12. To the extent redemptions and/or Major Cashless Exercises required by this Section 5(c) are deemed or determined by a court of competent jurisdiction to be prepayments of the Warrant by the Company, such redemptions and/or Major Cashless Exercises shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, until the Major Transaction Warrant Redemption Price and/or Major Cashless Exercises is paid in full, this Warrant may be exercised, in whole or in part, by the Holder into shares of Common Stock, or in the event the Exercise Date is after the consummation of the Major Transaction, shares of publicly traded common stock (or their equivalent) of the Successor Entity pursuant to Section 5(c). The parties hereto agree that in the event of the Company’s redemption and/or Major Cashless Exercises of any portion of the Warrant under this Section 5(c), the Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any premium due under this Section 5(c) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder’s actual loss of its investment opportunity and not as a penalty.

(d) *Exercise Price Adjusted.* As used in this Warrant, the term “Exercise Price” shall mean the purchase price per share specified in Section 3(a) of this Warrant, until the occurrence of an event stated in this Section 5 or otherwise set forth in this Warrant, and thereafter shall mean said price as adjusted from time to time in accordance with the provisions of said subsection. No adjustment made pursuant to any provision of this Section 5 shall have the net effect of increasing or decreasing the Exercise Price in relation to the split adjusted and distribution adjusted price of the Common Stock, as applicable.

(e) *Adjustments: Additional Shares, Securities or Assets.* In the event that at any time, as a result of an adjustment made pursuant to this Section 5 or otherwise, Holder shall, upon Exercise of this Warrant, become entitled to receive shares and/or other securities or assets (other than Common Stock) then, wherever appropriate, all references herein to shares of Common Stock shall be deemed to refer to and include such shares and/or other securities or assets; and thereafter the number of such shares and/or other securities or assets shall be subject to adjustment from time to time in a manner and upon terms as nearly equivalent as practicable to the provisions of this Section 5.

(f) *Notice of Adjustments.* Whenever the Exercise Price is adjusted pursuant to the terms of this Warrant, the Company shall promptly mail to the Holder a notice (an “Exercise Price Adjustment Notice”) setting forth the Exercise Price after such adjustment and setting forth a statement of the facts requiring such adjustment. The Company shall, upon the written request at any time of the Holder, furnish to such Holder a like Warrant setting forth (i) such adjustment or readjustment, (ii) the Exercise Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other securities or property which at the time would be received upon Exercise of the Warrant. For purposes of clarification, whether or not the Company provides an Exercise Price Adjustment Notice pursuant to this Section 5(f), upon the occurrence of any event that leads to an adjustment of the Exercise Price, the Holder would be entitled to receive a number of Exercise Shares based upon the new Exercise Price, as adjusted, for exercises occurring on or after the date of such adjustment, regardless of whether a Holder accurately refers to the adjusted Exercise Price in the Exercise Form.

6. Fractional Interests.

No fractional shares or scrip representing fractional shares shall be issuable upon the Exercise of this Warrant, but on Exercise of this Warrant, Holder may purchase only a whole number of shares of Common Stock. If, on Exercise of this Warrant, Holder would be entitled to a fractional share of Common Stock or a right to acquire a fractional share of Common Stock, such fractional share shall be disregarded and the number of shares of Common Stock issuable upon Exercise shall be the next higher whole number of shares.

7. Reservation of Shares.

From and after the date hereof, the Company shall at all times reserve for issuance such number of authorized and unissued shares of Common Stock (or other securities substituted hereof as herein above provided) as shall be sufficient for the Exercise of this Warrant. If at any time the number of shares of Common Stock authorized and reserved for issuance is below the number of shares sufficient for the Exercise of this Warrant (a "Share Authorization Failure"), the Company will promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet the Company's obligations under this Section 7, in the case of an insufficient number of authorized shares, and using its commercially reasonable efforts to obtain stockholder approval of an increase in such authorized number of shares. The Company covenants and agrees that upon the Exercise of this Warrant, all shares of Common Stock issuable upon such Exercise shall be duly and validly issued, fully paid and nonassessable and not subject to preemptive rights, rights of first refusal or similar rights of any person or entity.

8. Restrictions on Transfer.

(a) *Registration or Exemption Required.* Assuming the accuracy of the representations and warranties of the Holder contained in Section 8(c), this Warrant has been issued in a transaction exempt from the registration requirements of the Securities Act by virtue of Regulation D and exempt from state registration or qualification under applicable state laws. The Warrant, the Exercise Shares and the Failure Payment Shares may not be pledged, transferred, sold, assigned, hypothecated or otherwise disposed of except pursuant to an effective registration statement, pursuant to Rule 144 or after receipt by the Company of an opinion of counsel for the Holder that any such pledge, transfer, sale, assignment, hypothecation or other disposition shall be exempt from the registration requirements of the Securities Act and applicable state laws, including, without limitation, a so called "4(1) and a half" transaction. The Holder agrees to comply with the reporting obligations applicable to it under Section 16 of the Exchange Act with respect to this Warrant, the Exercise Shares and the Failure Payment Shares and any other shares of Common Stock beneficially owned by it.

(b) *Assignment.* Subject to applicable securities laws and Sections 8(a), the Holder may sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Warrant, in whole or in part. Holder shall deliver a written notice to Company, substantially in the form of the Assignment attached hereto as Exhibit B, indicating the person or persons to whom the Warrant shall be assigned and the respective number of warrants to be assigned to each assignee. The Company shall effect the assignment within three (3) Trading Days of its receipt of a properly completed and executed form of Assignment and, if required by this Warrant, receipt by the Company of an opinion of counsel (the "Transfer Delivery Period"), and shall deliver to the assignee(s) designated by Holder a Warrant or Warrants of like tenor and terms for the appropriate number of shares. This Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors and assigns of the Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant, and shall be enforceable by any such Holder. For avoidance of doubt, in the event Holder notifies the Company that such sale or transfer is a so called "4(1) and half" transaction, the parties hereto agree that a legal opinion from outside counsel for the Holder delivered to counsel for the Company substantially in the form attached hereto as Exhibit C shall be the only requirement to satisfy an exemption from registration under the Securities Act to effectuate such "4(1) and half" transaction.

(c) *Representations of the Holder.* The right to acquire Common Stock or the Common Stock issuable upon exercise of the Holder's rights contained herein will be acquired for investment and not with a view to the sale or distribution of any part thereof in violation of the Securities Act, and the Holder has no present intention of selling, transferring, assigning, pledging, hypothecating or otherwise disposing of this Warrant in any public distribution of the same except pursuant to a registration or exemption; provided, however, that no such representations shall be construed as constituting an agreement by the Holder to hold any of the Warrant Shares for any minimum or other specific term and the Holder shall reserve the right to dispose of such Warrant Shares at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act. Holder is an "accredited investor" within the meaning of the Securities and Exchange Commission's Rule 501 of Regulation D, as presently in effect. The Holder understands (i) that the Common Stock issuable upon exercise of the Holder's rights contained herein is not registered under the Securities Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Warrant will be exempt from the registration and qualifications requirements thereof and (ii) that the Company's reliance on such exemption is predicated on the representations set forth in this Section 8(c). The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment and has the ability to bear the economic risks of its investment.

9. Noncircumvention.

The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be reasonably required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, and (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

10. Events of Failure; Definition of Black Scholes Value.

(a) *Definition.*

The occurrence of each of the following shall be considered to be an “Event of Failure.”

- (i) A Delivery Failure occurs, where a “Delivery Failure” shall be deemed to have occurred if the Company fails to use its reasonable best efforts to deliver Exercise Shares to the Holder within any applicable Delivery Period (other than due to the limitation contained in the second paragraph of Section 1);
- (ii) A Legend Removal Failure occurs, where a “Legend Removal Failure” shall be deemed to have occurred if the Company fails to use its reasonable best efforts to issue this Warrant and/or Exercise Shares without a restrictive legend, or fails to use its reasonable best efforts to remove a restrictive legend, when and as required under Section 2(e) hereof;
- (iii) a Transfer Delivery Failure occurs, where a “Transfer Delivery Failure” shall be deemed to have occurred if the Company fails to use its reasonable best efforts to deliver a Warrant within any applicable Transfer Delivery Period; and
- (iv) a Registration Failure (as defined below).

For purpose hereof, “Registration Failure” means that (A) the Company fails to file the Initial Registration Statement with the SEC on or before the Initial Filing Deadline or fails to file any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement to the extent required under the Registration Rights Agreement or (B) the Company fails to use reasonable best efforts to obtain effectiveness with the SEC, prior to the Initial Registration Deadline with respect to the Initial Registration Statement or as required under the Registration Rights Agreement with respect to any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement, or fails to use reasonable best efforts to keep such Registration Statement current and effective as required in Section 3 of the Registration Rights Agreement (subject to the Company’s right to delay or suspend effectiveness pursuant to Section 3(q) of the Registration Rights Agreement) or (C) any Registration Statement required to be filed under the applicable Registration Rights Agreement, after its initial effectiveness and during the Registration Period, lapses in effect or sales of all of the Registrable Securities cannot otherwise be made thereunder (whether by reason of the Company’s failure to amend or supplement the prospectus included therein in accordance with the Registration Rights Agreement, the Company’s failure to file and use reasonable best efforts to obtain effectiveness with the SEC of an additional Registration Statement or amended Registration Statement required pursuant to Section 3 of the Registration Rights Agreement or otherwise) for a period of time in excess of the Grace Period, *provided* that in each case, a Registration Failure shall be deemed to not have occurred if such Registration Failure results from a breach by any holder of a Registrable Security of its obligations pursuant to Section 4 of the Registration Rights Agreement.

(b) *Failure Payments; Black-Scholes Determination.* The Company understands that any Event of Failure (as defined above) could result in economic loss to the Holder. In the event that any Event of Failure occurs (other than an Event of Failure caused by the submission of any incomplete or inaccurate information required to be furnished by the Holder) as compensation to the Holder for such loss, the Company agrees to pay (as liquidated damages and not as a penalty) to the Holder payments payable in, at the Company’s option, cash or shares of common stock that are valued for these purposes at 97.5% of the Volume Weighted Average Price on the date of such calculation (“Failure Payments”) at a rate of 12% per annum (or the maximum rate permitted by applicable law, whichever is less) of the Black-Scholes value (as determined below) of the remaining unexercised portion of this Warrant on the date of such Event of Failure (as recalculated on the first Business Day of each month thereafter for as long as Failure Payments shall continue to accrue), which shall accrue daily from the date of such Event of Failure until the Event of Failure is cured, accruing daily and compounded monthly; provided, however, if the Company elects to pay the Failure Payments in shares of Common Stock (the “Failure Payment Shares”), the Holder shall receive up to such amount of shares of Common Stock such that Holder and any other

persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) shall not collectively beneficially own greater than 9.98% of the total number of shares of Common Stock of the Company then issued and outstanding, and provided further, that the forgoing proviso shall not be construed to require any cash payment by the Company of the remaining amount of the Failure Payment. For purposes of clarification, it is agreed and understood that Failure Payments shall continue to accrue following any Event of Default until the applicable Default Amount is paid in full. The Holder shall make reasonable efforts to notify the Company if, during any period in which Failure Payments are accruing, Failure Payments cannot be paid by virtue of the ownership restrictions set forth in this subsection (b) and, following such notice, shall make reasonable efforts to notify the Company if, during such period that Failure Payments are accruing the Holder's ownership of Common Stock falls below such threshold.

Notwithstanding the above, with respect to a Registration Failure, in the event that the Company (i) has (A) by the Initial Filing Deadline filed the Initial Registration Statement as required by the Registration Rights Agreement and (B) to the extent required under the Registration Rights Agreement filed any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement and (ii) has responded in writing to any comments to such Registration Statement that the Company has received from the SEC within ten (10) Business Days of such receipt, and nevertheless the SEC has not declared effective (X) the Initial Registration Statement by the Initial Registration Deadline and (Y) with respect to any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement, as required under the Registration Rights Agreement, then the Failure Payments attributable to a Registration Failure shall be reduced from 12% to 10% (calculated as set forth above). The Company shall satisfy any Failure Payments incurred under this Section pursuant to Section 10(c) below.

For purposes hereof, the "Black-Scholes" value of a Warrant shall be determined by use of the Black-Scholes Option Pricing Model using the criteria set forth on Schedule 1 hereto.

(c) Payment of Accrued Failure Payments. The Failure Payment Shares for each Event of Failure shall be issued and delivered on or before the fifth (5th) Trading Day of each month following a month in which Failure Payments accrued. Nothing herein shall limit the Holder's right to pursue actual damages (to the extent in excess of the Failure Payments) for the Company's Event of Failure, and the Holder shall have the right to pursue all remedies available at law or in equity (including a decree of specific performance and/or injunctive relief). Notwithstanding the above, if a particular Event of Failure results in an Event of Default pursuant to Section 11 hereof, then the Failure Payment, for that Event of Failure only, shall be considered to have been satisfied upon payment to the Holder of an amount equal to the greater of (i) the Failure Payment, and (ii) the Default Amount, payable in accordance with Section 11.

(d) Maximum Interest Rate. Nothing contained herein or in any document referred to herein or delivered in connection herewith shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest or dividends required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

11. Default and Redemption.

(a) Events Of Default. Each of the following events shall be considered to be an "Event of Default," unless waived by the Holder:

(i) Failure To Effect Registration. With respect to all Registration Failures, a Registration Failure occurs and remains uncured for a period of more than forty-five (45) days (or sixty (60) days in the case where the Company (i) has (A) by the Initial Filing Deadline filed the Initial Registration Statement as required by the Registration Rights Agreement or (B) to the extent required under the Registration Rights Agreement filed any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement and (ii) has responded in writing to any comments to such Registration Statement that the Company has received from the SEC within ten (10) Business Days of such receipt, and nevertheless the SEC has not declared effective (X) the Initial Registration Statement by the Initial Registration Deadline or (Y) with respect to any other Registration Statement that is required to be filed pursuant to Section 2(a) of the Registration Rights Agreement, as required under the Registration Rights Agreement, and such Registration Failure relates solely to the Company's failure to have the applicable Registration Statement declared effective as required by the Registration Rights Agreement), *provided* that in each case, a Registration Failure shall be deemed to not have occurred if such Registration Failure results from a breach by any holder of a Registrable Security of its obligations pursuant to Section 4 of the Registration Rights Agreement;

(ii) *Failure To Deliver Common Stock.* Other than as provided in Section 11(a)(iv)(C) below, a Delivery Failure (as defined above) occurs and remains uncured for a period of more than twenty (20) days; or at any time, the Company announces or states in writing that it will not honor its obligations to issue shares of Common Stock to the Holder upon Exercise by the Holder of the Exercise rights of the Holder in accordance with the terms of this Warrant;

(iii) *Legend Removal Failure.* A Legend Removal Failure (as defined above) occurs and remains uncured for a period of thirty (30) days; and

(iv) *Corporate Existence; Major Transaction.* (A) The Company has effected a Major Transaction without paying the Major Transaction Warrant Redemption Price, if applicable, to the Holder pursuant to Section 5(c)(iii), (B) with respect to a Major Transaction that is to be treated as an Assumption under the terms hereof, the Company has failed to meet the Assumption requirements of Section 5(c)(ii) prior to effecting a Major Transaction or (C) a Delivery Failure has occurred with respect to the Exercise Shares issuable upon exercise by the Holder of a Cashless Major Exercise.

(b) *Mandatory Redemption; Cashless Default Exercise.*

(i) *Mandatory Redemption Amount; Cashless Default Exercise.* If any Events of Default shall occur then, upon the occurrence and during the continuation of any Event of Default, the Holder shall have the right to exercise this Warrant pursuant to a Cashless Default Exercise in accordance with Section 3(a)(iv) above; provided, however, that the Company shall have the right to redeem the outstanding amount of this Warrant and pay to the Holder (a "Mandatory Redemption"), in full satisfaction of its obligations hereunder by delivery of a notice to such effect to the Holder within two (2) Business Days following receipt of such Exercise Form delivered in accordance with Section 3(a)(iv), an amount in cash (the "Mandatory Redemption Amount" or the "Default Amount") equal to the Black-Scholes value (as determined in accordance with Section 10(b) of the remaining unexercised portion of this Warrant on the date of delivery of such Exercise Form.

The Mandatory Redemption Amount shall be payable within five (5) Trading Days of the date of delivery of such Exercise Form.

(ii) *Liquidated Damages.* The parties hereto acknowledge and agree that the sums payable as Failure Payments or pursuant to a Mandatory Redemption shall give rise to liquidated damages and not penalties. The parties further acknowledge that (A) the amount of loss or damages likely to be incurred by the Holder is incapable or is difficult to precisely estimate, (B) the amounts specified bear a reasonable proportion and are not plainly or grossly disproportionate to the probable loss likely to be incurred by the Holder, and (C) the parties are sophisticated business parties and have been represented by sophisticated and able legal and financial counsel and negotiated this Agreement at arm's length.

Subject to the time period for payment of the Mandatory Redemption Amount pursuant to Section 11(b)(i) above, from and after the Company's election to redeem the outstanding Warrant as provided in clause (i) above, the Default Amount, together with all other amounts payable hereunder, shall immediately become due and payable, all without demand, presentment or notice, all of which hereby are expressly waived, together with all costs, including, without limitation, legal fees and expenses, of collection, and the Holder shall be entitled to exercise all other rights and remedies available at law or in equity.

(c) *Remedies, Other Obligations, Breaches And Injunctive Relief.* The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, the Note Purchase Agreement and the Registration Rights Agreement, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

12. Mechanics of Holder's Redemptions.

In the event that the Company does not pay the applicable Major Transaction Warrant Redemption Price or issue the Exercise Shares upon a Cashless Major Exercise or Cashless Default (collectively, "Early Termination Shares") to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Major Transaction Warrant Redemption Price or issues such

Early Termination Shares in full, the Holder shall have the option, in lieu of redemption or exercise, to require the Company to promptly return to the Holder all or any portion of this Warrant that was submitted for redemption or exercise and for which the applicable Major Transaction Warrant Redemption Price (together with any late charges thereon) or Early Termination Shares has not been paid by submitting a written notice to the Company (the "Return Notice"). Upon the Company's receipt of such notice, (x) the applicable early termination or exercise, as the case may be, shall be null and void with respect to such applicable portion of this Warrant, and (y) the Company shall immediately return this Warrant, or issue a new Warrant to the Holder representing the portion of this Warrant that was submitted for redemption. The Holder's delivery of a notice voiding a notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Failure Payments which have accrued prior to the date of such notice with respect to the Warrant subject to such notice.

13. Limitation on Issuance of Common Stock.

(a) *Share Cap.* Notwithstanding anything herein to the contrary, the maximum number of shares of Common Stock (i) issued or issuable pursuant to this Warrant and all additional Warrants issued pursuant to Section 3(d) of that certain Third Amendment to the Note Purchase Agreement, dated as of the date hereof, may not exceed 3,000,000 shares of Common Stock, as appropriately adjusted for any stock split or combination. For the avoidance of doubt, the Company shall not be required to net cash settle or otherwise make any cash payment to Holder to settle this Warrant by virtue of such limitation.

(b) *No Obligation to Net Cash Settle this Warrant.* Notwithstanding anything to the contrary herein, in the event that the Company is not permitted to issue shares of Common Stock to Holder pursuant to this Warrant because the number of shares of Common Stock then beneficially owned by the Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would violate the 9.98% Cap, the Company shall not be required to net cash settle or otherwise make any cash payment to Holder to settle this Warrant by virtue of such limitation.

14. Benefits of this Warrant.

Nothing in this Warrant shall be construed to confer upon any person other than the Company and Holder any legal or equitable right, remedy or claim under this Warrant and this Warrant shall be for the sole and exclusive benefit of the Company and Holder.

15. Governing Law.

All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury. If either party shall commence an action or proceeding to enforce any provisions of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

16. Loss of Warrant.

Upon receipt by the Company of evidence of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of indemnity or security reasonably satisfactory to the Company, and upon surrender and cancellation of this Warrant, if mutilated, the Company shall execute and deliver a new Warrant of like tenor and date.

17. Notice or Demands.

Except as otherwise provided herein, notices or demands pursuant to this Warrant to be given or made by Holder to or on the Company shall be sufficiently given or made if sent by overnight delivery with a nationally recognized overnight courier service or by certified or registered mail, return receipt requested, postage prepaid, and addressed, until another address is designated in writing by the Company, to the address set forth in Section 2(a) above. To the extent any notice or demand pursuant to this Warrant can be made by electronic mail, such notice or demand given or made by Holder to or on the Company shall be sufficiently given or made if it is sent by electronic mail to the addresses that the Company shall designate in writing from time to time (it being understood that the Company may require such notices to be sent to multiple facsimile numbers and/or electronic mail addresses). Notices or demands pursuant to this Warrant to be given or made by the Company to or on Holder shall be sufficiently given or made if sent by overnight delivery with a nationally recognized overnight courier service or by certified or registered mail, return receipt requested, postage prepaid, and addressed, to the address of Holder set forth in the Company's records, until another address is designated in writing by Holder.

IN WITNESS WHEREOF, the undersigned has executed this Warrant as of the _____ day of January, 2014.

EXELIXIS, INC.

By: _____
Print
Title:

EXHIBIT A

EXERCISE FORM FOR WARRANT

TO: EXELIXIS, INC.

CHECK THE APPLICABLE BOX:

Cash Exercise

The undersigned hereby irrevocably exercises the attached warrant (the "Warrant") with respect to _____ shares of Common Stock (the "Common Stock") of EXELIXIS, INC., a Delaware corporation (the "Company").

Cashless Exercise

The undersigned hereby irrevocably exercises the Warrant with respect to _____ shares of Common Stock of the Company and herewith makes payment of the Exercise Price with respect to such shares in full, all in accordance with the conditions and provisions of said Warrant.

Cashless Major Exercise

The undersigned hereby irrevocably exercises the Warrant with respect to _____ % of the principal amount of the Warrant currently outstanding pursuant to a Cashless Major Exercise in accordance with the terms of the Warrant.

Cashless Default Exercise

The undersigned hereby irrevocably exercises the Warrant pursuant to a Cashless Default Exercise, in accordance with the terms of the Warrant.

1. The undersigned agrees not to sell, transfer, assign, pledge, hypothecate or otherwise dispose of any of the Common Stock obtained on Exercise of the Warrant, except in accordance with applicable securities laws and the provisions of Section 8(a) of the Warrant.
2. The number of shares of Common Stock beneficially owned by the Holder and its Affiliates (as defined in the Warrant) and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) is _____. For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the Securities and Exchange Commission, and the number of shares beneficially owned has been determined in a manner consistent with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.
3. The undersigned requests that a warrant representing any unexercised portion hereof be issued, pursuant to the Warrant in the name of the undersigned and delivered to the undersigned at the address set forth below.
4. Capitalized terms used but not otherwise defined in this Exercise Form shall have the meaning ascribed thereto in the Warrant.
5. In the event of any conflict between the term of this Exercise Form and any provisions of this Warrant, the terms of the Warrant shall govern.

Dated:

_____ Signature

_____ Print Name

NOTICE

The signature to the foregoing Exercise Form must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

ASSIGNMENT

(To be executed by the registered holder
desiring to transfer the Warrant)

FOR VALUE RECEIVED, the undersigned holder of the attached warrant (the "Warrant") hereby sells, assigns and transfers unto the person or persons below named the right to purchase _____ shares of the Common Stock of **EXELIXIS, INC.**, a Delaware corporation, evidenced by the attached Warrant and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Warrant on the books of the Company, with full power of substitution in the premises.

The undersigned hereby certifies that the Warrant is being sold, assigned or transferred in accordance with all applicable securities laws.

Dated:

Signature

Fill in for new registration of Warrant:

Name

Address

Please print name and address of assignee
(including zip code number)

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Warrant in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT C

FORM OF OPINION

, 20

[]

Re: Exelixis, Inc. (the "Company").

Dear Sir:

[] ("["]") intends to transfer [Warrants (the "Warrants")/shares of Common Stock (the "Shares")] of the Company to (" ") without registration under the Securities Act of 1933, as amended (the "Securities Act"). In connection therewith, we have examined and relied upon the truth of representations contained in an Investor Representation Letter attached hereto and have examined such other documents and issues of law as we have deemed relevant.

Based on and subject to the foregoing, we are of the opinion that the transfer of the [Warrants/Shares] by to may be effected without registration under the Securities Act, provided, however, that the [Warrants/Shares] to be transferred to contain a legend restricting its transferability pursuant to the Securities Act and that transfer of the [Warrants/Shares] is subject to a stop order.

The foregoing opinion is furnished only to and may not be used, circulated, quoted or otherwise referred to or relied upon by you for any purposes other than the purpose for which furnished or by any other person for any purpose, without our prior written consent.

Very truly yours,

, 20

[]

Gentlemen:

(“ ”) has agreed to purchase [Warrants (the “Warrants”)/shares of Common Stock (“Shares”)] of Exelixis, Inc. (the “Company”) from [] (“[]”). We understand that the [Warrants/Shares] are “restricted securities.” We represent and warrant that [] is a sophisticated institutional investor that qualifies as an “Accredited Investor” as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended (the “Securities Act”).

[] represents and warrants as of the date hereof as follows:

1. That it is acquiring the [Warrants and the shares of common stock, \$0.001 par value per share underlying such Warrants (the “Exercise Shares”)/Shares] solely for its account for investment and not with a view to or for sale or distribution of said [Warrants or Exercise Shares/Shares] or any part thereof. [] also represents that the entire legal and beneficial interests of the [Warrants and Exercise Shares/Shares] [] is acquiring is being acquired for, and will be held for, its account only;
2. That the [Warrants and the Exercise Shares/Shares] have not been registered under the Securities Act on the basis that no distribution or public offering of the stock of the Company is to be effected. [] realizes that the basis for the exemption may not be present if, notwithstanding its representations, [] has a present intention of acquiring the securities for a fixed or determinable period in the future, selling (in connection with a distribution or otherwise), granting any participation in, or otherwise distributing the securities. [] has no such present intention;
3. That the [Warrants and the Exercise Shares/Shares] must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. [] recognizes that the Company has no obligation to register the [Warrants/Shares], or to comply with any exemption from such registration;
4. That neither the [Warrants nor the Exercise Shares/Shares] may be sold pursuant to Rule 144 adopted under the Securities Act unless certain conditions are met, including, among other things, the existence of a public market for the shares, the availability of certain current public information about Company, the resale following the required holding period under Rule 144 and the number of shares being sold during any three month period not exceeding specified limitations;
5. That it will not make any disposition of all or any part of the [Warrants or Exercise Shares/Shares] in any event unless and until:
 - (i) The Company shall have received a letter secured by [] from the Securities and Exchange Commission stating that no action will be recommended to the Securities and Exchange Commission with respect to the proposed disposition;
 - (ii) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with said registration statement; or
 - (iii) [] shall have notified the Company of the proposed disposition and shall have furnished counsel to the Company with an opinion of counsel, reasonably satisfactory to counsel to the Company, that no registration under the Securities Act or qualification under any state securities laws is required for the proposed disposition.

We acknowledge that the Company will place stop orders with respect to the [Warrants and the Exercise Shares/Shares], and if a registration statement is not effective, the [Exercise Shares/Shares] shall bear the following restrictive legend:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULES 144 OR 144A UNDER SAID ACT.”

“THE SALE, TRANSFER OR ASSIGNMENT OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN REGISTRATION RIGHTS AGREEMENT DATED AS OF JANUARY 22, 2014, AS AMENDED FROM TIME TO TIME, AMONG THE COMPANY AND A HOLDER OF ITS OUTSTANDING SECURITIES. COPIES OF SUCH AGREEMENT MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE SECRETARY OF THE COMPANY.”

At any time and from time to time after the date hereof, _____ shall, without further consideration, execute and deliver to [_____] or the Company such other instruments or documents and shall take such other actions as they may reasonably request to carry out the transactions contemplated hereby.

Very truly yours,

Schedule 1

Black-Scholes Value

	<u>Calculation Under Section 5(c)(iii)</u>	<u>Calculation Under Section 3(a)(iv), 10(b) or 11(b)</u>
Remaining Term	Number of calendar days from date of public announcement of the Major Transaction until the prevailing Ending Date at such time.	Number of calendar days from date of the Event of Failure until the prevailing Ending Date at such time.
Interest Rate	A risk-free interest rate corresponding to the US\$ LIBOR/Swap rate for a period equal to the Remaining Term.	A risk-free interest rate corresponding to the US\$ LIBOR/Swap rate for a period equal to the Remaining Term.
Volatility	50%	50%
Stock Price	The closing price of the Common Stock on NASDAQ, or, if that is not the principal trading market for the Common Stock, such principal market on which the Common Stock is traded or listed (the "Closing Market Price") on the trading day immediately preceding the date on which a Major Transaction is consummated.	The volume Weighted Average Price on the date of such calculation.
Dividends	Zero.	Zero.
Cost to Borrow	Zero.	Zero.
Strike Price	Exercise Price as defined in Section 3(a)	Exercise Price as defined in Section 3(a)

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this “Agreement”), dated as of January 22, 2014, by and between **EXELIXIS, INC.**, a Delaware corporation (the “Company”), and Deerfield Partners, L.P., Delaware limited partnership, and Deerfield International Master Fund, L.P., a limited partnership organized under the laws of the British Virgin Islands (individually, a “Lender” and together, the “Lenders”).

WHEREAS:

A. In connection with the Third Amendment to a Note Purchase Agreement by and among the parties hereto, Deerfield Private Design Fund, L.P., a Delaware limited partnership and Deerfield Private Design International, L.P., a limited partnership organized under the laws of the British Virgin Islands (the “Note Purchase Agreement”), the Company has issued to the Lenders warrants in the amounts described in the Note Purchase Agreement (the “Warrants”), with each of the Warrants exercisable for shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), each upon the terms and conditions and subject to the limitations and conditions set forth in the Warrants; and

B. To induce the Lenders to execute and deliver the Note Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “Securities Act”), and applicable state securities laws.

NOW, THEREFORE, In consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Lenders hereby agree as follows:

1. DEFINITIONS.

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

(i) “Additional Filing Deadline” means, with respect to any Registration Statements that may be required pursuant to Section 2(a)(ii), (a) the first date or time that such Registrable Securities may then be included in a Registration Statement if such Registration Statement is required because the SEC shall have notified the Company in writing that certain Registrable Securities were not eligible for inclusion on a previously filed Registration Statement, or (b) if such additional Registration Statement is required for a reason other than as described in (a) above, the thirtieth (30th) day following the date on which the Company first knows, or reasonably should have known, that such additional Registration Statement is required; provided, however, if the Additional Filing Deadline would otherwise fall more than 45 days, but less than 91 days, after the end of the Company’s most recent fiscal year and the Company is unable to comply with the Additional Filing Deadline solely as a result of the unavailability of audited financial statements for such fiscal year, the Additional Filing Deadline shall be extended until the first business day following the earlier to occur of (a) the deadline (without regard to any extensions that may be permitted by Rule 12b-25 under the Exchange Act) for filing by the Company of an annual report on Form 10-K containing such financial statements with the SEC and (b) the date on which the Company files an annual report on Form 10-K containing such financial statements with the SEC.

(ii) “Additional Registration Deadline” means, with respect to any additional Registration Statements that may be required to be filed pursuant to Section 2(a)(ii), (a) the thirtieth (30th) day following the first date or time that such Registrable Securities may then be included in a Registration Statement if such Registration Statement is required because the SEC shall have notified the Company in writing that certain Registrable Securities were not eligible for inclusion on a previously filed Registration Statement, or (b) if such additional Registration Statement is required for a reason other than as described in (a) above, the sixtieth (60th) day following the date on which the Company first knows, or reasonably should have known, that such additional Registration Statement(s) is required; provided, however, if the applicable Additional Filing Deadline is extended due to the proviso contained in Section 1(a)(i) above, then such Additional Registration Deadline shall be extended until the thirtieth (30th)

following the Additional Filing Deadline, as so extended, and provided, further, that if, following the filing date but before the date that the additional Registration Statement is declared effective by the SEC, the Company is unable to file a pre-effective amendment to the additional Registration Statement that is required in order to cause such additional Registration Statement to become effective because such amendment would otherwise be filed more than 45 days, but less than 91 days, after the end of the Company's last fiscal year and the audited financial statement for such year are unavailable, the Additional Registration Deadline shall be the date that is the later of (a) thirty (30) days after the earlier of (1) the deadline (without regard to any extensions that may be permitted by Rule 12b-25 under the Exchange Act) for filing by the Company of an annual report on Form 10-K containing such financial statements with the SEC and (2) the date on which the Company files an annual report on Form 10-K containing such financial statements with the SEC, and (b) thirty (30) days after the Registration Statement is filed.

(iii) "Buyer" means each Lender and any permitted transferee or assignee who agrees to become bound by the provisions of this Agreement in accordance with Section 10 hereof.

(iv) "Initial Filing Deadline" shall mean a date that is the later of (a) thirty (30) calendar days following the date hereof and (b) the first business day after the earlier of (1) the deadline (without regard to any extension that may be permitted by Rule 12b-25 under the Exchange Act) for filing by the Company of an annual report on Form 10-K for the year ended December 27, 2013, and (2) the date on which the Company files an annual report on Form 10-K for the year ended December 27, 2013.

(v) "Initial Registration Deadline" shall mean the date that is thirty (30) days after the Initial Filing Deadline.

(vi) "Initial Registration Statement" means the Registration Statement required to be filed under Section 2(a)(i) hereof.

(vii) "Person" means and includes any natural person, individual, partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.

(viii) "Register," "Registered," and "Registration" refer to a registration effected by preparing and filing a Registration Statement or Statements in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis, and the declaration or ordering of effectiveness of such Registration Statement by the United States Securities and Exchange Commission (the "SEC").

(ix) "Registrable Securities" means (a) any shares of Common Stock (the "Warrant Shares") issued or issuable upon exercise of the Warrants (without giving effect to any limitations on exercise set forth in the Warrants), including pursuant to a Cash Exercise or a Cashless Exercise (each as defined in the Warrants), (b) any shares of capital stock issued or issuable as a dividend or other distribution on or in exchange for or otherwise with respect to any of the foregoing and (c) any securities issued or issuable upon any stock split, recapitalization or similar event with respect to the foregoing; *provided, however*, that no such securities shall be deemed Registrable Securities for purposes of this Agreement to the extent that such securities (A) have been sold to the public under a Registration or pursuant to Rule 144 under the Securities Act; (B) have been sold, transferred or otherwise disposed of by a Person in a transaction in which its rights under this Agreement were not validly assigned pursuant to Section 10 hereof or (C) may be immediately sold to the public without registration or restriction (including without limitation as to volume by each holder thereof) under the Securities Act.

(x) "Registration Statement(s)" means a registration statement(s) of the Company under the Securities Act required to be filed hereunder.

2. REGISTRATION.

a. MANDATORY REGISTRATION.

(i) The Company shall prepare and, on or prior to the Initial Filing Deadline file with the SEC, the Initial Registration Statement on Form S-3 (or, if Form S-3 is not then available, on such form of Registration Statement as is then available to effect a registration of the Registrable Securities, subject to the consent of the Buyers, which consent will not be unreasonably withheld) covering the resale of 1,000,000 shares of Common Stock representing the Warrant Shares (the "Initial Registration Shares"), which Registration Statement, to the extent allowable under the Securities Act and the rules and regulations promulgated thereunder (including Rule 416), shall state that such Registration Statement also covers such indeterminate number of shares of Common Stock as may become issuable upon exercise of or otherwise pursuant to the Warrants to prevent dilution resulting from stock splits, stock dividends or similar transactions. The number of shares of Common Stock initially included in such Initial Registration Statement shall be without regard to any limitation on a Buyer's ability to exercise the Warrants. The Initial Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided to each Buyer and its counsel prior to its filing or other submission.

(ii) If for any reason the SEC does not permit all of the Initial Registration Shares to be included in the Registration Statement filed pursuant to Section 2(a)(i) above, or for any other reason any Registrable Securities are not then included in a Registration Statement filed under this Agreement, then the Company shall prepare, and, as soon as practicable but in no event later than the Additional Filing Deadline, file with the SEC an additional Registration Statement covering the resale of all Registrable Securities not already covered by an existing and effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415.

b. PIGGY-BACK REGISTRATIONS. If, at any time prior to the expiration of the Registration Period (as hereinafter defined), the resale of any Registrable Securities (other than any indeterminate number thereof issuable pursuant to the Warrant other than pursuant to a Cash Exercise or Cashless Exercise) is not otherwise registered pursuant to an effective Registration Statement and the Company shall determine to file with the SEC a Registration Statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities (other than on Form S-4 or Form S-8 or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans) (a "Piggyback Eligible Registration Statement"), the Company shall send to each Buyer written notice of such determination and, if within fifteen (15) days after the effective date of such notice, a Buyer shall so request in writing, the Company shall include in such Piggyback Eligible Registration Statement all or any part of the Registrable Securities then outstanding and not otherwise registered pursuant to an effective Registration Statement, that such Buyer requests to be registered, except that if, in connection with any underwritten public offering for the account of the Company, the managing underwriter(s) thereof shall impose a limitation on the number of Registrable Securities which may be included in the Piggyback Eligible Registration Statement because, in such underwriter(s)' judgment, marketing or other factors dictate such limitation is necessary to facilitate public distribution, then the Company shall be obligated to include in such Piggyback Eligible Registration Statement only such limited portion of the Registrable Securities with respect to which a Buyer has requested inclusion hereunder as the underwriter shall permit;

PROVIDED, HOWEVER, that the Company shall not exclude any Registrable Securities unless the Company has first excluded all outstanding securities, the holders of which are not entitled by contract to inclusion of such securities in such Registration Statement or are not entitled to pro rata inclusion with the Registrable Securities; and

PROVIDED, FURTHER, HOWEVER, that, after giving effect to the immediately preceding proviso, any exclusion of Registrable Securities shall be made pro rata with holders of other securities having the contractual right to include such securities in the Piggyback Eligible Registration Statement other than holders of securities entitled to inclusion of their securities in such Piggyback Eligible Registration Statement by reason of demand registration rights. No right to registration of Registrable Securities under this Section 2(b) shall be construed to limit any registration required under Section 2(a) hereof. If an offering in connection with which a Buyer is entitled to registration under this Section 2(b) is an underwritten offering, then a Buyer shall, unless otherwise agreed by the Company, offer and sell such Registrable Securities in an underwritten offering using the same underwriter or underwriters and, subject to the provisions of this Agreement and the underwriting agreement in such offering, on the same terms and conditions as other shares of Common Stock included in such underwritten offering (including, without limitation, execution of an agreement with the managing underwriter or agent limiting the sale or distribution such Buyer may make of shares of Common Stock or any securities convertible or exchangeable or exercisable for such shares of the Company, except as part of such registration). Notwithstanding anything to the

contrary set forth herein, the registration rights of the Buyers pursuant to this Section 2(b) shall only be available to the extent that the Buyer holds Registrable Securities and the Initial Registration Shares are not registered for resale or issuance pursuant to Section 2(a) in accordance with the terms of this Agreement at the time that the Company files a Piggyback Eligible Registration Statement.

3. OBLIGATIONS OF THE COMPANY. In connection with the registration of the Registrable Securities, the Company shall have the following obligations:

a. The Company shall (i) prepare and file with the SEC the Registration Statement(s) required pursuant to Section 2(a) above and thereafter use reasonable best efforts to cause such Registration Statements relating to Registrable Securities to become effective prior to the Initial Registration Deadline or Additional Registration Deadline, as the case may be, and (ii) subject to Section 3(q) hereof, shall use commercially reasonable efforts to keep each such Registration Statement current and effective pursuant to Rule 415 at all times until such date as the Registrable Securities registered thereunder cease to be Registrable Securities (the "Registration Period"), which Registration Statement(s) (including any amendments or supplements thereto and prospectuses contained therein), except for information provided by a Buyer or any transferee of a Buyer pursuant to Section 4(a), shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading.

b. Subject to Section 3(q) hereof, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to each Registration Statement and the prospectus used in connection with each Registration Statement as may be necessary to keep each Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by each Registration Statement until the earlier of (i) such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in each Registration Statement, and (ii) the Registrable Securities registered thereunder cease to be Registrable Securities.

c. The Company shall furnish or otherwise make available to each Buyer and its legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company, one copy of each Registration Statement and any amendment thereto, each preliminary prospectus and prospectus and each amendment or supplement thereto, and, in the case of a Registration Statement referred to in Section 2(a), each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought or intends to seek confidential treatment), and (ii) such number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as a Buyer may reasonably request in order to facilitate the disposition of the Registrable Securities owned by a Buyer. The Company will promptly notify each Buyer by facsimile of the effectiveness of each Registration Statement or any post-effective amendment. The Company will promptly respond to any and all comments received from the SEC, with a view towards causing each Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and shall file an acceleration request as soon as practicable, but no later than three (3) business days, following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review.

d. The Company shall use commercially reasonable efforts to (i) register and qualify, in any jurisdiction where registration and/or qualification is required, the Registrable Securities covered by the Registration Statements under such other securities or "blue sky" laws of such jurisdictions in the United States as a Buyer shall reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions, *provided, however*, that the Company shall not be required in connection therewith or as a condition thereto to (A) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (B) subject itself to general taxation in any such jurisdiction, or (C) file a general consent to service of process in any such jurisdiction.

- e. Subject to Section 3(q) hereof, as promptly as practicable after becoming aware of such event, the Company shall notify each Buyer who holds Registrable Securities of the happening of any event, of which the Company has knowledge, as a result of which the prospectus included in any Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and use its commercially reasonable efforts promptly to prepare a supplement or amendment to any Registration Statement to correct such untrue statement or omission, and deliver such number of copies of such supplement or amendment to each Buyer as such Buyer may reasonably request.
- f. The Company shall use commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of any Registration Statement, and, if such an order is issued, to obtain the withdrawal of such order at the earliest possible moment and to notify each Buyer who holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.
- g. The Company shall permit a single firm of counsel designated by the Buyers to review such Registration Statement and all amendments and supplements thereto (as well as all requests for acceleration or effectiveness thereof), at Buyers' own cost, a reasonable period of time prior to their filing with the SEC (not less than five (5) business days but not more than eight (8) business days) and use commercially reasonable efforts to reflect in such documents any comments as such counsel may reasonably propose (so long as such comments are provided to the Company at least (2) business days prior to the expected filing date) and will not request acceleration of such Registration Statement without prior notice to such counsel; provided that the Company shall make the final decision as to the form and content of each such document.
- h. The Company shall hold in confidence and not make any disclosure of information concerning a Buyer provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws or the rules of any securities exchange or trading market on which the Company's securities are then listed or traded, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning a Buyer is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to such Buyer prior to making such disclosure, and allow such Buyer, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.
- i. The Company shall use commercially reasonable efforts to cause all the Registrable Securities covered by each Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, and, if listed on a national exchange, to arrange for at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("FINRA") as such with respect to such Registrable Securities.
- j. The Company shall provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the initial Registration Statement.
- k. The Company shall cooperate with each Buyer who holds Registrable Securities being offered and the managing underwriter or underwriters as reasonably requested by them with respect to an applicable Registration Statement, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to such Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the managing underwriter or underwriters, if any, or a Buyer may reasonably request and registered in such names as the managing underwriter or underwriters, if any, or a

Buyer may request, and, within three (3) business days after a Registration Statement which includes Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel selected by the Company to deliver, to the transfer agent for the Registrable Securities (with copies to each Buyer) an appropriate instruction and an opinion of such counsel in the form required by the transfer agent in order to issue such Registrable Securities free of restrictive legends upon the resale of such Registrable Securities pursuant to such Registration Statement.

l. At the reasonable request of a Buyer, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and any prospectus used in connection with the Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

m. The Company shall not, and shall not agree to, allow the holders of any securities of the Company, other than holders of the Registrable Securities, to include any of their securities in any Registration Statement under Section 2(a) hereof or any amendment or supplement thereto under Section 3(b) hereof without the consent of the Buyers. In addition, the Company shall not offer any securities for its own account or the account of others in any Registration Statement under Section 2(a) hereof or any amendment or supplement thereto under Section 3(b) hereof without the consent of the Buyers.

n. The Company shall take all other reasonable actions necessary to expedite and facilitate disposition by the Buyers of Registrable Securities pursuant to a Registration Statement.

o. The Company shall use commercially reasonable efforts to comply with all applicable laws related to a Registration Statement and offering and sale of securities and all applicable rules and regulations of governmental authorities in connection therewith (including without limitation the Securities Act and the Exchange Act and the rules and regulations promulgated by the SEC).

p. If required by the Financial Industry Regulatory Authority, Inc. Corporate Financing Department, the Company shall promptly effect a filing with the FINRA pursuant to FINRA Rule 2710 with respect to the public offering contemplated by resales of securities under the Registration Statement (an "Issuer Filing"), and pay the filing fee required by such Issuer Filing. The Company shall use commercially reasonable efforts to pursue the Issuer Filing until the FINRA issues a letter confirming that it does not object to the terms of the offering contemplated by the Registration Statement.

q. Notwithstanding anything to the contrary herein, at any time after the Registration Statement has been declared effective by the SEC, the Company may delay or suspend the effectiveness of any Registration Statement or the use of any prospectus forming a part of the Registration Statement, in its sole discretion, due to the non-disclosure of material, non-public information concerning Company the disclosure of which at the time is not in its best interest, in the good faith opinion of the Company (a "Grace Period"); provided, that the Company shall promptly notify each Buyer in writing of the existence of a Grace Period in conformity with the provisions of this Section 3(q) and the date on which the Grace Period will begin (such notice, a "Commencement Notice"); and, provided further, that no Grace Period shall exceed 45 days, and such Grace Periods shall not exceed an aggregate total of 90 days during any 12-month period. For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date specified by the Company in the Commencement Notice and shall end on and include the date each Buyer receives written notice of the termination of the Grace Period by the Company (which notice may be contained in the Commencement Notice). The provisions of Sections 3(a)(ii), 3(b) and 3(e) hereof shall not be applicable during any Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by Sections 3(a)(ii), 3(b) and 3(e) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable.

r. Notwithstanding anything to the contrary herein, a delay in the effectiveness of the Initial Registration Statement caused solely by the filing of a request for confidential treatment shall not be deemed a breach of the Company's obligations set forth herein and in such event the Initial Registration Deadline shall be deemed extended to the date that is ten business days after the date the SEC agrees to allow confidential treatment pursuant to such request or the date such request is withdrawn by the Company, as applicable.

4. OBLIGATIONS OF THE BUYER. In connection with the registration of the Registrable Securities, each Buyer shall have the following obligations:

a. It shall be a condition precedent to the obligations of the Company to complete a Registration pursuant to this Agreement with respect to the Registrable Securities of a Buyer that such Buyer shall furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request. At least five (5) business days prior to the first anticipated filing date of a Registration Statement under which Registrable Securities will be registered, the Company shall notify each Buyer of the information the Company requires from such Buyer. Any such information shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading. A Buyer must provide such information to the Company at least two (2) business days prior to the first anticipated filing date of such Registration Statement if such Buyer elects to have any Registrable Securities included in the Registration Statement.

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

c. In the event of an underwritten offering pursuant to Section 2(b) in which any Registrable Securities are to be included, each Buyer agrees to enter into and perform such Buyer's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering and take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless the Buyer has notified the Company in writing of the Buyer's election to exclude all of the Buyer's Registrable Securities from such Registration Statement.

d. Each Buyer agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 3(e), 3(f) or 3(q), the Buyer will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until the Buyer's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3(e) or 3(f) or notice from the Company of the termination of the Grace Period, and, if so directed by the Company, the Buyer shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Buyer's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

e. Each Buyer agrees that it will not effect any disposition or other transfer of the Registrable Securities that would constitute a sale within the meaning of the Securities Act other than transactions exempt from the registration requirements of the Securities Act or pursuant to, and as contemplated in, a Registration Statement, and that it will promptly notify the Company of any material changes in the information set forth in a Registration Statement furnished by or regarding such Buyer or its plan of distribution other than changes in the number of shares beneficially owned.

5. REGISTRATION FAILURE. In the event of a Registration Failure (as defined in the Warrants), the Buyer shall be entitled to Failure Payments (as defined in the Warrants) and such other rights as set forth in the Warrants.

6. EXPENSES OF REGISTRATION. All expenses of the Company incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualification fees, printers and accounting fees and the fees and disbursements of counsel for the Company, shall be

borne by the Company. All expenses of the Buyers incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, underwriting discounts and commissions and legal expenses incurred by any Buyer for review of any Registration Statement, shall be borne by the applicable Buyer.

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

a. The Company will indemnify, hold harmless and defend (i) each Buyer, (ii) the directors, officers, partners, managers, members, employees, agents and each person who controls each Buyer within the meaning of the Securities Act or the Exchange Act, if any, (iii) any underwriter (as defined in the Securities Act) for each Buyer in connection with an underwritten offering pursuant to Section 2(b) hereof, and (iv) the directors, officers, partners, managers, members, employees, agents and each person who controls any such underwriter within the meaning of the Securities Act or the Exchange Act, if any (each, an "Indemnified Person"), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, "Claims") to which any of them may become subject insofar as such Claims arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or the omission or alleged omission to state therein a material fact required to be stated or necessary to make the statements therein not misleading; (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading; or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities (the matters in the foregoing clauses (i) through (iii) being, collectively, "Violations"). The Company shall reimburse the Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 7(a): (A) shall not apply to a Claim arising out of or based upon a Violation to the extent that such Violation occurs in reliance upon and in conformity with information furnished in writing to the Company by any Indemnified Person for use in connection with the preparation of such Registration Statement or any such amendment thereof or supplement thereto; (B) with respect to any preliminary prospectus, shall not inure to the benefit of any such Person from whom the Person asserting any such Claim purchased the Registrable Securities that are the subject thereof (or to the benefit of any Person controlling such Person) if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected in the prospectus, as then amended or supplemented, if such prospectus was timely made available by the Company pursuant to Section 3(d), and the Indemnified Person was promptly advised in writing not to use the incorrect prospectus prior to the use giving rise to a violation and such Indemnified Person, notwithstanding such advice, used it or failed to deliver the correct prospectus as required by the Securities Act and such correct prospectus was timely made available pursuant to Section 3(d); (C) shall not be available to the extent such Claim is based on a failure of the Indemnified Person to deliver or to cause to be delivered the prospectus made available by the Company, including a corrected prospectus, if such prospectus or corrected prospectus was timely made available by the Company pursuant to Section 3(d); and (D) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by a Buyer pursuant to Section 10 and shall be binding on any transferee.

b. Promptly after receipt by an Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Indemnified Person shall, if a Claim in respect thereof is to be made against the Company under this Section 7, deliver to the Company a written notice of the commencement thereof, and the Company shall have the right to participate in, and, to the extent the Company so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Company and the Indemnified Person, as the case may be.

PROVIDED, HOWEVER, that an Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the Company, if, in the reasonable opinion of counsel for a Buyer, the representation by such counsel of the Indemnified Person and the Company would be inappropriate due to actual or potential differing interests between such Indemnified Person and any other party represented by such counsel in such proceeding. The Company shall pay for only one separate legal counsel for the Indemnified Persons, and such legal counsel shall be selected by the Buyers. The failure to deliver written notice to the Company within a reasonable time of the commencement of any such action shall not relieve the Company of any liability to the Indemnified Person under this Section 7, except to the extent that the Company is actually prejudiced in its ability to defend such action. The indemnification required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

c. Each Buyer will indemnify, hold harmless and defend (i) the Company, and (ii) the directors, officers, partners, managers, members, employees, agents and each person who controls the Company within the meaning of the Securities Act or the Exchange Act, if any (each, a “Company Indemnified Person”), against any joint or several losses, claims, damages, liabilities or expenses (collectively, together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened, in respect thereof, “Indemnity Claims”) to which any of them may become subject insofar as such Indemnity Claims arise out of or are based upon any Violation which occurs due to the inclusion by the Company in a Registration Statement of false or misleading information about such Buyer, where such information was furnished in writing to the Company by such Buyer expressly for inclusion in such Registration Statement. Such Buyer shall reimburse the Company Indemnified Person, promptly as such expenses are incurred and are due and payable, for any reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim, provided, however, that the indemnity agreement contained in this Section 7(c) and the agreement with respect to contribution contained in Section 8 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Buyer and which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Buyer shall be liable under this Section 7(c) for only that amount of a Claim as does not exceed the net amount of proceeds received by the Buyer as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company Indemnified Person. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 7(c) with respect to any preliminary prospectus shall not inure to the benefit of any Company Indemnified Person if the untrue statement or omission of material fact contained in the preliminary prospectus was corrected on a timely basis in the prospectus, as then amended or supplemented.

d. Promptly after receipt by a Company Indemnified Person under this Section 7 of notice of the commencement of any action (including any governmental action), such Company Indemnified Person shall, if a Claim in respect thereof is to be made against a Buyer under this Section 7, deliver to such Buyer a written notice of the commencement thereof, and such Buyer shall have the right to participate in, and, to the extent the Buyer so desires, to assume control of the defense thereof with counsel mutually satisfactory to the Buyer and the Company Indemnified Person, as the case may be.

PROVIDED, HOWEVER, that a Company Indemnified Person shall have the right to retain its own counsel with the reasonable fees and expenses to be paid by the applicable Buyer, if, in the reasonable opinion of counsel for the Company, the representation by such counsel of the Company Indemnified Person and such Buyer would be inappropriate due to actual or potential differing interests between such Company Indemnified Person and any other party represented by such counsel in such proceeding. A Buyer shall pay for only one separate legal counsel for the Company Indemnified Persons, and such legal counsel shall be selected by Company. The failure to deliver written notice to a Buyer within a reasonable time of the commencement of any such action shall not relieve the Buyer of any liability to the Company Indemnified Person under this Section 7, except to the extent that the Buyer is actually prejudiced in its ability to defend such action. The indemnification required by this Section 7 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable.

8. CONTRIBUTION. To the extent any indemnification by the Company or a Buyer is prohibited or limited by law, each of the Company and each Buyer agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 7 to the fullest extent permitted by law, based upon a comparative fault standard, that (i) no Person that is guilty of fraudulent misrepresentation (within the meaning Section 11(f) of the Securities Act) in connection with such sale shall be entitled to contribution from any Person who was not guilty of fraudulent misrepresentation; and (ii) contribution by a Buyer shall be limited in amount to the net amount of proceeds received by the Buyer from the sale of such Registrable Securities pursuant to a Registration Statement.

9. REPORTS UNDER THE 1934 ACT. With a view to making available to the Buyers the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the Buyers to sell securities of the Company to the public without registration the Company agrees to:

a. make and keep public information available, as those terms are understood and defined in Rule 144;

b. file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

c. furnish to the Buyers so long as the Buyers own Registrable Securities, promptly upon request, (i) a written statement by the Company that it has complied with the reporting requirements of the Securities Act and the Exchange Act as required for applicable provisions of Rule 144, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to permit the Buyers to sell such securities pursuant to Rule 144 without registration.

Each Buyer shall at all times comply with the restrictions on transfer contained in Section 8 of the Warrant, which provisions are hereby incorporated by reference and made a part hereof.

10. ASSIGNMENT OF REGISTRATION RIGHTS. The rights under this Agreement shall be automatically assignable by each Buyer to any transferee of all or any portion of the Registrable Securities if: (i) the Buyer agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned, and (iii) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein. In the event that a Buyer transfers all or any portion of its Registrable Securities pursuant to this Section, the Company shall have at least ten (10) business days following the receipt of such notice to file any amendments or supplements necessary to keep a Registration Statement current and effective pursuant to Rule 415, and the commencement date of any Event of Failure (as defined in the Warrants) under the Warrants caused thereby will be extended by ten (10) business days.

11. AMENDMENT OF REGISTRATION RIGHTS. Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), with written consent of the Company and the holders of a majority in interest of then-outstanding Registrable Securities. Any amendment or waiver effected in accordance with this Section 11 shall be binding upon the Buyers and the Company.

12. TERMINATION OF RIGHTS AND OBLIGATIONS. The obligations of the Company pursuant to the terms of this Agreement, other than the obligations set forth in Sections 6, 7, 8 and 13, shall terminate on the date upon which all Registrable Securities held by a Holder or issuable to a holder upon exercise of Warrants cease to be Registrable Securities.

13. MISCELLANEOUS.

a. A person or entity is deemed to be a holder of Registrable Securities whenever such person or entity owns of record or beneficially through a "street name" holder such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more persons or entities with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from the registered owner of such Registrable Securities.

b. Any notices required or permitted to be given under the terms hereof shall be in writing and shall be deemed given only if sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Exelixis, Inc.
210 East Grand Ave.
South San Francisco, CA 94080
Fax: (650) 837-7951
Attn: Executive Vice President and General Counsel

With copy to:

Cooley LLP
101 California Street
San Francisco, CA 94111
Fax: (415) 693-2222
Attn: Gian-Michele a Marca, Esq.

If to a Buyer:

c/o Deerfield Mgmt, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Fax: (212) 599-1248
Attn: Alexander Karnal

With a copy to:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
Fax: (212) 940-8776
Attn: Mark I. Fisher, Esq.
Elliot Press, Esq.

Each party shall provide notice to the other party of any change in address.

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

d. Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in either the state and federal courts sitting in the City of New York or City of San Francisco, California. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, borough of Manhattan and the City of San Francisco, California for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. The parties hereby waive all rights to a trial by jury. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

e. This Agreement, the Warrants and the Note Purchase Agreement (including all schedules and exhibits thereto) constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the Warrants and the Note Purchase Agreement supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

f. Subject to the requirements of Section 10 hereof, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto.

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

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

i. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

j. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Buyers by vitiating the intent and purpose of the transactions contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for breach of its obligations hereunder will be inadequate and agrees, in the event of a breach or threatened breach by the Company of any of the provisions hereunder, that the Buyers shall be entitled, in addition to all other available remedies in law or in equity, to an injunction or injunctions to prevent or cure breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

k. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

l. In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

m. In the event a Buyer shall sell or otherwise transfer any of such holder's Registrable Securities, each transferee shall be allocated a pro rata portion of the number of Registrable Securities included in a Registration Statement for such transferor.

n. There shall be no oral modifications or amendments to this Agreement. This Agreement may be modified or amended only in writing.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, each of the undersigned Buyers and the Company have caused this Agreement to be duly executed as of the date first written above.

COMPANY:
EXELIXIS, INC.

By: /s/ Michael M. Morrissey
Name: Michael M. Morrissey
Title: President and Chief Executive Officer

BUYER:
DEERFIELD PARTNERS, L.P.

By: Deerfield Mgmt, L.P., General Partner
By: J.E. Flynn Capital, LLC, General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

DEERFIELD INTERNATIONAL MASTER FUND, L.P.

By: Deerfield Mgmt, L.P., General Partner
By: J.E. Flynn Capital, LLC, General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

THIRD AMENDMENT TO NOTE PURCHASE AGREEMENT

THIS THIRD AMENDMENT TO NOTE PURCHASE AGREEMENT (this "Amendment") is dated as of January 22, 2014 by and among EXELIXIS, INC., a Delaware corporation ("Borrower"), DEERFIELD PRIVATE DESIGN FUND, L.P., a Delaware limited partnership ("DPDF"), DEERFIELD PRIVATE DESIGN INTERNATIONAL, L.P., a limited partnership organized under the laws of the British Virgin Islands (together with DPDF, collectively, referred to as "Purchasers"), DEERFIELD PARTNERS, L.P., a Delaware limited partnership ("DPLP"), and DEERFIELD INTERNATIONAL MASTER FUND, L.P., a limited partnership organized under the laws of the British Virgin Islands (together with DPLP, collectively, the "Assignees").

WITNESSETH:

WHEREAS, Borrower and Purchasers have entered into that certain Note Purchase Agreement dated as of June 2, 2010 (as the same may be amended, modified, restated or otherwise supplemented from time to time, the "Purchase Agreement");

WHEREAS, Borrower has requested that Purchasers and Assignees amend the Purchase Agreement in certain respects; and

WHEREAS, Purchasers and Assignees are willing to amend the Purchase Agreement on the terms and conditions set forth in this Amendment.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. Defined Terms. Capitalized terms used herein which are defined in the Purchase Agreement, unless otherwise defined herein, shall have the meanings ascribed to them in the Purchase Agreement.

2. Amendments to Purchase Agreement.

Upon the satisfaction of the conditions set forth in Section 3 to this Amendment the Purchase Agreement shall be amended as follows:

a. The definition of “Customary Subordination Terms” in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in substitution therefor:

“Customary Subordination Terms” means, with respect to any subordinated Indebtedness, that (1) no payment in respect of such Indebtedness may be made if (a) an Event of Default pursuant to Section 5.5(a) shall have occurred and is continuing, including as a result of the delivery of an Acceleration Notice (as defined in Section 5.5), until such Acceleration Notice is rescinded or the Notes have been paid in full or (b) any other Event of Default shall have occurred and be continuing and the Purchasers shall have sent to the Borrower a notice of default (a “Payment Blockage Notice”); provided that no more than one Payment Blockage Notice may be sent during any 365 day period and payments in respect of such Indebtedness may resume upon the earliest to occur of (i) the date on which such default is cured or waived in writing by Purchasers or Assignees (ii) 91 days after the date the Notes are paid in full, (iii) the date 179 days after the date on which the Payment Blockage Notice is received, and (iv) the date the Payment Blockage Notice is rescinded, and (2), in the case of any Indebtedness specified in clause (d) of the definition of Permitted Indebtedness, such Indebtedness matures on or after, does not require any scheduled amortization or other scheduled payments of principal and is not prepaid by Borrower (except as permitted under Section 5.2(c)), prior to January 1, 2019 (it being understood that any provision requiring an offer to purchase such Indebtedness as a result of a change of control or asset sale shall not violate the foregoing restriction, provided that the Obligations are concurrently repaid in full).

b. The definition of “Development/Commercialization Revenue” in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in substitution therefor:

““Development/Commercialization Revenue” means, with respect to any fiscal year of the Borrower, (a) all cash consideration actually received by the Borrower and its Subsidiaries from any Person, other than the Borrower or any of its Subsidiaries, during such fiscal year relating to (i) upfront payments pursuant to any Development/Commercialization Agreements, and (ii) milestone, profit share and royalty payments pursuant to any Development/Commercialization Agreements, and (b) any cash actually received by the Borrower and its Subsidiaries from any Person, other than the Borrower or any of its Subsidiaries, during such fiscal year from the monetization of any non-cash consideration relating to payments described in clauses (i) and (ii) above; provided, in each case, (x) any payments received by the Borrower or any of its Subsidiaries in respect of the expenses of sponsored research and any other expenses and capital expenditures incurred by the Borrower or any of its Subsidiaries and reimbursed pursuant to any Development/Commercialization Agreement, (y) any revenue derived from Product Sales, and (z) any proceeds from an Intellectual Property Sale shall, in each case, be excluded from the definition of Development/Commercialization Revenue.”

c. The definition of “Discount Factor” in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety.

d. The definition of Excluded Taxes is hereby deleted in its entirety and the following is inserted in substitution therefor:

“Excluded Taxes” means (i) all income taxes, minimum or alternative minimum income taxes, withholding taxes imposed on gross amounts, any tax determined based upon income, capital gains, gross income, sales, net profits, windfall profits or similar items, franchise taxes (or any other tax measured by capital, capital stock or net worth), gross receipts taxes, branch profits taxes, margin taxes (or any other taxes imposed on or measured by net income, or imposed in lieu of net income) in any jurisdiction by any Government Authority (or political subdivision or taxing authority thereof) other than, solely with respect to a Purchaser that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, any Taxes imposed by any U.S. federal, U.S. state or U.S. local Government Authority in connection with any payments received (whether in cash or stock) under this Agreement by such Purchaser or with the execution and delivery of, and the performance of its obligations under, this Agreement, other than Taxes imposed with respect to FATCA and (ii) any withholding Tax imposed by the United States under FATCA as a direct result of such Purchaser’s or Assignee’s failure to deliver the required IRS forms certifying as to its exemption from withholding under FATCA”.

e. The definition of “Excluded Transaction” in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in substitution therefor:

“Excluded Transaction” means any of the following transactions:

(a) the entering into any collaborative arrangement, licensing agreement, joint venture or partnership providing for the research, development or commercial exploitation of compounds, products or services that provides for the payments received therefrom or the Borrower’s income or profits to be shared with another Person, including, without limitation, (1) the grant, to an entity engaged in the pharmaceutical or biotechnology industry, of a license or option to obtain a license to any of the Borrower’s Intellectual Property or other assets, provided that the Borrower or a wholly owned Subsidiary of the Borrower (and not any third party or any of the Borrower’s stockholders) directly receives from such entity all consideration paid or payable by such entity in consideration of

such grant (other than any payments made by such third party in satisfaction of obligations of the Borrower or its wholly-owned Subsidiaries), which consideration may, but need not, include (without limitation) upfront, milestone, royalty and profit-sharing payments, and (2) the grant of a license or option to obtain a license to, or the sale or other transfer of, the Borrower's Intellectual Property or other assets to any entity that intends to research and develop or commercialize products or services covered by such Intellectual Property or embodying or arising from such other assets, whether directly or through the Borrower or another entity, provided that the Borrower or a wholly owned Subsidiary of the Borrower (and not any third party or any of the Borrower's stockholders) retains the right or has the obligation to reacquire such Intellectual Property or other assets at a price no more than an amount that reasonably reflects the value of such assets or Intellectual Property or to terminate such license or option;

(b) the incurrence, grant or existence of, or any sale or transfer of any assets in connection with, any Permitted Lien; or

(c) Product Sales;

provided, however, notwithstanding any provision of this definition to the contrary, an Intellectual Property Sale shall not constitute an Excluded Transaction."

f. Subsection (b) of the definition of "Major Transaction" in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in substitution therefor:

"(b)(i) the sale or transfer of assets in one transaction or a series of related transactions for a purchase price (excluding any consideration allocable to any Excluded Transaction or Intellectual Property Sale relating to cabozantinib) ("Aggregate Consideration") of more than (i) \$400 million or (ii) 50% of Borrower's Market Capitalization (as defined below). "Market Capitalization" means the product of (x) the number of issued and outstanding shares of Common Stock as of the Trading Day (as defined in Section 2.9) immediately preceding the date of the execution of the definitive agreement relating to such transaction or transactions, multiplied by (y) the per share closing price of the Common Stock on such Trading Day."

thereof: g. The definition of “Maturity Date” in Section 1.1 of the Purchase Agreement is hereby amended by adding the following proviso to the end thereof:

“; *provided, however*, that in the event of an Extension, “Maturity Date” means July 1, 2018.”

thereof: h. The definition of “Notes” in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in substitution thereof:

““Notes” means the secured convertible notes purchased by the Purchasers pursuant to Section 2.1 hereof or assigned to the Assignees in the forms attached hereto as Exhibit A-1 and Exhibit A-2, as amended, modified, restated or supplemented from time to time.”

i. The definition of “Optional Prepayment Price” in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety.

j. The definition of “Permitted Indebtedness” in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and the following shall be deemed inserted in substitution thereof, provided that if Borrower’s right to make an Extension Election shall have expired or Borrower has previously irrevocably waived, in writing, Borrower’s right to make an Extension Election, then the definition of “Permitted Indebtedness” shall revert to the definition in Section 1.1 of the Purchase Agreement, without giving effect to this Section 2(j):

““Permitted Indebtedness” means: (a) Indebtedness of Borrower in favor of the Purchasers arising under the Notes and this Agreement, (b) Indebtedness existing as of the date hereof and disclosed on Exhibit B hereof, (c) Indebtedness to trade creditors incurred in the ordinary course of business, (d) Indebtedness incurred in connection with and owed to other parties (or one or more Affiliates of the other parties) to, collaboration, licensing, joint venture or partnership arrangements (i) prior to January 22, 2014, or (ii) on or after January 22, 2014 if such Indebtedness is contractually subject to Customary Subordination Terms or otherwise subordinated to the Obligations by written agreement on terms and conditions acceptable to the Purchasers, (e) Indebtedness in respect of purchase money financing, capital lease obligations and equipment financing facilities, including without limitation, indebtedness pursuant to that certain Loan and Security Agreement, dated as of May 22, 2002, as amended, supplemented or otherwise modified from time to time, between the Borrower and Silicon Valley Bank (and any borrowings thereunder converted into term loans), (f) (i) the Convertible Notes and (ii) unsecured Indebtedness consisting of subordinated convertible notes so long as such notes are contractually subordinated on Customary Subordination Terms or otherwise subordinated to the Obligations by written agreement on terms and conditions acceptable to the Purchasers, (g) Indebtedness incurred to finance insurance premiums or time-based license or

royalty payments, in each case in the ordinary course of business, (h) Indebtedness in respect of netting services, overdraft protections and other similar and customary services in connection with deposit accounts, (i) guaranties in the ordinary course of business of the obligations of suppliers, customers and licenses of the Borrower, (j) Indebtedness owed to any Subsidiary subordinated to the Obligations and evidenced by an intercompany note that includes the subordination provisions set forth on Exhibit D or otherwise subordinated to the Obligations on terms and conditions acceptable to Purchasers, (k) Indebtedness in respect of any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward interest rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, interest rate or foreign exchange rate cap, floor or collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), in each case in the ordinary course of business, (l) any Indebtedness the net proceeds of which are used to prepay the Notes, (m) Indebtedness in respect of workers' compensation claims, self-insurance obligations, indemnities, bankers' acceptances, performance and surety bonds, appeal or other similar bonds, in each case in the ordinary course of business, in any such case, any reimbursement obligations in connection therewith, (n) Indebtedness in connection with letter of credit obligations incurred in the ordinary course of business, (o) Indebtedness arising from agreements providing for indemnification, and (p) extensions, refinancings, replacements and renewals of any items of Permitted Indebtedness, provided that the principal amounts and premiums, if any, are not increased (plus the amount of any costs and expenses incurred therewith)."

k. The definition of "Principal Amount" in Section 1.1 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in substitution therefor:

“Principal Amount” means, with respect to any Note (or portion thereof), the principal amount of such Note (or portion thereof) payable at maturity thereof, and with respect to all Notes, means \$124,000,000, in each case, less any repayments pursuant to Sections 2.2 and 2.10 hereof, and plus any additional loans, whether in the form of principal or interest, pursuant to Section 2.10 hereof.”

I. Section 1.1 of the Purchase Agreement is hereby amended to add the following additional defined terms:

“Assignees” means collectively, Deerfield Partners, L.P., a Delaware limited partnership, and Deerfield International Master Fund, L.P., a limited partnership organized under the laws of the British Virgin Islands.

“Exchange Act” means the United States Securities and Exchange Act of 1934, as amended.

“Exclusive License” means, with respect to any drug or pharmaceutical product, any license to the Intellectual Property relating to such drug or pharmaceutical product with a term greater than, or substantially equal to the remaining expected useful life, or, if applicable, patent life of such Intellectual Property (unless terminable prior to such time without material penalty or premium by the licensor) and which provides for exclusive rights to develop, commercialize, sell, market and promote such drug or product within the United States, Europe and/or Japan; provided that an “Exclusive License” shall not include (a) any license solely to sell, offer for sale, use, promote and/or distribute any such drug or product on an exclusive basis within any particular geographic region or territory in consideration for sales based payments to Borrower, (b) any licenses, which may be exclusive, solely to manufacture any such drug or product, and (c) any license solely to manufacture, use, promote, offer for sale and/or sell any authorized generic version of such drug or product.

“Extension” means an extension of the Maturity Date pursuant to Section 2.10.

“Extension Election” has the meaning given such term in Section 2.10.

“Election Date” has the meaning given such term in Section 2.10.

“FATCA” means Sections 1471 through 1474 of the Code, as amended, or any amended or successor version thereof, any Treasury Regulations or other official interpretations thereof, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“Intellectual Property” shall have the meaning provided therefor in the Security Agreement.

“Intellectual Property Sale” means any sale, assignment, the grant of any Exclusive License or other transfer of the rights, title or interest of Borrower or any of its Subsidiaries in Intellectual Property as a result of which the Borrower or its Subsidiary transfers all or substantially all of its legal or economic interests, in the Intellectual Property in a transaction whereby the predominate consideration received for transferred interests in such Intellectual Property is to be received upfront as compared to any retained or reversionary interests in such Intellectual Property and any rights of the Borrower or any of its Subsidiaries to royalties, milestones, profit sharing and other future payments in respect of such Intellectual Property; provided that an Intellectual Property Sale does not include (a) the assignment, cancellation, abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful for the sale of the applicable drug or product or in the conduct of the business of Borrower and its Subsidiaries, taken as a whole and which does not have material value, or (b) any license or sublicense that is not an Exclusive License.

“Prepayment Price” has the meaning given such term in Section 2.2(e).

“Product Sales” means the sale or distribution by the Borrower or any of its Subsidiaries of drug or pharmaceutical products in the ordinary course of Borrower’s or such Subsidiary’s business.

“Registration Rights Agreement” means the Registration Rights Agreement in the form of Exhibit B to the Third Amendment.

“Supplemental Indenture” means that certain First Supplemental Indenture dated as of August 14, 2012 to the Indenture dated as of August 14, 2012 between Borrower and Wells Fargo Bank, National Association as Trustee with respect to the Convertible Notes.

“Third Amendment” means the Third Amendment to Note Purchase Agreement dated as of January 22, 2014 among Borrower, Purchasers and Assignees.

“Warrants” shall have the meaning provided therefor in the Third Amendment.

m. Section 2.2 of the Purchase Agreement is deleted in its entirety and substituted by the following:

“(a) Subject to Maximum Annual Prepayment Amount, on or before January 10, 2015, the Borrower shall prepay a portion of the Principal Amount of the Notes equal to 15% of the Development/Commercialization Revenue actually received by the Borrower during the first three quarters of the previous fiscal year (the “Quarterly Prepayment Amount”) and from and after an Extension and receipt by Borrower of an Election Notice, Borrower shall, on or before each of January 10, 2016, 2017 and 2018, prepay a portion of the Principal Amount of the Notes in an amount of up to the Quarterly Prepayment Amount for the applicable previous fiscal year.

In the event of receipt of an Election Notice and subject to the Maximum Annual Prepayment Amount, Borrower shall (i) on or before the thirtieth Trading Day (as such term is defined in Section 2.9(e)) after the Borrower files its Annual Report on Form 10-K for the fiscal year ended January 2, 2015 and each of the fiscal years ending on or about December 31, 2015, 2016 and 2017, or (ii) if the Borrower is not then required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, on or before each of January 31, 2015, January 31, 2016, January 31, 2017 and January 31, 2018, as applicable, prepay a portion of the Principal Amount of the Notes equal to the difference between (A) 15% of the Development/Commercialization Revenue actually received by the Borrower during the previous fiscal year and (B) the Quarterly Prepayment Amount for such previous fiscal year.

The Borrower shall provide to the Purchasers at least five Business Days notice prior to each such prepayment date the calculation of such Development/Commercialization Revenue for the relevant fiscal year, together with the basis for such calculation, and shall promptly provide to the Purchasers such information as the Purchasers shall reasonably request to permit the Purchasers to verify each such calculation.

The Principal Amount of the Notes to be prepaid pursuant to this subsection (a) with respect to any fiscal year shall not exceed the lesser of (i) the sum of the Quarterly Prepayment Amount and any further amounts payable pursuant to the preceding two paragraphs and (ii) \$27,500,000 (the “Maximum Annual Prepayment Amount”).

Purchasers shall notify Borrower in writing within five Business Days of the receipt of such calculation, of their election to require a prepayment and the amount of such prepayment (each, an “Election Notice”). Upon Purchasers’ receipt of each of the prepayments specified in this Section 2.2(a) (each, a “Mandatory Prepayment Amount”), the Principal Amount shall be reduced by such Mandatory Prepayment Amount.

(b) On the Maturity Date, the outstanding Principal Amount of the Notes shall become due and payable, together with any other accrued and unpaid Obligations.

(c) On a Major Transaction Put Date, the Borrower shall prepay the Notes in full by paying Purchasers simultaneously with the consummation of the Major Transaction an amount equal to the Prepayment Price.

(d) Prior to any Intellectual Property Sale, Borrower shall notify the Purchasers in writing and, at the Purchaser's election, prepay the Principal Amount of the Notes in an amount equal to (i) 100% of the cash proceeds of any Intellectual Property Sale of Intellectual Property relating to cabozantinib, and (ii) 50% of the cash proceeds of any Intellectual Property Sale of any other Intellectual Property, in each case when and as such cash proceeds are received (including any cash proceeds from any subsequent sale of any non-cash proceeds received from such Intellectual Property Sale) and net of any fees and expenses and estimated taxes payable in respect of such Intellectual Property Sale.

(e) The Borrower may prepay the Notes by paying to the Purchasers (i) at any time prior to July 1, 2015, (1) the outstanding Principal Amount of the Notes, (2) all accrued and unpaid interest through the date of such prepayment payment, (3) all interest that would accrue on the Principal Amount from the date of prepayment through the applicable Maturity Date if the outstanding Principal Amount of the Notes as of such date were to remain outstanding through the applicable Maturity Date, and (4) all other accrued and unpaid Obligations, and (ii) from and after an Extension, (1) an amount equal to 105% of the outstanding Principal Amount of the Notes, (2) all accrued and unpaid interest through the date of such prepayment payment, and (3), if prior to July 1, 2017, all interest that would accrue on the Principal Amount from the date of prepayment through July 1, 2017 if the outstanding Principal Amount of the Notes as of such date were to remain outstanding through July 1, 2017, and (4) all other accrued and unpaid Obligations (collectively the "Prepayment Price").

n. The last full sentence of Section 2.8 of the Purchase Agreement is hereby deleted in its entirety and the following is inserted in substitution therefor:

“Any such interest shall be in addition to any interest otherwise payable under Section 2.7 or Section 2.10, as applicable, and shall be payable on demand.”

o. Section 2.9 of the Purchase Agreement is hereby amended to delete the reference to the words “Optional Prepayment Amount” where it appears therein and insert in substitution therefor the term “Prepayment Price”. In addition, from and after an Extension, the maximum number of shares of Common Stock specified in Section 2.9(i) shall be replaced with 33,889,596 shares of Common Stock.

p. Article II of the Purchase Agreement is hereby amended by adding the following new subsection 2.10 thereto:

“Section 2.10. Extension of Maturity. Subject to the terms of this Section 2.10, Borrower may, unless expressly waived in writing by Borrower prior to such date, by written notice to Purchasers prior to March 31, 2015, elect to extend the Maturity Date to July 1, 2018 (“Extension Election” and the date of such Extension Election, the “Election Date”).

In the event of an Extension Election by Borrower, on July 1, 2015: (i) Borrower shall pay the Prepayment Price less such amount as shall cause the Principal Amount after such payment to be One Hundred Thousand Dollars (\$100,000), (ii) Purchasers shall, sell, assign and transfer the Notes, together with all collateral and security for the Obligations and all rights, title and interest in the Financing Documents to Assignees, for One Hundred Thousand Dollars (\$100,000), plus all accrued and unpaid interest, (iii) Assignees shall loan to Borrower an amount equal to Ninety Nine Million Nine Hundred Thousand Dollars (\$99,900,000) (such amounts to be allocated among the Assignees at their own discretion) such that the Principal Amount following such loans equals One Hundred Million Dollars (\$100,000,000), (iv) the Borrower shall execute and deliver to Assignees amended and restated notes in the form of Exhibit A to the Third Amendment in the then outstanding Principal Amount of the Notes after giving effect to such readvance, in substitution for and replacement of the Notes, and (v) notwithstanding anything to the contrary contained in, and in lieu of Section 2.7, (1) the outstanding Principal Amount of the Notes shall thereafter bear interest at the rate of fifteen percent (15%) per annum, payable quarterly, in arrears, on each March 31, June 30, September 30 and December 31, with any partial quarterly periods being pro-rated based on a 365 day or 366 day year, as

applicable, (2) on each such quarterly interest payment date one half of the interest payable on the outstanding Principal Amount of the Notes shall be automatically added to the outstanding Principal Amount of the Notes and bear interest as provided herein and one half of the interest payable on the outstanding Principal Amount of the Notes shall be payable in cash on each such quarterly interest payment date, and (3) Section 2.7 shall cease to have any force or effect. For the avoidance of doubt, the transactions contemplated in clauses (i), (ii) and (iii) may occur substantially concurrently and if so directed by Borrower, the Assignees shall make the advances contemplated under clause (iii) (prior to any repayment under clause (i)) directly to an escrow account in the name of Borrower, subject to a first priority lien in favor of Assignees, to be disbursed by the escrowee to Purchasers, on behalf of Borrower, pursuant to written escrow instructions from Assignees and Borrower, in payment of the amount due to Purchasers set forth in (i) above.

In the event Borrower makes an Extension Election, the term of the Warrants shall automatically be extended by two years beyond their current Ending Date (as defined in the Warrants) and the Exercise Price (as defined in the Warrants) shall be adjusted to the lesser of (i) the Exercise Price as set forth in Section 3(c) of the Third Amendment and (ii) 120% of the Volume Weighted Average Price of the Common Stock for the ten (10) Trading Days immediately following the Extension Election.

Purchasers' and Assignees' obligation to extend the Maturity Date pursuant to this Section 2.10 is subject to the following conditions precedent:

(1) No Event of Default shall have occurred or be continuing on either the Election Date or July 1, 2015;

(2) As of both the Election Date and July 1, 2015, the representations and warranties of Borrower contained in this Agreement are (i) in the case of representations and warranties qualified by "materiality," "Material Adverse Effect" or similar language, true and correct in all respects and (ii) in the case of all other representations and warranties, true and correct in all material respects, in each case on and as of the date hereof, true and correct after giving effect to the consents, waivers and amendments herein (including with respect to any particular representations or warranties as contemplated or delivered hereunder), except to the extent that any such representation or warranty relates to a specific date, in which case such representation and warranty shall be true and correct in all respects or all material respects, as applicable, as of such earlier date; and

(3) Borrower shall have executed and delivered to Assignees amended and restated Notes, in the form of Exhibit A to the Third Amendment.

q. Sections 5.4, 5.5 and 5.6 of the Purchase Agreement are hereby amended to delete the reference to the words "Put Price" wherever they appear therein and insert in substitution therefor the words "Prepayment Price".

r. Article III of the Purchase Agreement is hereby amended by adding the following new subsection 3.3(h):

The Assignees' receipt of the Warrants will not cause either Purchaser to own, or be treated as owning under the attribution rules of Section 871(h)(3)(C), 10% or more of the total combined voting power of the stock of Borrower.

3. Conditions Precedent. The effectiveness of this Amendment is subject to the following conditions precedent:

a. Delivery of Documents. The following shall have been delivered to Purchasers, each duly executed and in form and substance satisfactory to Purchasers in their sole discretion:

- i. this Amendment;
- ii. evidence of the due authorization of this Amendment by Borrower's board of directors; and
- iii. a Registration Rights Agreement in the form of Exhibit B to this Amendment.

b. Performance; No Default. Borrower shall have performed and complied with all agreements and conditions contained in the Purchase Agreement and the other Financing Documents to be performed by or complied with by Borrower prior to the date hereof in all respects, and, after giving effect to this Amendment, no Event of Default shall exist or be created hereby.

c. Delivery of Warrants. Upon the date of this Amendment, Borrower shall issue to the Assignees Warrants to Purchase, in the aggregate, one million (1,000,000) shares of Common Stock (the "Warrants") in the form annexed hereto as Exhibit C containing an initial Exercise Price (as defined in the Warrants) equal to \$9.70. Prior to the delivery of Warrants, each Assignee shall provide the Borrower with IRS Form W-9 or the applicable IRS Form W-8 (including all required attachments).

All Warrants that are issued pursuant to this Amendment shall be allocated to Assignees in such ratio as Assignees shall provide the Borrower at any time and from time to time.

4. Representations and Warranties. Borrower hereby represents and warrants to Purchasers and Assignees as follows:

a. As of the date hereof, the representations and warranties of Borrower contained in the Financing Documents are (i) in the case of representations and warranties qualified by “materiality,” “Material Adverse Effect” or similar language, true and correct in all respects and (ii) in the case of all other representations and warranties, true and correct in all material respects, in each case on and as of the date hereof, except to the extent that any such representation or warranty relates to a specific date, in which case such representation and warranty shall be true and correct in all respects or all material respects, as applicable, as of such earlier date;

b. The execution, delivery and performance by Borrower of this Amendment, the Warrants, the Registration Rights Agreement and Amended and Restated Notes (i) are within Borrower’s corporate powers, (ii) have been duly authorized by all necessary action pursuant to its Organizational Documents, (iii) require no further action by or in respect of, or filing with, any Government Authority, except for such registrations and filings in connection with the issuance of the shares of Common Stock pursuant to Section 2.9 of the Purchase Agreement or required pursuant to the terms of the Warrants and the Registration Rights Agreement and (iv) do not violate, conflict with or cause a breach or a default under any provision of applicable law or regulation or of Borrower’s Organizational Documents or of any agreement, judgment, injunction, order, decree or other instrument binding upon Borrower;

c. This Amendment constitutes the valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws relating to the enforcement of creditor’s rights generally and by general equitable principles;

d. No Event of Default exists;

e. The Notes, as amended pursuant to this Agreement constitute, and upon (i) any assignment thereof to Assignees, (ii) the making of a loan pursuant to Section 2.10 of the Purchase Agreement by Assignees in the amount of any principal paid by Borrower on or about the original Maturity Date pursuant to Section 2.10 of the Purchase Agreement, and (iii) the extension of the Maturity Date as provided in Section 2.10 of the Purchase Agreement, will continue to constitute, Senior Indebtedness as such term is defined in the Supplemental Indenture, and upon any such assignment and loan of repaid principal, Assignees will be holders

of Senior Indebtedness as to all outstanding amounts (including, without limitation, the amount of such loan) and entitled to all of the rights and benefits to which such a holder is entitled under the Supplemental Indenture, including, without limitation, the provisions of Article 5 thereof; and

f. The Warrants and the shares of Common Stock issuable upon exercise of the Warrants (the "Warrant Shares"), have been duly authorized and the Warrant Shares when issued, delivered and paid for in accordance with the terms of the Warrants, will have been validly issued and will be fully paid and nonassessable. There are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of any shares of Common Stock pursuant to the Borrower's Organizational Documents or any agreements to which the Borrower or any of its Subsidiaries is a party or by which the Borrower or any of its Subsidiaries is bound.

5. No Further Amendments; Ratification of Liability. Except as amended hereby, the Purchase Agreement and each of the other Financing Documents shall remain in full force and effect in accordance with their respective terms. Borrower as debtor, grantor, pledgor, guarantor or assignor, or in any similar capacity in which it has granted Liens or acted as an accommodation party or guarantor, as the case may be, hereby ratify, confirms and reaffirms its liabilities, their payment and performance obligations (contingent or otherwise) and their agreements under the Purchase Agreement and the other Financing Documents to the extent such Person is a party thereto, all as amended by this Amendment, and the liens and security interests granted, created and perfected thereby. The Purchasers' and Assignees' agreement to the terms of this Amendment or any other amendment of the Purchase Agreement or any other Financing Document shall not be deemed to establish or create a custom or course of dealing among Borrower, Purchasers, Assignees, or any of them. This Amendment, together with the Warrants and the Registration Rights Agreement and the other Financing Documents, contains the entire agreement among Borrower, Purchasers and Assignees contemplated by this Amendment.

6. Release. By execution of this Amendment, Borrower acknowledges and confirms that it does not as of the date hereof have any offsets, defenses or claims arising out of or relating to this Amendment, the Purchase Agreement or the other Financing Documents against any Purchaser, Assignee, or any of their subsidiaries, affiliates, officers, directors, employees, agents, attorneys, predecessors, successors or assigns whether asserted or unasserted. To the extent that such offsets, defenses or claims may exist as of the date hereof, Borrower for itself and its successors, assigns, parents, subsidiaries, affiliates, predecessors, employees, agents, heirs and executors, as applicable (collectively, "Releasors"), releases and forever discharges each Purchaser, Assignee and their subsidiaries, affiliates, officers, directors, employees, agents, attorneys, predecessors, successors and assigns, both present and former (collectively, the "Purchaser Affiliates") of and from any and all manner of actions, causes of action, torts, suits, debts, controversies, damages, judgments, executions, claims and demands whatsoever, asserted

or unasserted, in law or in equity, arising out of or relating to this Amendment, the Purchase Agreement and the other Financing Documents which Releasors ever had or now have against Purchasers, Assignees and/or Purchaser Affiliates, including, without limitation, any presently existing claim or defense whether or not presently suspected, contemplated or anticipated.

7. Severability. In case any provision of or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

8. Headings. Headings and captions used in this Amendment (including the Exhibits, Schedules and Annexes hereto, if any) are included for convenience of reference only and shall not be given any substantive effect.

9. GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AMENDMENT SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT, AND IN ALL OTHER RESPECTS, WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF OTHER THAN SECTION 5/1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF SUCH STATE. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN OR THE CITY OF SAN FRANCISCO FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR OTHER PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT THAT SUCH COURT, ACTION OR PROCEEDING IS IMPROPER OR IS AN INCONVENIENT VENUE FOR SUCH PROCEEDING. FINAL NON-APPEALABLE JUDGMENT AGAINST ANY PARTY IN ANY SUCH ACTION, SUIT OR OTHER PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY JURISDICTION BY SUIT ON THE JUDGMENT. NOTHING CONTAINED IN ANY FINANCING DOCUMENT SHALL AFFECT THE RIGHT OF THE PURCHASERS TO COMMENCE LEGAL PROCEEDINGS IN ANY COURT HAVING JURISDICTION, OR CONCURRENTLY IN MORE THAN ONE JURISDICTION, OR TO SERVE PROCESS, PLEADINGS AND OTHER LEGAL PAPERS UPON THE BORROWER IN ANY MANNER AUTHORIZED BY THE LAWS OF ANY SUCH JURISDICTION. THE BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO ANY FINANCING DOCUMENT, BROUGHT IN

THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY CLAIM THAT ANY SUCH ACTION, SUIT OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10. WAIVER OF JURY TRIAL. BORROWER, PURCHASERS AND ASSIGNEES HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AMENDMENT, ANY OF THE OTHER FINANCING DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL, ANY ALLEGED TORTIOUS CONDUCT BY SUCH OBLIGOR OR LENDER OR WHICH, IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP AMONG BORROWER, PURCHASERS AND ASSIGNEES. IN NO EVENT SHALL ANY PARTY BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

11. Notices. The addresses for any notice, request or other communication pursuant to Section 6.1 of the Purchase Agreement are hereby revised as follows for Borrower and set forth as follows for the Assignees:

If to Borrower:

Exelixis, Inc.
210 East Grand Ave.
South San Francisco, CA 94080
Fax: (650) 837-7951
Attn: Executive Vice President and General Counsel

With a courtesy copy to:

Cooley LLP
101 California Street
San Francisco, CA 94111
Fax: (415) 693-2222
Attn: Gian-Michele a Marca, Esq.

For the Assignees c/o:

Deerfield Mgmt, L.P.
780 Third Avenue, 37th Floor
New York, New York 10017
Fax: (212) 599-1248
Attn: Alexander Karnal

With a courtesy copy to:

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
Fax: (212) 940-8776
Attn: Robert I. Fisher

12. Counterparts; Integration. This Amendment may be executed and delivered via facsimile with the same force and effect as if an original were executed and may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures hereto were upon the same instrument. This Amendment constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Amendment shall be considered part of the Purchase Agreement and shall be a Financing Document for all purposes under the Purchase Agreement and other Financing Documents.

[Remainder of Page Intentionally Left Blank, signature page follows]

BORROWER:

EXELIXIS, INC.

By: /s/ Micheal M. Morrissey
Name: Micheal M. Morrissey
Title: President and Chief Executive Officer

PURCHASERS:

DEERFIELD PRIVATE DESIGN FUND, L.P.

By: Deerfield Mgmt, L.P., General Partner
By: J.E. Flynn Capital, LLC, General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN INTERNATIONAL,
L.P.**

By: Deerfield Mgmt, L.P., General Partner
By: J.E. Flynn Capital, LLC, General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

ASSIGNEES:

DEERFIELD PARTNERS, L.P.

By: Deerfield Mgmt, L.P., General Partner
By: J.E. Flynn Capital, LLC, General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

By: Deerfield Mgmt, L.P., General Partner
By: J.E. Flynn Capital, LLC, General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

Exhibit A

Form of Amended and Restated Notes

AMENDED AND RESTATED SECURED CONVERTIBLE NOTE

THE SECURITY REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR APPLICABLE STATE SECURITIES LAWS. THIS SECURITY MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER SAID ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SAID ACT INCLUDING, WITHOUT LIMITATION, PURSUANT TO RULE 144 UNDER SAID ACT.

THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT (“**OID**”). THE FOLLOWING INFORMATION IS BEING PROVIDED PURSUANT TO TREASURY REGULATION SECTION 1.275-3:

ISSUE PRICE:	\$
AMOUNT OF OID:	\$
ISSUE DATE:	July 1, 2015
MATURITY DATE:	July 1, 2018

July 1, 2015

FOR VALUE RECEIVED, EXELIXIS, INC., a Delaware corporation (the “**Issuer**”), by means of this Amended and Restated Secured Convertible Note (this “**Note**”), hereby unconditionally promises to pay to (the “**Holder**”), a principal amount equal to (\$) (or such lesser amount as may be outstanding under this Note as result of prepayments and conversions by the Borrower pursuant to the Note Purchase Agreement (as defined below)), in lawful money of the United States of America and in immediately available funds, on the dates provided in the Note Purchase Agreement.

This Note is a “Note” referred to in the Note Purchase Agreement dated as of June 2, 2010 among the Issuer, the Holder and the other parties thereto (as amended, restated, supplemented or otherwise modified from time to time, the “**Note Purchase Agreement**”), with respect to the purchase of this Note by the Holder thereunder. Capitalized terms used herein and not expressly defined in this Note shall have the respective meanings assigned to them in the Note Purchase Agreement. All Obligations of the Issuer under this Note are secured as provided in the Security Agreement.

This Note shall bear interest on the Principal Amount hereof in the amounts set forth in and pursuant to the provisions of the Note Purchase Agreement. This Note is subject to the voluntary and mandatory prepayment provisions set forth in the Note Purchase Agreement.

The Issuer shall make all payments to the Holder of interest and principal under this Note in the manner provided in and otherwise in accordance with the Note Purchase Agreement. The principal amount of this Note may be converted into shares of Common Stock as set forth in the Note Purchaser Agreement. On July 1, 2018 and on any Major Transaction Put Date, the Principal Amount of this Note shall become due and payable.

If default is made in the punctual payment of principal or any other amount under this Note in accordance with the Note Purchase Agreement, or if any other Event of Default has occurred, this Note shall, at the Holder's option exercised at any time upon or after the occurrence of any such payment default or other Event of Default and in accordance with the applicable provisions of the Note Purchase Agreement, become immediately due and payable.

All payments of any kind due to the Holder from the Issuer pursuant to this Note shall be made in the full face amount thereof, other than Excluded Taxes and Taxes for which the Holder (as a "**Purchaser**") is responsible for pursuant to Section 2.5(b) of the Note Purchase Agreement. The Issuer shall pay all and any costs (administrative or otherwise) imposed by banks, clearing houses, or any other financial institution, in connection with making any payments hereunder, except for any costs imposed by the Holder's banking institutions.

The Issuer shall pay all reasonable costs of collection, including, without limitation, all reasonable, documented legal expenses and attorneys' fees, paid or incurred by the Holder in collecting and enforcing this Note.

The Issuer and every endorser of this Note, or the obligations represented hereby, expressly waives presentment, protest, demand, notice of dishonor or default, and notice of any kind with respect to this Note and the Note Purchase Agreement or the performance of the obligations under this Note and/or the Note Purchase Agreement. No renewal or extension of this Note or the Note Purchase Agreement, no release of any Person primarily or secondarily liable on this Note or the Note Purchase Agreement, including the Issuer and any endorser, no delay in the enforcement of payment of this Note or the Note Purchase Agreement, and no delay or omission in exercising any right or power under this Note or the Note Purchase Agreement shall affect the liability of the Issuer or any endorser of this Note.

No delay or omission by the Holder in exercising any power or right hereunder shall impair such right or power or be construed to be a waiver of any default, nor shall any single or partial exercise of any power or right hereunder preclude the full exercise thereof or the exercise of any other power or right. The provisions of this Note may be waived or amended only in a writing signed by the Issuer and the Holder. This Note may be prepaid in whole or in part without premium or penalty, including in shares of Common Stock in accordance with the provisions of the Note Purchase Agreement.

THIS NOTE, AND ANY RIGHTS OF THE HOLDER ARISING OUT OF OR RELATING TO THIS NOTE, MAY, AT THE OPTION OF THE HOLDER, BE ENFORCED BY THE HOLDER IN THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK OR IN ANY OTHER COURTS HAVING JURISDICTION. FOR THE BENEFIT OF THE HOLDER, THE ISSUER HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION, SUIT OR OTHER

PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND HEREBY CONSENTS THAT PERSONAL SERVICE OF SUMMONS OR OTHER LEGAL PROCESS MAY BE MADE AS SET FORTH IN SECTION 6.1 OF THE NOTE PURCHASE AGREEMENT, WHICH SERVICE THE ISSUER AGREES SHALL BE SUFFICIENT AND VALID. THE ISSUER HEREBY WAIVES ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED BY THIS NOTE.

This Note shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed in such State, without giving effect to the conflicts of laws principles thereof other than Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York.

Whenever this Note is held by a noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "**Code**"), then it is the intention of the Issuer and such noteholder that (x) all interest accrued and paid on this Note will qualify for exemption from United States withholding tax as "portfolio interest" because this Note is an obligation which is in "registered form" within the meaning of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and the applicable Treasury Regulations promulgated thereunder, and (y) as such, all interest accrued and paid on this Note will be exempt from United States information reporting under Sections 6041 and 6049 of the Code and United States backup withholding under Section 3406 of the Code. The Issuer and the Holder shall reasonably cooperate with one another, and execute and file such forms or other documents, or do or refrain from doing such other acts, as may be required, to secure such exemptions from United States withholding tax, information reporting, and backup withholding. In furtherance of the foregoing, any Holder, transferee or assignee noteholder that is not a United States person shall represent, warrant and covenant to the Issuer that (i) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a "United States person," within the meaning of Section 7701(a)(30) of the Code; (ii) such noteholder is not, and will not be as long as any amounts due under this Note have not been paid in full, a person described in Section 881(c)(3) of the Code; (iii) on or prior to the date of transfer or assignment (and on or prior to the date the form provided pursuant to this clause (iii) is no longer valid) until all amounts due under this Note have been paid in full, such noteholder shall provide the Issuer with a properly executed U.S. Internal Revenue Service ("**IRS**") Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (or any successor form prescribed by the IRS), certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder hereunder; (iv) if an event occurs that would require a change in the exempt status of such noteholder or any of the other information provided on the most recent IRS Form W-8BEN (or successor form) previously submitted by such noteholder to the Issuer, such noteholder will so inform the Issuer in writing (or by submitting to the Issuer a new IRS Form W-8BEN or successor form) within 30 days after the occurrence of such event; and (v) such noteholder will not assign or otherwise transfer this Note or any of its rights hereunder except in accordance with the provisions hereof. In the case of a Holder that is not a United States person and that, for U.S. federal income tax purposes, is treated

as (A) a partnership (i) the representations, warranties and covenants set forth in the preceding sentence shall apply to such Holder and the Holder's partners or members that are the beneficial owners of this Note for U.S. federal income tax purposes and are not United States persons, and (ii) such Holder shall provide the Issuer with an IRS Form W-8IMY along with an IRS Form W-8BEN for each of such Holder's partners or members (or an IRS Form W-8IMY with applicable IRS W-8BEN forms for such Holder's partners or members) or (B) a disregarded entity, the representations, warranties and covenants set forth in the preceding sentence shall apply to such Holder's beneficial owner. A Holder that is not a United States person and that is treated as a partnership or disregarded entity for U.S. federal income tax purposes shall, in lieu of an IRS Form W-8, provide IRS Form W-9 certifying exemption from U.S. backup withholding with respect to any of such Holder's partners or members that are United States persons.

In order to qualify as a "registered note" for purposes of the Code, transfer of this Note may be effected only by (i) surrender of this Note to the Issuer and the re-issuance of this Note to the transferee, or the Issuer's issuance to the Holder of a new note in the same form as this Note but with the transferee denoted as the Holder, or (ii) the recording of the identity of the transferee by the Affiliate of the Holder that is maintaining a record ownership register of this Note as agent to, and on behalf of, the Issuer. Such Affiliate in its capacity as such agent shall notify the Issuer in writing immediately upon any change in such identity. The terms and conditions of this Note shall be binding upon and inure to the benefit of the Issuer and the Holder and their permitted assigns; provided, however, that if any such assignment (whether by operation of law, by way of transfer or participation, or otherwise) is to any noteholder that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code, then such noteholder shall submit to the Issuer on or before the date of such assignment an IRS Form W-8BEN (or any successor form) certifying as to such noteholder's status for purposes of determining exemption from United States withholding tax, information reporting and backup withholding with respect to all payments to be made to such noteholder under the new note (or other instrument). Any attempted transfer in violation of the relevant provisions of this Note shall be void and of no force and effect. Until there has been a valid transfer of this Note and of all of the rights hereunder by the Holder in accordance with this Note, the Issuer shall deem and treat the Holder as the absolute beneficial owner and holder of this Note and of all of the rights hereunder for all purposes (including, without limitation, for the purpose of receiving all payments to be made under this Note).

It is the intention of the Issuer and the Holder that this Note is to be a registered instrument and not a bearer instrument and the provisions of this Note are to be interpreted accordingly. This Note is intended to be registered as to both principal and interest and all payments hereunder shall be made to the named Holder or, in the event of a transfer pursuant to the Note Purchase Agreement and this Note, to the transferee identified in the record of ownership of this Note maintained by the Holder on behalf of the Issuer. Transfer of this Note may not be effected except in accordance with the provisions hereof.

This Note constitutes a renewal and restatement of, and replacement and substitution for, that certain Secured Convertible Note dated as of July 2, 2010 in the original principal amount of \$ _____ executed by Issuer in favor of Holder, as Assignee of _____ (the "**Prior Note**"). The indebtedness evidenced by the Prior Note is continuing indebtedness evidenced hereby and nothing herein shall be deemed to constitute payment, settlement or novation of the Prior Note or to release or otherwise adversely affect any Lien securing such indebtedness.

[Signature Page Follows]

IN WITNESS WHEREOF, an authorized representative of the Issuer has executed this Note as of the date first written above.

EXELIXIS, INC.

By: _____
Name:
Title:

Secured Convertible Note issued to

Exhibit B

Form of Registration Rights Agreement
[Filed separately]

Exhibit C

Form of Warrants
[Filed separately]

Exhibit D

Intercompany Subordination Provisions

Each promissory note evidencing intercompany Indebtedness (an "Intercompany Note") incurred by Borrower owing to any Subsidiary shall have included on its face the following subordination provision (modified as appropriate to reflect the defined terms used in the applicable Intercompany Note):

(a) Anything in this Intercompany Note to the contrary notwithstanding, the Indebtedness evidenced by this Note owed by Borrower shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Obligations (such Obligations and other indebtedness and obligations in connection with any renewal, refunding, restructuring or refinancing thereof, including interest thereon accruing after the commencement of any proceedings referred to in clause (i) below, whether or not such interest is an allowed claim in such proceeding, being hereinafter collectively referred to as "Senior Indebtedness").

(i) In the event of any insolvency or bankruptcy proceedings, and any receivership, examinership, liquidation, reorganization or other similar proceedings in connection therewith, relative to Borrower or to its creditors, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of Borrower, whether or not involving insolvency or bankruptcy, then (x) the holders of Senior Indebtedness shall be paid in full in cash in respect of all amounts constituting Senior Indebtedness before any holder of this Intercompany Note (a "Holder") is entitled to receive (whether directly or indirectly), or make any demands for, any payment on account of this Intercompany Note and (y) until the holders of Senior Indebtedness are paid in full in cash in respect of all amounts constituting Senior Indebtedness, any payment or distribution to which such Holder would otherwise be entitled (other than debt securities of the Borrower that are subordinated, to at least the same extent as this Intercompany Note, to the payment of all Senior Indebtedness then outstanding (such securities being hereinafter referred to as "Restructured Debt Securities")) shall be made to the holders of Senior Indebtedness.

(ii) If any default occurs and is continuing with respect to any Senior Indebtedness (including any Event of Default under the Note Purchase Agreement), then no payment or distribution of any kind or character shall be made by or on behalf of Borrower or any other Person on its behalf with respect to this Intercompany Note.

(iii) If any payment or distribution of any character by Borrower, whether in cash, securities or other property (other than Restructured Debt Securities), in respect of this Intercompany Note shall (despite these subordination provisions) be received by any Holder in violation of clause (i) or (ii) before all Senior Indebtedness shall have been paid in full in cash, such

payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to the holders of Senior Indebtedness, to the extent necessary to pay all Senior Indebtedness in full in cash.

(iv) To the fullest extent permitted by law, no present or future holder of Senior Indebtedness shall be prejudiced in its right to enforce the subordination of this Intercompany Note by any act or failure to act on the part of Borrower or by any act or failure to act on the part of such holder or any trustee or agent for such holder. Each Holder and Borrower hereby agree that the subordination of this Intercompany Note is for the benefit of the holders of Senior Indebtedness and the holders of Senior Indebtedness are obligees under this Intercompany Note to the same extent as if their names were written herein as such and holders of Senior Indebtedness may proceed to enforce the subordination provisions herein.

(vi) Nothing contained in this subordination provision is intended to or will impair, as between Borrower and each Holder, the obligations of Borrower, which are absolute and unconditional, to pay to such Holder the principal of and interest on this Intercompany Note as and when due and payable in accordance with its terms, or is intended to or will affect the relative rights of such Holder and other creditors of Borrower other than the holders of Senior Indebtedness.