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

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2002

OR

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

Commission file number 000-12477

AMGEN INC.

(Exact name of registrant as specified in its charter)

Delaware	**95-3540776**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
One Amgen Center Drive, Thousand Oaks, California	**91320-1799**
(Address of principal executive offices)	**(Zip Code)**

(805) 447-1000
Registrant's telephone number, including area code

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

As of July 31, 2002, the registrant had 1,278,174,432 shares of Common Stock, $0.0001 par value, outstanding.

AMGEN INC.

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

The information in this report for the three and six months ended June 30, 2002 and 2001 is unaudited but includes all adjustments (consisting only of normal recurring accruals, unless otherwise indicated) which Amgen Inc. ("Amgen" or the "Company") considers necessary for a fair presentation of the results of operations for those periods.

The condensed consolidated financial statements should be read in conjunction with the Company's financial statements and the notes thereto contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2001.

Interim results are not necessarily indicative of results for future quarters or the full fiscal year.

AMGEN INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In millions, except per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2002	2001	2002	2001
Revenues:				
Product sales	$ 1,115.2	$ 858.9	$ 2,023.8	$ 1,657.3
Corporate partner revenues	53.9	70.3	85.4	121.4
Royalty income	80.0	57.5	148.4	109.6
Total revenues	1,249.1	986.7	2,257.6	1,888.3
Operating expenses:				
Cost of sales	131.9	98.4	235.5	187.8
Research and development	233.6	208.8	437.0	415.5
Selling, general and administrative	320.5	226.5	566.3	422.7
(Earnings) loss of affiliates, net	(1.7)	3.6	(3.4)	(3.6)
Total operating expenses	684.3	537.3	1,235.4	1,022.4
Operating income	564.8	449.4	1,022.2	865.9
Other income (expense):				
Interest and other income, net	45.5	39.7	89.2	88.8
Interest expense, net	(12.7)	(3.6)	(19.7)	(7.9)
Total other income	32.8	36.1	69.5	80.9
Income before income taxes	597.6	485.5	1,091.7	946.8
Provision for income taxes	185.2	163.6	338.4	320.0
Net income	$ 412.4	$ 321.9	$ 753.3	$ 626.8
Earnings per share:				
Basic	$ 0.40	$ 0.31	$ 0.72	$ 0.60
Diluted	$ 0.38	$ 0.30	$ 0.70	$ 0.58
Shares used in calculation of earnings per share:				
Basic	1,038.6	1,044.8	1,041.2	1,043.0
Diluted	1,098.8	1,085.1	1,092.4	1,085.7

See accompanying notes.

AMGEN INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(In millions, except per share data)
(Unaudited)

	June 30, 2002	December 31, 2001
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,905.0	$ 689.1
Marketable securities	2,152.8	1,973.1
Trade receivables, net	553.5	497.2
Inventories	387.2	355.6
Other current assets	335.2	343.6
Total current assets	6,333.7	3,858.6
Property, plant, and equipment at cost, net	2,013.6	1,946.1
Other assets	790.3	638.4
	$ 9,137.6	$ 6,443.1
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 132.4	$ 136.7
Commercial paper	100.0	99.9
Accrued liabilities	969.8	766.3
Total current liabilities	1,202.2	1,002.9
Long-term debt	3,054.8	223.0
Stockholders' equity:		
Preferred stock; $0.0001 par value; 5.0 shares authorized; none issued or outstanding	—	—
Common stock and additional paid-in capital; $0.0001 par value; 2,750.0 shares authorized; outstanding—1,031.0 shares in 2002 and 1,045.8 shares in 2001	3,722.0	3,474.1
Retained earnings	1,134.1	1,686.8
Accumulated other comprehensive income	24.5	56.3
Total stockholders' equity	4,880.6	5,217.2
	$ 9,137.6	$ 6,443.1

See accompanying notes.

AMGEN INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In millions)
(Unaudited)

	Six Months Ended June 30,	
	2002	**2001**
Cash flows from operating activities:		
Net income	$ 753.3	$ 626.8
Depreciation and amortization	127.4	125.5
Tax benefits related to employee stock options	103.7	120.7
Gain on equity investments	(9.7)	(12.4)
Other non-cash expenses	17.8	2.7
Earnings of affiliates, net	(3.4)	(3.6)
Cash provided by (used in):		
Trade receivables, net	(56.3)	11.7
Inventories	(31.6)	(84.9)
Other current assets	29.6	7.6
Accounts payable	(9.7)	(45.7)
Accrued liabilities	203.5	(80.7)
Net cash provided by operating activities	1,124.6	667.7
Cash flows from investing activities:		
Purchases of property, plant, and equipment	(192.6)	(201.2)
Proceeds from maturities of marketable securities	375.9	—
Proceeds from sales of marketable securities	298.3	208.6
Purchases of marketable securities	(858.8)	(576.9)
Purchase of certain rights from Roche	(122.5)	—
Other	(12.3)	6.9
Net cash used in investing activities	(512.0)	(562.6)
Cash flows from financing activities:		
Net proceeds from issuance of common stock upon the exercise of employee stock options and in connection with an employee stock purchase plan	141.4	125.4
Issuance of zero-coupon convertible notes, net of issuance costs	2,764.7	—
Repurchases of common stock	(1,306.0)	(167.9)
Other	3.2	(6.6)
Net cash provided by (used in) financing activities	1,603.3	(49.1)
Increase in cash and cash equivalents	2,215.9	56.0
Cash and cash equivalents at beginning of period	689.1	226.5
Cash and cash equivalents at end of period	$ 2,905.0	$ 282.5

See accompanying notes.

1. Summary of significant accounting policies

Business

Amgen Inc. ("Amgen" or the "Company") is a global biotechnology company that discovers, develops, manufactures, and markets human therapeutics based on advances in cellular and molecular biology.

Principles of consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries as well as affiliated companies in which the Company has a controlling financial interest and exercises control over their operations ("majority controlled affiliates"). All material intercompany transactions and balances have been eliminated in consolidation. Investments in affiliated companies which are 50% or less owned and where the Company exercises significant influence over operations are accounted for using the equity method. All other equity investments are accounted for under the cost method. The caption "(Earnings) loss of affiliates, net" includes Amgen's equity in the operating results of affiliated companies and the minority interest others hold in the operating results of Amgen's majority controlled affiliates (see Note 5, "Acquisition of Certain Rights from Roche").

Inventories

Inventories are stated at the lower of cost or market. Cost is determined in a manner which approximates the first-in, first-out (FIFO) method. Inventories consist of raw materials, work in process, and finished goods for currently marketed products and product candidates awaiting regulatory approval which the Company expects to commercialize. The inventory balance of such product candidates totaled $8.8 million as of December 31, 2001. As of June 30, 2002, no inventory was capitalized related to such product candidates. Inventories are shown net of applicable reserves and allowances. Inventories consisted of the following (in millions):

	June 30, 2002	December 31, 2001
Raw materials	$ 26.4	$ 21.9
Work in process	264.5	266.7
Finished goods	96.3	67.0
	$ 387.2	$ 355.6

Product sales

Product sales primarily consist of sales of EPOGEN® (Epoetin alfa), Aranesp™ (darbepoetin alfa), NEUPOGEN® (Filgrastim), and Neulasta™ (pegfilgrastim).

The Company has the exclusive right to sell Epoetin alfa for dialysis, certain diagnostics and all non-human, non-research uses in the United States. The Company sells Epoetin alfa under the brand name EPOGEN®. Amgen has granted to Ortho Pharmaceutical Corporation (which has assigned its rights under the product license agreement to Ortho Biotech Products, L.P.), a subsidiary of Johnson & Johnson ("Johnson & Johnson"), a license relating to Epoetin alfa for sales in the United States for all human uses except dialysis and diagnostics. The license agreement, which is perpetual, can be terminated upon mutual agreement of the parties, or default. Pursuant to this license, the Company and Johnson & Johnson are required to compensate each other for Epoetin alfa sales that either party makes into the other party's exclusive market, sometimes referred to as "spillover" sales. Accordingly, Amgen does not recognize product sales it makes into the exclusive market of Johnson & Johnson and does recognize the product sales made by Johnson & Johnson into Amgen's exclusive market. Sales in Amgen's exclusive market are derived from the Company's sales to its customers, as adjusted for any spillover sales. The Company is employing an arbitrated audit methodology to measure each party's spillover sales based on estimates of and subsequent adjustments thereto of third-party data on shipments to end users and their usage.

Sales of the Company's other products are recognized when shipped and title has passed. Product sales are recorded net of reserves for estimated discounts, incentives, and rebates.

Corporate partner revenues

Corporate partner revenues are primarily comprised of amounts earned from Kirin-Amgen, Inc. ("Kirin-Amgen") for certain research and development ("R&D") activities and are generally earned as the R&D activities are performed and the amounts become due. In addition, corporate partner revenues include license fees and milestone payments associated with collaborations with third parties. Revenue from non-refundable, upfront license fees where the Company has continuing involvement is recognized ratably over the development or agreement period. Revenue associated with performance milestones is recognized based upon the achievement of the milestones, as defined in the respective agreements. The Company's collaboration agreements with third parties are performed on a "best efforts" basis.

Royalty income

Royalties from licensees are based on third-party sales of licensed products and are recorded in accordance with contract terms when third-party results are reliably measurable and collectibility is reasonably assured. Royalty estimates are made in advance of amounts collected using historical and forecasted trends. Pursuant to the license agreement with Johnson & Johnson, noted above, the Company earns a 10% royalty on sales of Epoetin alfa by Johnson & Johnson in the U.S.

Research and development costs

Research and development expenses are comprised of the following types of costs incurred in performing R&D activities: salaries and benefits, allocated overhead and occupancy costs, clinical trial and related clinical manufacturing costs, contract services and other outside costs, and costs to acquire in-process research and development projects and technologies which have no alternative future use. Research and development expenses also include such costs related to activities performed on behalf of corporate partners. Research and development costs are expensed as incurred.

Derivative instruments

Statement of Financial Accounting Standards ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities", as amended, requires companies to recognize all of its derivative instruments as either assets or liabilities in the balance sheet at fair value. The accounting for changes in the fair value (i.e., unrealized gains or losses) of a derivative instrument depends on whether it has been designated and qualifies as part of a hedging relationship and further, on the type of hedging relationship. Derivatives that are not hedges must be adjusted to fair value through current earnings.

To protect against possible changes in values of certain anticipated foreign currency cash flows, primarily resulting from sales outside the U.S., the Company enters into foreign currency forward contracts which qualify and are designated as cash flow hedges. These foreign currency forward contracts cover anticipated foreign currency cash flows for up to the succeeding twelve months. No portions of these foreign currency forward contracts are excluded from the assessment of hedge effectiveness, and there are no ineffective portions of these hedging instruments. The gains and losses on these forward contracts are reported as a component of other comprehensive income and reclassified into interest and other income, net in the same periods during which the hedged transactions affect earnings. At June 30, 2002, amounts in accumulated other comprehensive income related to cash flow hedges were not material.

To protect against possible reductions in value of certain of its available-for-sale marketable equity securities, the Company entered into equity forward contracts during 2001 which qualify and are designated as fair value hedges. The gains and losses on these forward contracts as well as the offsetting losses and gains on the hedged equity securities are recognized in interest and other income, net in the current period. During the three and six months ended June 30, 2002, gains and losses on the portions of these forwards excluded from the assessment of hedge effectiveness and the ineffective portions of these hedging instruments were not material. In addition, to protect against possible reductions in value of certain available-for-sale fixed income investments, the Company entered into interest rate swap agreements during 2001 which qualify and are designated as fair value hedges. The terms of the interest rate swap agreements correspond to the related hedged investments. As a result, there is no hedge ineffectiveness. During the three and six months ended June 30, 2002, gains and losses on these interest rate swap agreements were fully offset by the losses and gains on the hedged investments.

The Company has additional foreign currency forward contracts to reduce exposures to foreign currency fluctuations of certain assets and liabilities denominated in foreign currencies.

However, these contracts have not been designated as hedges under SFAS No. 133. Accordingly, gains and losses on these foreign currency forward contracts are recognized in interest and other income, net in the current period. During the three and six months ended June 30, 2002, gains and losses on these foreign currency forward contracts were not material.

Employee stock option and stock purchase plans

The Company's employee stock option and stock purchase plans are accounted for under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees".

Earnings per share

Basic earnings per share is based upon the weighted-average number of common shares outstanding. Diluted earnings per share is based upon the weighted-average number of common shares and dilutive potential common shares outstanding. Dilutive potential common shares are: 1) outstanding options under the Company's employee stock option plans, 2) potential issuances of stock under the employee stock purchase plan, 3) restricted stock (collectively "Dilutive Securities" which are included under the treasury stock method), and 4) common shares to be issued under the assumed conversion of outstanding 30-year, zero-coupon senior convertible notes which are included under the if-converted method (see Note 4, "Convertible Notes").

The following table sets forth the computation for basic and diluted earnings per share (in millions, except per share information):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2002	2001	2002	2001
Income (Numerator):				
Net income for basic EPS	$ 412.4	$ 321.9	$ 753.3	$ 626.8
Adjustment for interest expense on Convertible Notes, net of tax	5.2	—	6.9	—
Income for diluted EPS, after assumed conversion of Convertible Notes	$ 417.6	$ 321.9	$ 760.2	$ 626.8
Shares (Denominator):				
Weighted-average shares for basic EPS	1,038.6	1,044.8	1,041.2	1,043.0
Effect of Dilutive Securities	25.2	40.3	27.6	42.7
Effect of Convertible Notes	35.0	—	23.6	—
Adjusted weighted-average shares for diluted EPS	1,098.8	1,085.1	1,092.4	1,085.7
Basic earnings per share	$ 0.40	$ 0.31	$ 0.72	$ 0.60
Diluted earnings per share	$ 0.38	$ 0.30	$ 0.70	$ 0.58

Recent accounting pronouncements

The Company adopted SFAS No. 141, "Business Combinations" and SFAS No. 142, "Goodwill and Other Intangible Assets" on January 1, 2002, and the adoption of these standards has not had a material effect on the Company's financial statements. Under the new rules, goodwill is no longer amortized, but will be subject to periodic impairment tests in accordance with the statements. Other intangible assets will continue to be amortized over their estimated useful lives.

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States ("GAAP") requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results may differ from those estimates.

Basis of presentation

The financial information for the three and six months ended June 30, 2002 and 2001 is unaudited but includes all adjustments (consisting only of normal recurring accruals, unless otherwise indicated) which the Company considers necessary for a fair presentation of the results of operations for these periods. Interim results are not necessarily indicative of results for the full fiscal year.

Reclassification

Certain prior year amounts have been reclassified to conform to the current year presentation.

2. Stockholders' equity

The Company has a stock repurchase program primarily to reduce the dilutive effect of its employee stock option and stock purchase plans. Stock repurchased under the program is intended to be retired. During the six months ended June 30, 2002, the Company repurchased 25.5 million shares of its common stock at a total cost of $1,306.0 million under its common stock repurchase program, including 11.3 million shares of common stock repurchased simultaneously with the issuance of 30-year, zero-coupon senior convertible notes at a total cost of $650 million (see Note 4, "Convertible Notes"). In June 2002, the Board of Directors authorized the Company to repurchase up to an additional $2.0 billion of common stock through June 30, 2004. At the time of the additional authorization, the Company had approximately $257.1 million remaining under the previous authorized stock repurchase program. The amount the Company spends on and the number of shares repurchased each quarter varies based on a variety of factors, including the stock price and blackout periods in which the Company is restricted from repurchasing shares. As of June 30, 2002, $1,956.5 million was available for stock repurchases through June 30, 2004.

3. Other comprehensive income

SFAS No. 130, “Reporting Comprehensive Income”, requires unrealized gains and losses on the Company’s available-for-sale securities and foreign currency forward contracts which qualify and are designated as cash flow hedges, and foreign currency translation adjustments to be included in other comprehensive income. During the three and six months ended June 30, 2002, total comprehensive income was $405.6 million and $721.5 million, respectively. During the three and six months ended June 30, 2001, total comprehensive income was $358.3 million and $622.9 million, respectively.

4. Convertible Notes

On March 1, 2002, the Company issued $3.95 billion in aggregate face amount at maturity ($1,000 face amount per note) of 30-year, zero-coupon senior convertible notes (the “Convertible Notes”) with a yield to maturity of 1.125%. The gross proceeds from the offering were approximately $2.82 billion (a $714.23 per note original issue price). The original issue discount of $1.13 billion (or $285.77 per note) is being accreted to interest expense over the life of the Convertible Notes using the effective interest method. Debt issuance costs were approximately $56.5 million and are being amortized on a straight-line basis over the life of the notes.

Holders of the Convertible Notes may convert each of their notes into 8.8601 shares of common stock of the Company (the “conversion rate”) at any time on or before the maturity date, or approximately 35.0 million shares in the aggregate. The conversion price per share at issuance was $80.61. The conversion price per share as of any day will equal the original issuance price plus the accrued original issue discount to that day, divided by the conversion rate, or $80.91 per share as of June 30, 2002. The holders of the Convertible Notes may require the Company to purchase all or a portion of their notes on March 1, 2005, March 1, 2007, March 1, 2012, and March 1, 2017 at a price equal to the original issuance price plus the accrued original issue discount to the purchase dates. The Company may choose to pay the purchase price in cash and/or shares of common stock.

The Company may redeem all or a portion of the Convertible Notes for cash at any time on or after March 1, 2007 at the original issuance price plus accrued original issue discount as of the redemption date. In addition, the Company will pay contingent cash interest during any six-month period commencing on or after March 2, 2007 if the average market price of a note for a five trading day measurement period preceding the applicable six-month period equals 120% or more of the sum of the original issuance price and accrued original issue discount for such note. The contingent cash interest in respect of any quarterly period will equal the greater of 1) the amount of regular cash dividends paid by the Company per share multiplied by the number of shares of common stock deliverable upon conversion of the Convertible Notes at the then applicable conversion rate or 2) 0.0625% of the average market price of a note for a five trading day measurement period preceding the applicable six-month period provided, that if the Company does not pay cash dividends during a semiannual period it will pay contingent interest semiannually at a rate of 0.125% of the average market price of a note for a five trading day measurement period.

5. Acquisition of Certain Rights from Roche

In May 2002, the Company acquired certain rights related to the commercialization of NEUPOGEN® and GRANULOKINE® (Filgrastim) and pegfilgrastim in the European Union ("EU"), Switzerland, and Norway from F. Hoffman-La Roche Ltd ("Roche"). Amgen agreed to pay $137.5 million for such rights. Upon execution of the purchase agreement, Amgen paid Roche $122.5 million. An additional $15 million is payable to Roche upon the achievement of certain performance targets. The purchase price of the rights was capitalized and will be amortized on a straight-line basis over the useful life of the rights acquired, estimated to be 15 years. Prior to this acquisition, NEUPOGEN® and GRANULOKINE® were commercialized in the EU under a co-promotion agreement between Amgen and Roche. Roche will continue as the licensee for Filgrastim and pegfilgrastim in certain countries in Eastern Europe, the Middle East, Africa, Asia, and Latin America.

6. Subsequent events

On July 15, 2002, the Company completed its acquisition of Immunex Corporation ("Immunex") pursuant to the Amended and Restated Agreement and Plan of Merger dated as of December 16, 2001 among Amgen, AMS Acquisition Inc., a wholly owned subsidiary of Amgen ("Merger Sub"), and Immunex, as amended by the First Amendment to the Amended and Restated Agreement and Plan of Merger dated as of July 15, 2002 (the "Merger Agreement"). Pursuant to the Merger Agreement, Immunex was merged with and into Merger Sub, with Merger Sub continuing as the surviving corporation and a wholly owned subsidiary of Amgen.

Each share of Immunex common stock outstanding at the effective time of the merger was converted into the right to receive 0.44 of a share of Amgen common stock and $4.50 in cash. As a result, Amgen issued approximately 244.6 million shares of common stock and paid approximately $2.5 billion in cash to former Immunex shareholders. In addition, each option to purchase Immunex common stock outstanding at the effective time of the merger was assumed by Amgen and exchanged into an option to purchase Amgen common stock based on the terms of the Merger Agreement. As a result, approximately 22.4 million options to purchase Amgen common stock were assumed, on a converted basis. The total value of the acquisition is approximately $17.7 billion, including transaction fees. The value of the Amgen shares used in determining the purchase price was $58.525 per share based on the average of the closing prices of Amgen common stock for a range of four trading days, two days prior to and two days subsequent to the announcement on December 17, 2001 that a definitive agreement related to the merger had been signed. The acquisition will be accounted for under the purchase method of accounting.

In May 2002, Immunex announced that it had agreed to sell its Leukine® (sargramostim) business to Schering AG Germany ("Schering") for a purchase price of approximately $380 million in cash plus the payment of additional cash consideration upon achievement of certain milestones. Immunex pursued the sale of Leukine® in connection with Amgen's acquisition of Immunex. The sale of Leukine® was completed in July 2002, subsequent to the close of the Immunex acquisition.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Acquisition of Immunex

On July 15, 2002, the Company completed its acquisition of Immunex Corporation ("Immunex") pursuant to the Amended and Restated Agreement and Plan of Merger dated as of December 16, 2001 among Amgen, AMS Acquisition Inc., a wholly owned subsidiary of Amgen ("Merger Sub"), and Immunex, as amended by the First Amendment to Amended and Restated Agreement and Plan of Merger dated as of July 15, 2002 (the "Merger Agreement"). Pursuant to the Merger Agreement, Immunex was merged with and into Merger Sub, with Merger Sub continuing as the surviving corporation and a wholly owned subsidiary of Amgen.

Each share of Immunex common stock outstanding at the effective time of the merger was converted into the right to receive 0.44 of a share of Amgen common stock and $4.50 in cash. As a result, Amgen issued approximately 244.6 million shares of common stock and paid approximately $2.5 billion in cash to former Immunex shareholders. In addition, each option to purchase Immunex common stock outstanding at the effective time of the merger was assumed by Amgen and exchanged into an option to purchase Amgen common stock based on the terms of the Merger Agreement. As a result, approximately 22.4 million options to purchase Amgen common stock were assumed, on a converted basis. The total value of the acquisition is approximately $17.7 billion, including transaction fees. The value of the Amgen shares used in determining the purchase price was $58.525 per share based on the average of the closing prices of Amgen common stock for a range of four trading days, two days prior to and two days subsequent to the announcement on December 17, 2001 that a definitive agreement related to the merger had been signed.

Unless otherwise indicated, the discussions in this report relate to Amgen as a stand-alone entity and do not reflect the impact of the acquisition of Immunex.

Liquidity and Capital Resources

The Company had cash, cash equivalents, and marketable securities of $5,057.8 million at June 30, 2002, compared with $2,662.2 million at December 31, 2001. Cash provided by operating activities has been and is expected to continue to be the Company's primary recurring source of funds. During the six months ended June 30, 2002, operations provided $1,124.6 million of cash compared with $667.7 million for the same period last year. The increase in cash provided by operating activities for the six months ended June 30, 2002 resulted primarily from higher net income and favorable changes to accrued liabilities.

Capital expenditures totaled $192.6 million for the six months ended June 30, 2002, compared with $201.2 million for the same period a year ago.

In the fourth quarter of 2001, the Company recorded a charge of $203.1 million primarily related to the costs of terminating collaboration agreements with various third parties. Of this amount, $100.7 million related to amounts to be paid to third parties in connection with the termination of these agreements. As of June 30, 2002, approximately $64.9 million of this amount remains to be paid under the various terminated agreements.

The Company receives cash from the exercise of employee stock options and proceeds from the sale of stock by Amgen pursuant to the employee stock purchase plan. During the six months ended June 30, 2002, employee stock option exercises and proceeds from the sale of stock by Amgen pursuant to the employee stock purchase plan provided $141.4 million of cash compared with $125.4 million for the same period last year. Proceeds from the exercise of employee stock options will vary from period to period based upon, among other factors, fluctuations in the market value of the Company's stock relative to the exercise price of such options.

The Company has a stock repurchase program primarily to reduce the dilutive effect of its employee stock option and stock purchase plans. During the six months ended June 30, 2002, the Company purchased 25.5 million shares of its common stock at a total cost of $1,306.0 million compared with 2.9 million shares purchased at a cost of $167.9 million during the same period last year. Stock repurchased during the six months ended June 30, 2002 includes 11.3 million shares of common stock repurchased simultaneously with the issuance of the 30-year, zero-coupon senior convertible notes (the "Convertible Notes", discussed below) at a total cost of $650 million. In June 2002, the Board of Directors authorized the Company to repurchase up to an additional $2.0 billion of common stock through June 30, 2004. At the time of the additional authorization, the Company had approximately $257.1 million remaining under the previous authorized stock repurchase program. The amount the Company spends on and the number of shares repurchased each quarter varies based on a variety of factors, including the stock price and blackout periods in which the Company is restricted from repurchasing shares. As of June 30, 2002, $1,956.5 million was available for stock repurchases through June 30, 2004.

On March 1, 2002, the Company issued $3.95 billion in aggregate face amount at maturity of Convertible Notes with a yield to maturity of 1.125%. The gross proceeds from the offering were approximately $2.82 billion. The original issue discount of $1.13 billion is being accreted to interest expense over the life of the Convertible Notes using the effective interest method. Debt issuance costs were approximately $56.5 million and are being amortized on a straight-line basis over the life of the notes.

To provide for financial flexibility and increased liquidity, the Company has established several other sources of debt financing. As of June 30, 2002, the Company had $223 million of unsecured long-term debt securities outstanding. These unsecured long-term debt securities consisted of: 1) $100 million of debt securities that bear interest at a fixed rate of 6.5% and mature in 2007 under a $500 million debt shelf registration (the "Shelf"); 2) $100 million of debt securities that bear interest at a fixed rate of 8.1% and mature in 2097; and 3) $23 million of debt securities that bear interest at a fixed rate of 6.2% and mature in 2003. The Company's outstanding long-term debt is rated A2 by Moody's and A+ by Standard & Poor's ("S&P"), upgraded by S&P from A in July 2002. Under the Shelf, all of the remaining $400 million of debt securities available for issuance may be offered under the Company's medium-term note program with terms to be determined by market conditions.

The Company's sources of debt financing also include a commercial paper program which provides for unsecured short-term borrowings up to an aggregate face amount of $200 million. As of June 30, 2002, commercial paper with a face amount of $100 million was outstanding. These borrowings had maturities of less than one month and had effective interest rates averaging 1.8%. In addition, the Company has an unsecured $150 million committed credit facility with five participating banking institutions that expires on May 28, 2003. This credit facility supports the

Company's commercial paper program. As of June 30, 2002, no amounts were outstanding under this line of credit.

The primary objectives for the Company's fixed income investment portfolio are liquidity and safety of principal. Investments are made to achieve the highest rate of return to the Company, consistent with these two objectives. The Company's investment policy limits investments to certain types of instruments issued by institutions with investment grade credit ratings and places restrictions on maturities and concentration by type and issuer.

The Company believes that existing funds, cash generated from operations, and existing sources of debt financing are adequate to satisfy its working capital and capital expenditure requirements for the foreseeable future, as well as to support its stock repurchase program (see "Financial Outlook- Liquidity and capital resources"). However, the Company may raise additional capital from time to time.

Results of Operations

Product sales

Product sales primarily consist of sales of EPOGEN® (Epoetin alfa), Aranesp™ (darbepoetin alfa), NEUPOGEN® (Filgrastim), and Neulasta™ (pegfilgrastim). For the three and six months ended June 30, 2002, product sales were $1,115.2 million and $2,023.8 million, respectively. These amounts represent increases of $256.3 and $366.5 million, or 30% and 22%, respectively, over the same periods last year. Quarterly product sales are influenced by a number of factors, including underlying demand, wholesaler and end-user inventory management practices, and foreign exchange effects.

EPOGEN®/Aranesp™

In 2001, the Company received approval to market Aranesp™ in the U.S., most countries in the European Union ("EU"), Australia, and New Zealand for the treatment of anemia associated with chronic renal failure, including patients on dialysis and patients not on dialysis. As a result of the timing of these launches, including the U.S. launch in September 2001, Aranesp™ sales during the three and six months ended June 30, 2001 were not material.

Combined EPOGEN® and Aranesp™ sales were $626.0 million and $1,177.4 million for the three and six months ended June 30, 2002, respectively. These amounts represent increases of $107.6 million and $155.9 million, or 21% and 15%, respectively, over the same periods last year. The increases for the three and six months ended June 30, 2002 were primarily due to Aranesp™ sales and EPOGEN® demand growth. EPOGEN® demand includes the effects of patient population growth and inflation-related price increases.

EPOGEN® sales for the three months ended June 30, 2002 were $570.3 million, an increase of 10% over EPOGEN® sales in the same period last year. The Company believes that EPOGEN® sales for the three months ended June 30, 2002 were driven primarily by demand growth in the high-single digits, and to a lesser extent, wholesaler inventory changes. EPOGEN® sales for the six months ended June 30, 2002 were $1,082.5 million, an increase of 6% over EPOGEN® sales in the

same period last year. The increase in EPOGEN® sales for the six months ended June 30, 2002 was driven principally by demand growth, and to a lesser extent, wholesaler inventory changes.

Aranesp™ sales for the three and six months ended June 30, 2002 were $55.7 million and $94.9 million, respectively. The Company believes that Aranesp™ sales for the three and six months ended June 30, 2002 were driven primarily by demand.

NEUPOGEN®/Neulasta™

With the U.S. launch of Neulasta™ on April 1, 2002, combined NEUPOGEN® and Neulasta™ sales were $473.2 million and $828.2 million for the three and six months ended June 30, 2002, respectively. These amounts represent increases of $133.6 million and $194.6 million, or 39% and 31%, respectively, over NEUPOGEN® only sales the same periods last year. NEUPOGEN® sales for the three and six months ended June 30, 2002 were $363.4 and $718.4 million, respectively. These amounts represent increases of $23.8 million and $84.8 million, or 7% and 13%, respectively over the same periods last year. Neulasta™ sales for the three months ended June 30, 2002 were $109.8 million.

The Company believes that the increases in combined sales for NEUPOGEN® and Neulasta™ (the “filgrastim franchise”) for the three and six months ended June 30, 2002 were primarily driven by demand, which includes: the launch of Neulasta™, the conversion of NEUPOGEN® patients to Neulasta™, new filgrastim franchise patients, and the effect of higher NEUPOGEN(R) prices in the U.S. The Company believes that combined worldwide demand for the three months ended June 30, 2002 grew in the mid-20% range for the filgrastim franchise. The sales growth for the three months ended June 30, 2002 also benefited from wholesaler inventory changes, primarily normal inventory stocking in support of the Neulasta™ launch. The sales growth for the six months ended June 30, 2002 benefited from wholesaler inventory changes, also, in part, due to normal inventory stocking in support of the Neulasta™ launch.

Corporate partner revenues

Corporate partner revenues were $53.9 million and $85.4 million for the three and six months ended June 30, 2002, respectively. Of these amounts, $44.9 million and $70.1 million related to amounts earned from Kirin-Amgen, Inc. (“Kirin-Amgen”) for the three and six months ended June 30, 2002, respectively. Corporate partner revenues decreased by $16.4 million and $36.0 million, or 23% and 30%, respectively, from the same periods last year. These decreases were primarily due to lower revenues earned from Kirin-Amgen related to late-state development programs conducted on behalf of Kirin-Amgen.

Royalty income

Substantially all royalty income earned by Amgen relates to amounts received from sales of Epoetin alfa by Johnson & Johnson in the U.S. for use in non-dialysis settings. Royalty income was $80.0 million and $148.4 million for the three and six months ended June 30, 2002, respectively. These amounts represent increases of $22.5 million and $38.8 million, or 39% and 35%, respectively, over the same periods last year. These increases were due to higher royalties earned from Johnson & Johnson from its sales of Epoetin alfa.

Cost of sales

Cost of sales as a percentage of product sales was 11.8% and 11.6% for the three and six months ended June 30, 2002, respectively, compared with 11.5% and 11.3% for the same periods last year. These increases were primarily due to the impact of higher manufacturing costs for the Company's recently launched products.

Research and development

During the three and six months ended June 30, 2002, research and development ("R&D") expenses increased $24.8 million and $21.5 million, or 12% and 5%, respectively, over the same periods last year. These increases were primarily due to higher staff-related costs and clinical trial costs necessary to support ongoing research and product development activities, partially offset by lower outside R&D costs.

Selling, general and administrative

During the three and six months ended June 30, 2002, selling, general and administrative ("SG&A") expenses increased $94.0 million and $143.6 million, or 42% and 34%, respectively, over the same periods last year. These increases were primarily due to higher outside marketing expenses and staff-related costs as the Company increased its support for new products and new product launches.

Interest and other income

During the three and six months ended June 30, 2002, interest and other income increased $5.8 million and $0.4 million, or 15% and 0%, respectively, over the same periods last year. The increase for the three months ended June 30, 2002 was primarily due to higher interest income generated from the Company's investment portfolio as a result of higher average cash balances, partially offset by lower average interest rates. The increase for the six months ended June 30, 2002 was primarily due to higher interest income generated from the Company's investment portfolio as a result of higher average cash balances, substantially offset by lower realized gains on the sale of equity investments in the current year period, and lower average interest rates.

Income taxes

The Company's effective tax rate for both the three and six months ended June 30, 2002 was 31.0%, compared with 33.7% and 33.8% for the same periods last year. The Company's tax rate has decreased primarily due to an increase in the amount of permanently reinvested foreign earnings resulting from a restructuring of the Company's Puerto Rico operations.

Summary of Critical Accounting Policies

EPOGEN® revenue recognition

The Company has the exclusive right to sell Epoetin alfa for dialysis, certain diagnostics, and all non-human, non-research uses in the United States. Amgen has granted to Johnson & Johnson a license relating to Epoetin alfa for sales in the United States for all human uses except dialysis and diagnostics. Pursuant to this license, the Company and Johnson & Johnson are required to

compensate each other for Epoetin alfa sales that either party makes into the other party's exclusive market, sometimes referred to as "spillover" sales. Accordingly, Amgen does not recognize product sales it makes into the exclusive market of Johnson & Johnson and does recognize the product sales made by Johnson & Johnson into Amgen's exclusive market. Sales in Amgen's exclusive market are derived from the Company's sales to its customers, as adjusted for any spillover sales. The Company is employing an arbitrated audit methodology to measure each party's spillover sales based on independent third-party data on shipments to end users and their estimated usage. Data on end user usage is derived in part using market sampling techniques, and accordingly, the results of such sampling can produce variability in recognized spillover sales. The Company initially recognizes spillover sales based on estimates of shipments to end users and their usage, utilizing historical third-party data and subsequently adjusts such amounts based on revised third-party data as received. Differences between initially estimated spillover sales and amounts based on revised third-party data could produce materially different amounts for recognized EPOGEN® sales. However, such differences to date have not been material.

Inventory capitalization

The Company capitalizes inventory costs associated with certain product candidates prior to regulatory approval, based on management's judgment of probable future commercialization. The Company would be required to expense previously capitalized costs related to pre-approval inventory upon a change in such judgment, due to, among other factors, a decision denying approval of the product candidate by the necessary regulatory bodies. At June 30, 2002, the Company did not have capitalized inventory related to product candidates.

Financial Outlook

Liquidity and capital resources

As a result of the closing of the Immunex acquisition, the Company funded the cash portion of the merger consideration of approximately $2.5 billion. Additional impacts to liquidity related to the Immunex acquisition include:

- cash and investments acquired from Immunex of approximately $1.2 billion;
- proceeds from the sale of Leukine® to Schering of approximately $380 million; and
- costs associated with the Helix project of approximately $200 million related to the termination of the Immunex synthetic lease.

The Company previously estimated spending on capital projects and equipment to be approximately $450 million to $550 million in 2002. Following the acquisition of Immunex, the Company anticipates significantly higher spending on capital projects primarily due to certain acquired facilities.

Results of operations

In the future, the Company expects growth of its businesses to be driven by new products, primarily Aranesp™, Neulasta™, and Enbrel® (etanercept).

Aranesp™

In June 2002, the European Committee on Proprietary Medicinal Products ("CPMP") recommended approval of Aranesp™ for the treatment of anemia in adult cancer patients with solid tumors receiving chemotherapy. The European Commission must ratify the CPMP recommendation prior to its approval of the marketing authorization. Once ratified, the Company will obtain the extension to the indications for Aranesp™ throughout the EU, and will launch this new indication according to pricing and reimbursement procedures in each EU country. In July 2002, the Company received FDA approval to market Aranesp™ for the treatment of chemotherapy-induced anemia in patients with non-myeloid malignancies. In 2001, Aranesp™ was approved in the U.S., most countries in the EU, Australia, and New Zealand for the treatment of anemia associated with chronic renal failure, including patients on dialysis and patients not on dialysis.

Future Aranesp™ demand may be dependent, in part, upon such factors as: the effects of competitive pressures, penetration of existing and new market opportunities, and changes in foreign currency exchange rates. In addition, future worldwide Aranesp™ sales may be affected by cost containment pressures from governments and private insurers on health care providers, as well as the availability of reimbursement by third-party payors, including governments and private insurance plans. See "Forward Looking Statements and Factors that may Affect Amgen."

EPOGEN®

The Company expects future growth in its EPOGEN® business, which is marketed in the U.S. for the treatment of anemia associated with chronic renal failure, to come primarily from patient population growth and inflation-related price increases. Patients receiving treatment for end stage renal disease are covered primarily under medical programs provided by the federal government. Therefore, EPOGEN® sales may also be affected by future changes in reimbursement rates or a change in the basis for reimbursement by the federal government. Aranesp™ may compete with EPOGEN® as health care providers in the U.S. may transition from administering EPOGEN® to Aranesp™. See "Forward Looking Statements and Factors that may Affect Amgen."

NEUPOGEN®/Neulasta™

In January 2002, the Company received regulatory approval to market Neulasta™, its new white blood cell booster, in the U.S. Neulasta™, administered as a single fixed dose per chemotherapy cycle, is indicated for decreasing the incidence of infection, as manifested by febrile neutropenia in patients with non-myeloid malignancies receiving myelosuppressive anti-cancer drugs associated with clinically significant incidence of febrile neutropenia. The Company launched Neulasta™ in the U.S. on April 1, 2002. In June 2002, the CPMP recommended approval of Neulasta™ for the reduction in the duration of neutropenia and the incidence of febrile neutropenia in patients with cytotoxic chemotherapy for malignancy. The European Commission must ratify the CPMP recommendation prior to its approval of the marketing authorization. Once ratified, the Company will launch Neulasta™ according to pricing and reimbursement procedures in each EU country.

NEUPOGEN® is indicated to: decrease the incidence of infection, as manifested by febrile neutropenia, in chemotherapy patients with non-myeloid malignancies; to reduce the duration of neutropenia for patients undergoing myeloablative therapy followed by bone marrow transplantation; to reduce the incidence and duration of neutropenia-related consequences in patients

with severe chronic neutropenia; for use in mobilization of peripheral blood progenitor cells for stem cell transplantation; and to reduce the recovery time of neutrophils and the duration of fever following chemotherapy treatment in patients being treated for acute myelogenous leukemia. In the EU, Canada, and Australia, NEUPOGEN® is marketed for the same indications. The Company also markets NEUPOGEN® in the EU, Canada, and Australia for the treatment of neutropenia in HIV patients receiving antiviral and/or other myelosuppressive medications.

The Company believes that future demand for the filgrastim franchise will be dependent upon: penetration of existing markets, the conversion of NEUPOGEN® patients to Neulasta™, new filgrastim franchise patients, inflation-related price increases, the effects of competitive products, the development of new treatments for cancer, cost containment pressures, and the availability of reimbursement. NEUPOGEN® usage is expected to continue to be affected by cost containment pressures from governments and private insurers on health care providers worldwide. Neulasta™ usage is expected to be affected by similar cost containment pressures from governments and private insurers on health care providers in the U.S. Reported NEUPOGEN® sales will continue to be affected by changes in foreign currency exchange rates. In both domestic and foreign markets, sales of NEUPOGEN® are dependent, in part, on the availability of reimbursement from third-party payors such as governments (for example, Medicare and Medicaid programs in the U.S.) and private insurance plans. In domestic markets, sales of Neulasta™ are also dependent, in part, on the availability of reimbursement from third-party payors such as governments and private insurance plans. Therefore, filgrastim franchise sales may also be affected by future changes in reimbursement rates or changes in the bases for reimbursement. In addition, chemotherapy treatments that are less myelosuppressive may require less NEUPOGEN®/Neulasta™. See “Forward Looking Statements and Factors that may Affect Amgen.”

Enbrel®

With the acquisition of Immunex in July 2002, the Company acquired the rights to Enbrel® in the U.S. and Canada. Enbrel® is currently marketed in the U.S. and Canada under a promotion agreement with Wyeth. Enbrel® is approved in the U.S. for: the reduction of the signs and symptoms in patients with moderately to severely active rheumatoid arthritis (“RA”); treating moderately to severely active polyarticular-course juvenile RA in patients who have had an inadequate response to one or more disease modifying antirheumatic drugs; inhibiting the progression of structural damage in patients with moderately to severely active RA; and for reducing the signs and symptoms of active arthritis in patients with psoriatic arthritis. The Company believes that future sales for Enbrel® will be dependent, in part, upon such factors as: limits on the current supply of and sources of Enbrel®, penetration of existing and new market opportunities, the availability and extent of reimbursement by third-party payors, the effects of competitive pressures, and adverse developments discovered with respect to Enbrel®’s safety. In addition, while Kineret™ (anakinra) is generally considered complementary to Enbrel®, there may be circumstances in which physicians may substitute Kineret™ for Enbrel®. See “Forward Looking Statements and Factors that may Affect Amgen.”

Kineret™

In November 2001, the Company received regulatory approval to market Kineret™ in the U.S. for the reduction in signs and symptoms of moderately to severely active RA in adult patients who have failed one or more disease modifying antirheumatic drugs. In March 2002, the Company received approval for Kineret™ in the EU for the treatment of the signs and symptoms of RA in

combination with methotrexate, in patients with an inadequate response to methotrexate alone. Worldwide Kineret™ sales may be dependent, in part, upon such factors as: the effects of competitive pressures, penetration of existing and new market opportunities, the availability and extent of reimbursement by third-party payors including governments and private insurance plans, and changes in foreign currency exchange rates. See "Forward Looking Statements and Factors that may Affect Amgen."

Known Trends on Future Operations

Future operating results of the Company may be impacted by a number of factors, in part, resulting from the Immunex acquisition. The following known trends in our business are expected to impact our future liquidity and results of operations:

- Enbrel® sales will be recorded commencing from the July 15, 2002 closing date;
- corporate partner revenues are expected to be significantly lower in 2002 compared to the prior year as a result of lower funding of late stage clinical programs;
- cost of sales are expected to continue to be impacted by higher manufacturing costs for some of our recently launched products and acquired products;
- R&D spending is expected to accelerate in the second half of 2002, in part, as a result of the Immunex acquisition;
- SG&A spending is expected to accelerate in the second half of 2002 primarily as a result of the Immunex acquisition;
- we expect to record a one-time non-cash expense related to the write-off of acquired in-process R&D in the quarter ending September 30, 2002, estimated to be approximately $2.4 billion;
- the impact of ongoing non-cash amortization expense of acquired identifiable intangible assets, principally related to Enbrel®. Intangible assets will be amortized over the useful lives, estimated to be 15 years, and the related amortization expense is estimated to be approximately $260 million on an annual basis, net of tax; and
- spending on capital projects is expected to be significantly higher primarily due to capital requirements for certain acquired facilities.

In accordance with GAAP, Amgen will account for the merger using the purchase method of accounting. Under the purchase method, the estimated purchase price of the acquisition is equal to: 1) the cash consideration; 2) the market value of Amgen common stock issued in connection with the merger based on the average of the closing prices of Amgen common stock for a range of four trading days, two days prior to and two days subsequent to the announcement on December 17, 2001; 3) the fair value of Amgen options issued in exchange for the options to purchase shares of Immunex common stock; and 4) the amount of direct transaction costs associated with the merger. Amgen will allocate the estimated purchase price to the net tangible and identifiable intangible assets acquired based on their respective fair values on July 15, 2002 (the date of the completion of the merger). Any excess of the estimated purchase price over the fair value of net assets acquired will be accounted for as goodwill. Amortizable intangible assets, principally related to Enbrel®, will be amortized over the useful lives, estimated to be 15 years, resulting in amortization of $260 million on an annual basis, net of tax. In-process R&D, currently estimated to be $2.4 billion, will be expensed during the quarter ending September 30, 2002. The current amounts above relating to acquired in-process R&D and amortization of identifiable intangible assets are based on a preliminary allocation of the purchase price, and a final determination will be made upon completion of a third-party valuation. Therefore, the final amounts may differ significantly from the corresponding preliminary amounts presented above. The final determination of the purchase price allocation will be based on the fair values of

assets acquired, including the fair values of acquired in-process R&D and other identifiable intangible assets, and the fair values of liabilities assumed as of July 15, 2002 (the date of the completion of the merger).

Forward Looking Statements and Factors that may Affect Amgen

The Company is providing forward looking information in this quarterly report as of the date of filing, and does not plan to update this information and expressly disclaims any duty to update the information contained in this filing, except as required by law.

Except for the historical information contained herein, the matters discussed herein are by their nature forward-looking. Investors are cautioned that forward-looking statements or projections made by the Company, including those made in this document, are subject to risks and uncertainties that may cause actual results to differ materially from those projected. Reference is made in particular to forward-looking statements regarding product sales, expenses, earnings per share, liquidity and capital resources, and known trends on future operations. Amgen and its subsidiaries operate in a rapidly changing environment that involves a number of risks, some of which are beyond our control. Future operating results and the Company's stock price may be affected by a number of factors. The following discussion highlights some of these risks.

Our product development efforts may not result in commercial products.

We intend to continue an aggressive product development program. Successful product development in the biotechnology industry is highly uncertain, and very few research and development projects produce a commercial product. Product candidates that appear promising in the early phases of development, such as in early human clinical trials, may fail to reach the market for a number of reasons, such as:

- the product candidate did not demonstrate acceptable clinical trial results even though it demonstrated positive preclinical trial results
- the product candidate was not effective in treating a specified condition or illness
- the product candidate had harmful side effects on humans
- the necessary regulatory bodies such as the U.S. Food and Drug Administration, did not approve our product candidate for an intended use
- the product candidate was not economical for us to manufacture and commercialize
- other companies or people have or may have proprietary rights to our product candidate, such as patent rights, and will not let us sell it on reasonable terms, or at all
- the product candidate is not cost effective in light of existing therapeutics

Several of our product candidates have failed at various stages in the product development process, including Brain Derived Neurotrophic Factor ("BDNF"), Megakaryocyte Growth and Development Factor ("MGDF") and Glial Cell-line Derived Neurotrophic Factor ("GDNF"). For example, in 1997, we announced the failure of BDNF for the treatment of amyotrophic lateral sclerosis, or Lou Gehrig's Disease, because the product candidate, when administered by injection, did not produce acceptable clinical results for a specific use after a phase 3 trial, even though BDNF had progressed successfully through preclinical and earlier clinical trials. In addition, in 1998, we discontinued development of MGDF, a novel platelet growth factor, at the phase 3 trial stage after several people in platelet donation trials developed low platelet counts and neutralizing antibodies. In 1999 we discontinued development of GDNF after a phase 1/2 trial of GDNF in Parkinson's disease failed to demonstrate a statistically significant benefit. Of course, there may be other factors

that prevent us from marketing a product. We cannot guarantee we will be able to produce commercially successful products. Further, clinical trial results are frequently susceptible to varying interpretations by scientists, medical personnel, regulatory personnel, statisticians, and others which may delay, limit, or prevent further clinical development or regulatory approvals of a product candidate. Also, the length of time that it takes for us to complete clinical trials and obtain regulatory approval for product marketing has in the past varied by product and by the intended use of a product. We expect that this will likely be the case with future product candidates and we cannot predict the length of time to complete necessary clinical trials and obtain regulatory approval. See "—Our current products and products in development cannot be sold if we do not obtain and maintain regulatory approval."

Our current products and products in development cannot be sold if we do not obtain and maintain regulatory approval.

We conduct research, preclinical testing, and clinical trials and we manufacture or contract manufacture our product candidates. We also manufacture or contract manufacture, price, sell, distribute, and market or co-market our products for their approved indications. These activities are subject to extensive regulation by numerous state and federal governmental authorities in the U.S., such as the FDA and HCFA, as well as by foreign countries, including the European Union. Currently, we are required in the U.S. and in foreign countries to obtain approval from those countries' regulatory authorities before we can market and sell our products in those countries. In our experience, obtaining regulatory approval is costly and takes many years, and after it is obtained, it remains costly to maintain. The FDA and other U.S. and foreign regulatory agencies have substantial discretion to terminate clinical trials, require additional testing, delay or withhold registration and marketing approval, and mandate product withdrawals. EPOGEN®, Kineret™ and Neulasta™ are currently approved in the U.S. and NEUPOGEN® and Aranesp™ are currently approved in the U.S., the EU, and in some other foreign countries for specific uses. Enbrel® is approved in the U.S. and Canada. We currently manufacture EPOGEN®, NEUPOGEN®, Aranesp™, Kineret™, Neulasta™, and INFERGEN® and market EPOGEN®, NEUPOGEN®, Aranesp™, Neulasta™, Kineret™ and Enbrel®, and we plan to manufacture and market many of our potential products. Even though we have obtained regulatory approval for EPOGEN®, NEUPOGEN®, Aranesp™, Kineret™, Neulasta™, and INFERGEN®, these products and our manufacturing processes are subject to continued review by the FDA and other regulatory authorities. Currently Enbrel® is manufactured by a third-party contract manufacturer, Boehringer Ingelheim Pharma KG ("BI Pharma"), which is subject to FDA regulatory authority as well. We plan to manufacture Enbrel® ourselves and are in the process of preparing our Rhode Island manufacturing facility for this. FDA approval is required for commercial production of Enbrel® at this facility and there can be no assurance that we will able to obtain (and maintain) FDA approval on a timely basis or at all. In addition, later discovery of unknown problems with our products or manufacturing processes or those of our contract manufacturers could result in restrictions on such products or manufacturing processes, including potential withdrawal of the products from the market. If regulatory authorities determine that we or our contract manufacturers have violated regulations or if they restrict, suspend, or revoke our prior approvals, they could prohibit us from manufacturing or selling EPOGEN®, NEUPOGEN®, Aranesp™, Kineret™, Neulasta™, Enbrel® and/or INFERGEN® until we or our contract manufacturers comply or indefinitely. In addition, if regulatory authorities determine that we have not complied with regulations in the research and development of a product candidate, then they may not approve the product candidate and we will not be able to market and sell it. If we are unable to market and sell our products or product candidates, our business would be adversely affected.

Guidelines and recommendations published by various organizations can reduce the use of our products.

Government agencies promulgate regulations and guidelines directly applicable to us and to our products. However, professional societies, practice management groups, private health/science foundations, and organizations involved in various diseases from time to time may also publish guidelines or recommendations to the health care and patient communities. Recommendations of government agencies or these other groups/organizations may relate to such matters as usage, dosage, route of administration, and use of concomitant therapies. Organizations like these have in the past made recommendations about our products. Recommendations or guidelines that are followed by patients and health care providers could result in decreased use of our products. In addition, the perception by the investment community or stockholders that recommendations or guidelines will result in decreased use of our products could adversely affect prevailing market prices for our common stock.

Our sales depend on payment and reimbursement from third-party payors, and a reduction in the payment rate or reimbursement could result in decreased use or sales of our products.

In both domestic and foreign markets, sales of our products are dependent, in part, on the availability of reimbursement from third-party payors such as state and federal governments, under programs such as Medicare and Medicaid in the U.S., and private insurance plans. Medicare does not cover prescriptions for Enbrel®. In certain foreign markets, the pricing and profitability of our products generally are subject to government controls. In the U.S., there have been, and we expect there will continue to be, a number of state and federal proposals that could limit the amount that state or federal governments will pay to reimburse the cost of drugs. In addition, we believe the increasing emphasis on managed care in the U.S. has and will continue to put pressure on the price and usage of our products, which may adversely impact product sales. Further, when a new therapeutic product is approved, the availability of governmental and/or private reimbursement for that product is uncertain, as is the amount for which that product will be reimbursed. We cannot predict the availability or amount of reimbursement for our recently approved products or product candidates, including those at a late stage of development, and current reimbursement policies for existing products may change at any time. For example, we believe that sales of Aranesp™, Neulasta™ and Kineret™ are and will be affected by government and private payor reimbursement policies.

If reimbursement for EPOGEN®, NEUPOGEN® and/or Enbrel® changes adversely or if we fail to obtain adequate reimbursement for our other current or future products, health care providers may limit how much or under what circumstances they will administer them, which could reduce the use of our products or cause us to reduce the price of our products. This could result in lower product sales or revenues which could have a material adverse effect on us and our results of operations. For example, in the U.S. the use of EPOGEN® in connection with treatment for end stage renal disease is funded primarily by the U.S. federal government. In early 1997, HCFA instituted a reimbursement change for EPOGEN® which adversely affected Amgen's EPOGEN® sales, until the policies were revised. Therefore, as in the past, EPOGEN® sales could be adversely affected by future changes in reimbursement rates or the basis for reimbursement by the federal government for the end stage renal disease program.

If our intellectual property positions are challenged, invalidated or circumvented, or if we fail to prevail in present and future intellectual property litigation, our business could be adversely affected.

The patent positions of pharmaceutical and biotechnology companies can be highly uncertain and often involve complex legal, scientific, and factual questions. To date, there has emerged no consistent policy regarding breadth of claims allowed in such companies' patents. Third parties may challenge, invalidate, or circumvent our patents and patent applications relating to our products, product candidates, and technologies. In addition, our patent positions might not protect us against competitors with similar products or technologies because competing products or technologies may not infringe our patents. For certain of our product candidates, there are third parties who have patents or pending patents that they may claim prevent us from commercializing these product candidates in certain territories. Patent disputes are frequent, costly and can preclude commercialization of products. We are currently, and in the future may be, involved in patent litigation. For example, we are involved in ongoing patent infringement lawsuits against Transkaryotic Therapies, Inc. and Aventis with respect to our erythropoietin patents. The trial court decided in our favor on January 19, 2001, however, Transkaryotic Therapies, Inc. and Aventis have appealed the decision. If we ultimately lose these or other litigations we could be subject to competition and/or significant liabilities, we could be required to enter into third-party licenses for the infringed product or technology, or we could be required to cease using the technology or product in dispute. In addition, we cannot guarantee that such licenses will be available on terms acceptable to us.

Our success depends in part on our ability to obtain and defend patent rights and other intellectual property rights that are important to the commercialization of our products and product candidates. We have filed applications for a number of patents and have been granted patents or obtained rights relating to erythropoietin, recombinant G-CSF, etanercept and our other products and potential products. We market our erythropoietin, G-CSF and etanercept products as EPOGEN®, NEUPOGEN® and Enbrel®, respectively. In the United States, we have been issued or obtained rights to several patents relating to erythropoietin that generally cover DNA and host cells, processes for making erythropoietin, various product claims to erythropoietin, cells that make levels of erythropoietin, and pharmaceutical compositions of erythropoietin. We have also been issued or obtained rights to U.S. patents relating to G-CSF that cover aspects of DNA, vectors, cells, processes, polypeptides, methods of treatment using G-CSF polypeptides, methods of enhancing bone marrow transplantation, and treating burn wounds, methods for recombinant production of G-CSF and analogs of G-CSF. We also have been granted or obtained rights to a patent in the EU relating to erythropoietin, a patent in the EU relating to G-CSF, two patents in the EU relating to darbepoetin alfa and hyperglycosylated erythropoietic proteins, and a patent in the U.S. and a patent in the EU relating to anakinra. Enbrel is a fusion protein consisting of a dimer of two subunits, each comprising a TNF receptor domain derived from a TNF receptor known as "p80," fused to a segment derived from a human antibody molecule known as an "Fc domain." Immunex has been issued U.S. patents covering p80 TNFR, DNAs encoding p80 TNFR, and methods of using TNFR:Fc, including for the treatment of arthritis. Immunex was granted a European patent in December 1995 covering p80 TNFR DNAs, proteins and related technology.

We face substantial competition, and others may discover, develop, acquire or commercialize products before or more successfully than we do.

We operate in a highly competitive environment. Our products compete with other products or treatments for diseases for which our products may be indicated. For example, although we

maintain a substantial share of the chemotherapy induced neutropenia market, NEUPOGEN® competes in certain circumstances against a product marketed by Schering AG. EPOGEN® faces competition from other treatments for anemia in end stage renal disease patients in the U.S. In addition, Enbrel® competes in certain circumstances with rheumatoid arthritis products marketed by Centocor Inc./Johnson & Johnson, Aventis, Pharmacia and Merck as well as the generic drug methotrexate. Further, we believe that some of our newly approved products and late stage product candidates may face competition when and as they are approved and marketed. For example, Aranesp™ competes with an Epoetin alfa product marketed by Johnson & Johnson in certain anemia markets and Kineret™ competes in certain circumstances with rheumatoid arthritis products marketed by Centocor Inc./Johnson & Johnson, and others. Additionally, some of our competitors, including biotechnology and pharmaceutical companies, market products or are actively engaged in research and development in areas where we are developing product candidates. For example, we anticipate that Enbrel® will face competition from potential rheumatoid arthritis therapies being developed by, among others, Abbott Laboratories/Knoll. Large pharmaceutical corporations may have greater clinical, research, regulatory, manufacturing, and marketing resources than we do. In addition, some of our competitors may have technical or competitive advantages over us for the development of technologies and processes. These resources may make it difficult for us to compete with them to successfully discover, develop, and market new products.

Certain of our raw materials, medical devices and components are single-sourced from third parties; third-party supply failures could adversely affect our ability to supply our products.

Certain raw materials necessary for commercial manufacturing and formulation of our products are provided by single-source unaffiliated third-party suppliers. Also, certain medical devices and components necessary for fill, finish, and packaging of our products are provided by single-source unaffiliated third-party suppliers. Certain of these raw materials, medical devices, and components are the proprietary products of these unaffiliated third-party suppliers, and in some cases, such proprietary products are specifically cited in our drug application with the FDA such that they must be obtained from that specific sole source and could not be obtained from another supplier unless and until the FDA approved such other supplier. We would be unable to obtain these raw materials, medical devices, or components for an indeterminate period of time if these third-party single suppliers were to cease or interrupt production or otherwise fail to supply these materials or products to us for any reason, including due to regulatory requirements or action, due to adverse financial developments at or affecting the supplier, or due to labor shortages or disputes. This, in turn, could adversely affect our ability to satisfy demand for our products, which could adversely affect our operating results.

Also, certain of the raw materials required in the commercial manufacturing and the formulation of our products are derived from biological sources, including bovine serum and human serum albumin (“HSA”). The Company is investigating screening procedures with respect to certain biological sources and alternatives to them. Such raw materials may be subject to contamination and/or recall. A material shortage, contamination, and/or recall could adversely impact or disrupt our commercial manufacturing of our products or could result in a mandated withdrawal of our products from the market. This too, in turn, could adversely affect our ability to satisfy demand for our products, which could adversely affect our operating results.

Limits on our current source of supply for Enbrel® constrain Enbrel® sales.

Because demand for Enbrel® was projected to temporarily exceed supply, Immunex began an Enbrel® enrollment program in November 2000 to help ensure uninterrupted therapy for U.S. patients prescribed Enbrel® before January 1, 2001. The Enbrel® enrollment program called for these patients to register with Immunex and receive an enrollment number. As of January 1, 2001, patients considering therapy with Enbrel®, but not yet receiving treatment, were invited to enroll in the program and were placed on a waiting list to receive Enbrel® on a first come, first served basis once additional supply of Enbrel® becomes available. The enrolled patients do not include patients on the program waiting list. U.S. and Canadian supply of Enbrel® is impacted by many manufacturing and production variables, such as the timing and actual number of production runs, production success rate, bulk drug yield, the timing and outcome of product quality testing, and whether and when our Rhode Island manufacturing facility will be approved by the FDA. For example, in the second quarter of 2002, Immunex experienced a brief period where no Enbrel® was available to fill patient prescriptions, primarily due to variation in the expected production yield from BI Pharma. Once supply of Enbrel® became available, Immunex resumed filling orders on a first come, first served basis. If we are at any time unable to provide an uninterrupted supply of Enbrel® to all patients enrolled in the program, we may lose patients, physicians may elect to prescribe competing therapeutics instead of Enbrel®, our Enbrel® sales will be adversely affected, any of which could adversely affect our results of operations. See "—We depend on third parties for our supply of Enbrel®" and "—Our sources of supply for Enbrel® are limited."

We depend on third parties for our supply of Enbrel®.

BI Pharma is currently our sole supplier of Enbrel®; accordingly, our U.S. and Canadian supply of Enbrel® is currently primarily dependent on BI Pharma's production schedule for Enbrel®. We would be unable to obtain Enbrel® for an indeterminate period of time if BI Pharma or other third-party manufacturers used for Enbrel® production were to cease or interrupt production or services or otherwise fail to supply materials, products or services to us for any reason, including due to labor shortages or disputes, due to regulatory requirements or action, or due to contamination of product lots or product recalls. This in turn could materially reduce our ability to satisfy demand for Enbrel®, which could adversely affect our operating results. Factors that will affect our actual supply of Enbrel® at any time include, without limitation, the following:

- BI Pharma does not produce Enbrel® continuously; rather, it produces the drug through a series of periodic campaigns throughout the year. The amount of commercial inventory available to us at any time depends on a variety of factors, including the timing and actual number of BI Pharma's production runs, level of production yields and success rates, timing and outcome of product quality testing and the amount of vialing capacity.

- BI Pharma schedules the vialing production runs for Enbrel® in advance, based on the expected timing and yield of bulk drug production runs. Therefore, if BI Pharma realizes production yields beyond expected levels, or provides additional manufacturing capacity for Enbrel®, it may not have sufficient vialing capacity for all of the Enbrel® bulk drug that it produces. As a result, even if we are able to increase our supply of Enbrel® bulk drug, BI Pharma may not be able to vial the extra bulk drug in time to prevent any supply interruptions.

In addition, once we begin manufacturing Enbrel® in our Rhode Island manufacturing facility, we will be dependent on third parties for vialing Enbrel® bulk drug. If third-party vialers are unable to provide sufficient capacity or otherwise unable to provide vialing services to us, then supply of Enbrel® could be adversely affected. See "—Our sources of supply for Enbrel® are limited."

Our sources of supply for Enbrel® are limited.

Enbrel® supply for the U.S. and Canada is produced by BI Pharma, currently our sole source supplier. We also plan to manufacture Enbrel® ourselves and are in the process of preparing our Rhode Island manufacturing facility for this. The Rhode Island facility will require FDA approval before we can sell any product manufactured at this facility. See "—We depend on third-party manufacturers for our supply of Enbrel®." In addition, our current plan includes construction of a new large-scale cell culture commercial manufacturing facility, known as the BioNext Project, at the site of the current Rhode Island manufacturing facility. In April 2002, we announced that we had entered into a manufacturing agreement with Genentech, Inc. to produce Enbrel® at Genentech's manufacturing facility in South San Francisco, California. The manufacturing facility is subject to FDA approval, which the parties hope to obtain in 2004. Under the terms of the agreement, Genentech will produce Enbrel® through 2005, with an extension through 2006 by mutual agreement. In addition, Wyeth is constructing a new manufacturing facility in Ireland, which is expected to increase the United States and Canadian supply of Enbrel®. If additional manufacturing capacity at the Rhode Island site, pursuant to the Genentech agreement or the Ireland manufacturing facility is not completed, or if these manufacturing facilities do not receive FDA approval before we encounter supply constraints, our sales growth would again be restricted which could have an adverse effect on our results of operations. We anticipate commencing production runs and building commercially significant quantities of inventory of Enbrel® bulk drug at the Rhode Island manufacturing facility prior to estimated FDA approval of the facility. We would not be able to sell, and may be required to write off, inventory unless and until the Rhode Island manufacturing facility and our contract manufacturer for vialing the Enbrel® bulk drug manufactured at the Rhode Island facility are approved by the FDA, which approval is not assured.

Our marketing of Enbrel® will be dependent in part upon Wyeth.

Under the amended and restated promotion agreement, Amgen and Wyeth jointly market and sell Enbrel® in the United States and Canada. An Enbrel® management committee comprised of an equal number of representatives from Amgen and Wyeth is responsible for overseeing the marketing and sales of Enbrel®, including strategic planning, approval of an annual marketing plan, product pricing and establishing an Enbrel® brand team. The Enbrel® brand team, with equal representation from each of Amgen and Wyeth, will prepare and implement the annual marketing plan and will be responsible for all sales activities. If Wyeth fails to market Enbrel® effectively or Amgen and Wyeth fail to coordinate their efforts effectively, Amgen's sales of Enbrel® may not reach their full potential or may decline.

We may be required to perform additional clinical trials or change the labeling of our products if we or others identify side effects after our products are on the market.

If we or others identify side effects after any of our products are on the market, or if manufacturing problems occur, regulatory approval may be withdrawn and reformulation of our products, additional clinical trials, changes in labeling of our products and changes to or re-approvals of our manufacturing facilities may be required, any of which could have a material adverse effect on sales of the affected products and on our business and results of operations.

For example, because Enbrel® has only been marketed since 1998, its long-term effects on the development or course of serious infection, malignancy and autoimmune disease are largely

unknown and more rarely occurring side effects may not be known. In May 1999, Immunex announced an update to the package insert for Enbrel® to advise doctors not to start using Enbrel® in patients who have an active infection, and for doctors to exercise caution when considering using Enbrel® in patients with a history of recurring infections or with underlying conditions that may predispose patients to infections. In October 2000, Immunex again revised the package insert for Enbrel® in response to spontaneous adverse events reported to Immunex, including rare cases of hematologic and central nervous system disorders. The causal relationship between these adverse events and therapy with Enbrel® remains unclear. In January 2001, Immunex revised the package insert for Enbrel® to advise doctors that rare cases of central nervous system disorders, including seizures, and rare cases of tuberculosis have also been reported in patients using Enbrel®. It is possible that additional spontaneous adverse events will be reported to us as experience with Enbrel® continues. If we or others identify new adverse events for patients treated with Enbrel®, additional precautions, warnings or other changes in the label for Enbrel® may be required.

Our operating results may fluctuate, and this fluctuation could cause financial results to be below expectations.

Our operating results may fluctuate from period to period for a number of reasons. In budgeting our operating expenses, we assume that revenues will continue to grow; however, some of our operating expenses are fixed in the short term. Because of this, even a relatively small revenue shortfall may cause a period's results to be below our expectations or projections. A revenue shortfall could arise from any number of factors, some of which we cannot control. For example, we may face:

- lower than expected demand for our products
- inability to provide adequate supply of our products
- changes in the government's or private payors' reimbursement policies for our products
- changes in wholesaler buying patterns
- increased competition from new or existing products
- fluctuations in foreign currency exchange rates
- changes in our product pricing strategies

Of these, we would only have control over changes in our product pricing strategies and, of course, there may be other factors that affect our revenues in any given period.

We may be required to defend lawsuits or pay damages for product liability claims.

Product liability is a major risk in testing and marketing biotechnology and pharmaceutical products. We face substantial product liability exposure in human clinical trials and for products that we sell after regulatory approval. Product liability claims, regardless of their merits, could be costly and divert management's attention, and adversely affect our reputation and the demand for our products.

Our corporate compliance program cannot guarantee that we are in compliance with all potentially applicable federal and state regulations.

The development, manufacturing, pricing, sales and reimbursement of our products, together with the general operations of our company, is subject to extensive federal and state regulation. See "—Our current products and products in development cannot be sold if we do not obtain and maintain regulatory approval" and "—We may be required to perform additional clinical trials or change the labeling of our precuts if we or others identify side effects after our products are on the

market." While the Company has developed and instituted a corporate compliance program based on current best practices, we cannot assure you that the Company or its employees has or will be in compliance with all potentially applicable federal and state regulations. A failure to comply with any of these regulations could result in a range of actions, including, but not limited to, the termination of clinical trials, the failure to approve a product candidate, restrictions on the Company's products or manufacturing processes, including withdrawal of the Company's products from the market, significant fines or other sanctions or litigation.

We plan to grow rapidly, and if we fail to adequately manage that growth our business could be adversely impacted.

We have an aggressive growth plan that includes substantial and increasing investments in research and development, sales and marketing and facilities. Our plan has a number of risks, some of which we cannot control. For example:

- we may need to generate higher revenues to cover a higher level of operating expenses, and our ability to do so may depend on factors that we do not control
- we may need to attract and assimilate a large number of new employees
- we may need to manage complexities associated with a larger and faster growing organization
- we will need to accurately anticipate demand for the products we manufacture and maintain adequate manufacturing capacity, and our ability to do so may depend on factors that we do not control

Of course, there may be other risks and we cannot guarantee that we will be able to successfully manage these or other risks.

Our stock price is volatile, which could adversely affect your investment.

Our stock price, like that of other biotechnology companies, is highly volatile. For example, in the fifty-two weeks prior to February 25, 2002, the trading price of our common stock has ranged from a high of $75.06 per share to a low of $45.44 per share. Our stock price may be affected by such factors as:

- clinical trial results
- adverse developments regarding the safety or efficacy of our products
- actual or anticipated product supply constraints
- product development announcements by us or our competitors
- regulatory matters
- announcements in the scientific and research community
- intellectual property and legal matters
- changes in reimbursement policies or medical practices
- broader industry and market trends unrelated to our performance

In addition, if our revenues or earnings in any period fail to meet the investment community's expectations, there could be an immediate adverse impact on our stock price.

We may not realize all of the anticipated benefits of the merger.

The success of the merger will depend, in part, on our ability to realize the anticipated synergies, cost savings, and growth opportunities from integrating the businesses of Immunex with

the businesses of Amgen. Our success in realizing these benefits and the timing of this realization depend upon the successful integration of the operations of Immunex. The integration of two independent companies is a complex, costly, and time-consuming process. The difficulties of combining the operations of the companies include, among others:

- consolidating research and development and manufacturing operations
- retaining key employees
- consolidating corporate and administrative infrastructures
- coordinating sales and marketing functions
- preserving our and Immunex's research and development, distribution, marketing, promotion, and other important relationships
- minimizing the diversion of management's attention from ongoing business concerns
- coordinating geographically separate organizations

In addition, even if we are able to integrate Immunex's operations successfully, this integration may not result in the realization of the full benefits of the synergies, cost savings or sales and growth opportunities that we currently expect or that these benefits will be achieved within the anticipated time frame. For example, the elimination of significant duplicative costs may not be possible or may take longer than anticipated and the benefits from the merger may be offset by costs incurred in integrating the companies. We cannot assure you that the integration of Immunex with us will result in the realization of the full benefits anticipated by us to result from the merger. Our failure to achieve these benefits could have a material adverse effect on our results of operations.

Sales of a substantial amount of shares of our common stock by Wyeth, or the perception that a large number of shares will be sold by Wyeth, could depress the market price of our common stock.

As of July 15, 2002, Wyeth beneficially owned approximately 98,286,358 shares of our common stock. As required by a stockholders' rights agreement between us and Wyeth, we have filed with the Securities and Exchange Commission a shelf registration statement seeking to register the resale, from time to time, by Wyeth of the shares of our common stock received by it in connection with our acquisition of Immunex. This registration statement has not been declared effective. Under the stockholders' rights agreement, subject to certain conditions and limitations, Wyeth may request us to effect up to two underwritten syndicated offerings by supplement or amendment to the shelf registration statement. In addition, beginning on July 15, 2003 and until July 15, 2006, Wyeth may request up to four demand registrations (i.e. require that we file four additional registration statements) registering the resale of the shares of our common stock received by Wyeth in connection with our acquisition of Immunex. As a result, subject to certain black out, lock up and volume limitations set forth in the stockholders' right agreement, Wyeth will be entitled to sell a significant number of shares of our common stock. If Wyeth sells a substantial number of shares, or the market perceives that a large number of shares will be sold by Wyeth, the market price of our common stock could decline.

PART II — OTHER INFORMATION

Item 1. Legal Proceedings

Certain of the Company's legal proceedings are reported in the Company's Annual Report on Form 10-K for the year ended December 31, 2001, with material developments since that report described in the Company's Form 10-Q for the quarter ended March 31, 2002, and below. While it is not possible to predict accurately or to determine the eventual outcome of these matters, the Company believes that the outcome of these proceedings will not have a material adverse effect on the annual financial statements of the Company.

Transkaryotic Therapies and Aventis litigation

In the appeal proceedings in the United States, oral arguments were heard on May 7, 2002 by the Court of Appeals for the Federal Circuit.

Genentech litigation

The Court of Appeals for the Federal Circuit issued a decision April 29, 2002 vacating summary judgment of no literal infringement and affirming Genentech's non-compliance with the local rules, thereby precluding Genentech from proceeding on a theory of infringement under the doctrine of equivalents. The Federal Circuit Court of Appeals remanded the case to the United States District Court for the Northern District of California to determine the issue of literal infringement under a revised claim construction.

Average Wholesale Price Litigation

Amgen has been served with complaints in four separate civil actions broadly alleging that it, together with a large number of other pharmaceutical manufacturers, reported prices for certain products that overstate the Average Wholesale Price ("AWP"), allegedly inflating reimbursement, including co-payments paid to providers who prescribe and administer the products. The complaints assert claims under the federal RICO statutes and its state law corollaries, as well as state law claims for deceptive trade practices and common law fraud and seek an undetermined amount of damages, as well as other relief, including declaratory and injunctive relief. The cases include: *Citizens for Consumer Justice, et al., v. Abbott Laboratories, Inc., et al*. (U.S. District Court, District of Massachusetts); *State of Nevada v. American Home Products Corporation, et al.* (removed from Nevada state court to the U.S. District Court for the District of Nevada); *State of Montana ex rel. Mike McGrath, Attorney General v. Abbott Laboratories, et al*. (removed from Montana state court to the U.S. District Court for the District of Montana); and *Teamsters Health & Welfare Fund of Philadelphia, et al., v. Abbott Laboratories, Inc., et al*. (U.S. District Court for the Eastern District of Pennsylvania). Immunex Corporation was also served with complaints in the *Citizens for Consumer Justice, et al., v. Abbott Laboratories, Inc., et al, State of Nevada v. American Home Products Corporation, et al.* and *State of Montana ex rel. Mike McGrath, Attorney General v. Abbott Laboratories, et al*. cases.

On April 30, 2002, the Joint Panel on Multidistrict Litigation entered an order consolidating certain pending AWP litigation, including the Massachusetts action, and transferring those matters pending further order to Judge Patti Saris, U.S. District Court for the District of Massachusetts. The *Teamsters* case was subsequently transferred by order dated June 26, 2002. Both the Nevada and

Montana matters have been conditionally transferred to the District of Massachusetts, although plaintiffs in those cases have filed oppositions and intend to move to vacate the conditional transfer orders and have moved to remand those cases to state court, which motions are currently pending.

On June 27, 2002, Amgen and Immunex Corporation filed a motion to dismiss the complaint filed in the Nevada action. Plaintiff filed its opposition to that motion on July 15, 2002. The court has not, to date, scheduled a hearing on the motion. Neither Amgen nor Immunex Corporation has filed any responsive pleadings in any of the other pending matters listed above.

On July 18, 2002, Amgen learned that it and Immunex Corporation were also named as defendants, along with 38 other pharmaceutical manufacturers, in a putative class action filed in Superior Court for Alameda County, California. This action, which was brought under Section 17200 of California's Business & Professions Code, similarly alleges a similar scheme among defendants to overstate AWP. The complaint alleges that defendants violated California's Business and Professions Code (Section 17200) and seeks undefined damages, together with equitable and injunctive relief. Amgen has not yet been served with the complaint.

On November 27, 2001, the Action Alliance of Senior Citizens of Greater Philadelphia filed suit in the United States District Court for the Western District of Washington against Immunex Corporation alleging monopolistic, anti-competitive conduct in an industry-wide scheme to defraud the consumer by manipulating the AWP and selling drugs to physicians at prices below the reimbursement cost charged to Medicare. This lawsuit alleges violation of federal antitrust law. On May 1, 2002, Immunex Corporation received notice that a motion for multi-district litigation transfer had been granted and that this federal consumer class action case would be consolidated for pretrial proceedings in United States District Court in Boston, Massachusetts.

Securities Litigation

Shareholder Litigation

On April 29, 2002, Immunex Corporation announced the settlement, which settlement is subject to court approval among other things, of three lawsuits against Immunex Corporation and certain of Immunex Corporation's former directors and officers, and in the Osher matter, against Amgen relating to the acquisition of Immunex Corporation by Amgen: (i) a suit filed by David Osher, on behalf of a class of Immunex Corporation shareholders, against Immunex, all former members of Immunex Corporation's board of directors, Wyeth and Amgen; (ii) a suit filed by Adele Brody, on behalf of a class of Immunex Corporation shareholders against Immunex Corporation, Wyeth, all former members of Immunex Corporation's board of directors and the marital community of each named individual; and (iii) a suit filed by Edwin Weiner, on behalf of a class of Immunex Corporation shareholders, against Immunex Corporation, Wyeth, all former members of Immunex Corporation's board of directors and the marital community of each named individual.

In connection with the settlement, (i) Immunex Corporation and Amgen agreed to reduce the termination fee payable by Immunex Corporation or Amgen under certain circumstances set forth in the Amended and Restated Agreement and Plan of Merger dated December 16, 2001 between Amgen, AMS Acquisition Inc. and Immunex Corporation by $20 million, (ii) Immunex Corporation obtained an updated opinion from Merrill Lynch, Pierce, Fenner & Smith Incorporated regarding the fairness of the merger consideration from a financial point of view to be received by Immunex Corporation shareholders, and (iii) Immunex Corporation agreed to provide certain additional

disclosures regarding the merger in a Current Report on Form 8-K, which was filed with the SEC on April 30, 2002.

Stockholder Derivative Lawsuit

The plaintiff in the purported stockholder derivative lawsuit filed against all members of the Amgen board of directors has tentatively agreed to a dismissal without prejudice for no consideration.

ZymoGenetics litigation

On March 7, 2002, ZymoGenetics filed a patent infringement lawsuit against Immunex Corporation in the U.S. District Court for the Western District of Washington, relating to six U.S. patents having claims directed to certain fusion proteins and processes for making these proteins. The patents-in-suit are the following U.S. patents: 5,843,725; 6,018,026; 6,291,212 BI; 6,291,646 BI; 6,300,099 BI; and 6,323,323 BI. Although not specified in the complaint, it its public statements, ZymoGenetics asserts that the manufacture, importation, and sale of Enbrel® infringes these patents. ZymoGenetics seeks a declaration of infringement and available remedies under the patent laws, including monetary damages and injunctive relief.

Johnson & Johnson arbitrations

The trial concluded in April 2002. Closing arguments are scheduled to be heard in September 2002.

Governmental Investigations

According to press reports, approximately 20 pharmaceutical companies are under investigation by the U.S. Department of Justice, U.S. Department of Health and Human Services, and/or state agencies related to the pricing of their products. Immunex Corporation has received notice from the U.S. Department of Justice requesting it to produce documents in connection with a Civil False Claims Act investigation of the pricing of Immunex Corporation’s current and former products for sale and eventual reimbursement by Medicare or state Medicaid programs. Immunex Corporation also received similar requests from the U.S. Department of Health and Human Services and state agencies. Several of Immunex Corporation’s current and former products are or were regularly sold at substantial discounts from list price. The Company does not know what action, if any, the federal government or any state agency will take as a result of their investigations.

Item 4. Submission of Matters to a Vote of Security Holders

(a) The Company held its Annual Meeting of Stockholders on May 16, 2002.

(b) Omitted pursuant to Instruction 3 to Item 4 of Form 10-Q.

(c) The four matters voted upon at the meeting were: (i) To approve the issuance of Amgen common stock, par value $.0001 per share, to the shareholders of Immunex pursuant to the Amended and Restated Agreement and Plan of Merger dated December 16, 2001 between Amgen Inc., AMS Acquisition Inc. and Immunex Corporation (“Proposal

One"); (ii) to elect three directors to a three year term of office expiring at the Annual Meeting of Stockholders in the year 2005 ("Proposal Two"); (iii) to ratify the selection of Ernst & Young LLP as independent auditors of the Company for the year ending December 31, 2002 ("Proposal Three"); and (iv) to approve the Amgen Inc. Executive Incentive Plan designed to qualify compensation paid under such plan as performance based compensation under Section 162(m) of the Internal Revenue Code ("Proposal Four").

(i) With respect to Proposal One, 598,469,233 shares were in favor, 14,734,551 shares were against, 5,691,645 shares abstained, and 250,791,982 broker non-votes were withheld from voting with respect to such proposal. Proposal One was declared to have been approved.

(ii) With respect to each of the nominees for director, Dr. David Baltimore received 861,629,325 shares in favor and 8,058,086 shares were withheld, Ms. Judith C. Pelham received 858,087,687 shares in favor and 11,599,724 shares were withheld, and Mr. Kevin W. Sharer received 859,562,696 shares in favor and 10,124,715 shares were withheld, and there were no abstentions or broker non-votes. All nominees were declared to have been elected as directors to hold office until the Annual Meeting of Stockholders in the year 2005.

(iii) With respect to Proposal Three, 833,655,626 shares were in favor, 31,277,599 shares were against, 4,712,616 shares abstained, and 41,570 broker non-votes were withheld from voting with respect to such proposal. Proposal Three was declared to have been approved.

(iv) With respect to Proposal Four, 796,783,596 shares were in favor, 63,136,024 shares were against, 9,751,384 shares abstained, and 16,407 broker non-votes were withheld from voting with respect to such proposal. Proposal Four was declared to have been approved.

(d) Not applicable.

Item 5. Other Matters

The Company's 2003 Annual Meeting of Stockholders will be held on May 15, 2003.

Item 6. Exhibits and Reports on Form 8-K

(a) *Reference is made to the Index to Exhibits included herein.*

(b) *Reports on Form 8-K.*

The Company filed two Current Reports on Form 8-K for the three months ended June 30, 2002. The report dated May 7, 2002, reported that on May 7, 2002, the Company purchased Roche's rights, assets, and business related to Filgrastim and pegfilgrastim in the EU, Switzerland, and Norway, effective January 1, 2002. Under the terms of the agreement, the Company will pay Roche

$137.5 million for the acquisition. Roche will continue as the licensee for Filgrastim and pegfilgrastim in certain countries in Eastern Europe, the Middle East, Africa, Asia, and Latin America. The report dated May 16, 2002, reported that on May 16, 2002, stockholders of Amgen and Immunex approved their respective acquisition related proposals pursuant to an Agreement and Plan of Merger dated as of December 16, 2001, between Amgen and Immunex. The 8-K dated May 16, 2002 was filed in connection with the filing of the Company's Registration Statement on Form S-3 related to registration of shares pertaining to the issuance of the Convertible Notes. The Company filed, among other exhibits, its unaudited pro forma condensed combining balance sheet as of March 31, 2002 and unaudited pro forma condensed combining statements of operations for the year ended December 31, 2001 and three months ended March 31, 2002 and notes thereto.

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 thereunto duly authorized.

AMGEN INC.
(Registrant)

Date: 8/13/02

By: /s/ RICHARD D. NANULA

Richard D. Nanula
Executive Vice President, Finance,
Strategy and Communications,
and Chief Financial Officer

Date: 8/13/02

By: /s/ BARRY D. SCHEHR

Barry D. Schehr
Vice President, Financial Operations,
and Chief Accounting Officer

AMGEN INC.

INDEX TO EXHIBITS

Exhibit No.	Description
2.1	Amended and Restated Agreement and Plan of Merger, dated as of December 16, 2001, by and among Amgen Inc., AMS Acquisition Inc., and Immunex Corporation. (28)
2.2	First Amendment to Amended and Restated Agreement and Plan of Merger, dated as of July 15, 2002 (30)
3.1	Restated Certificate of Incorporation as amended. (9)
3.2*	Amended and Restated Bylaws of Amgen Inc. (as amended and restated July 15, 2002).
3.3	Certificate of Amendment of Restated Certificate of Incorporation. (17)
3.4	Certificate of Designations of Series A Junior Participating Preferred Stock. (20)
4.1	Indenture dated January 1, 1992 between the Company and Citibank N.A., as trustee. (3)
4.2	First Supplement to Indenture, dated February 26, 1997 between the Company and Citibank N.A., as trustee. (6)
4.3	Officer's Certificate pursuant to Sections 2.1 and 2.3 of the Indenture, as supplemented, establishing a series of securities "8-1/8% Debentures due April 1, 2097." (8)
4.4	8-1/8% Debentures due April 1, 2097. (8)
4.5	Form of stock certificate for the common stock, par value $.0001 of the Company. (9)
4.6	Officer's Certificate pursuant to Sections 2.1 and 2.3 of the Indenture, dated as of January 1, 1992, as supplemented by the First supplemental Indenture, dated as of February 26, 1997, each between the Company and Citibank, N.A., as Trustee, establishing a series of securities entitled "6.50% Notes Due December 1, 2007". (11)
4.7	6.50% Notes Due December 1, 2007 described in Exhibit 4.6. (11)
4.8	Corporate Commercial Paper—Master Note between and among Amgen Inc., as Issuer, Cede & Co., as nominee of The Depository Trust Company and Citibank, N.A. as Paying Agent. (12)
4.9	Shareholders' Rights Agreement dated as of December 16, 2001 by and among Amgen Inc., Wyeth (formerly American Home Products Corporation), MDP Holdings, Inc., and Lederle Parenterals, Inc. (25)
4.10	Indenture, dated as of March 1, 2002, between Amgen Inc. and LaSalle Bank National Association. (27)
4.11	Form of Liquid Yield Option(TM) Note due 2032. (27)
4.12	Registration Rights Agreement, dated as of March 1, 2002, between Amgen Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated. (27)
10.1+	Company's Amended and Restated 1991 Equity Incentive Plan, effective December 11, 2001. (26)
10.2+	Company's Amended and Restated 1997 Equity Incentive Plan, effective December 11, 2001. (29)
10.3	Shareholder's Agreement of Kirin-Amgen, Inc., dated May 11, 1984, between the Company and Kirin Brewery Company, Limited. (20)

10.4	Amendment Nos. 1, 2, and 3, dated March 19, 1985, July 29, 1985 and December 19, 1985, respectively, to the Shareholder's Agreement of Kirin-Amgen, Inc., dated May 11, 1984. (17)
10.5	Product License Agreement, dated September 30, 1985, and Technology License Agreement, dated, September 30, 1985 between the Company and Ortho Pharmaceutical Corporation. (17)
10.6	Product License Agreement, dated September 30, 1985, and Technology License Agreement, dated September 30, 1985 between Kirin-Amgen, Inc. and Ortho Pharmaceutical Corporation. (17)
10.7+	Company's Amended and Restated Employee Stock Purchase Plan. (17)
10.8	Research, Development Technology Disclosure and License Agreement PPO, dated January 20, 1986, by and between the Company and Kirin Brewery Co., Ltd. (1)
10.9	Amendment Nos. 4 and 5, dated October 16, 1986 (effective July 1, 1986) and December 6, 1986 (effective July 1, 1986), respectively, to the Shareholders Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.10	Assignment and License Agreement, dated October 16, 1986, between the Company and Kirin-Amgen, Inc. (20)
10.11	G-CSF European License Agreement, dated December 30, 1986, between Kirin-Amgen, Inc. and the Company. (20)
10.12+	Company's Retirement and Savings Plan (as amended and restated effective October 23, 2000). (20)
10.13+	Company's Amended and Restated 1988 Stock Option Plan. (5)
10.14+	First Amendment to the Company's Retirement and Savings Plan (as amended and restated effective October 23, 2000). (20)
10.15	Amendment, dated June 30, 1988, to Research, Development, Technology Disclosure and License Agreement: GM-CSF dated March 31, 1987, between Kirin Brewery Company, Limited and the Company. (2)
10.16	Enbrel® Supply Agreement, dated April 12, 2002, between Immunex Corporation and Genentech, Inc. (with certain confidential information deleted therefrom). (31)
10.17	Partnership Purchase Agreement, dated March 12, 1993, between the Company, Amgen Clinical Partners, L.P., Amgen Development Corporation, the Class A limited partners and the Class B limited partner. (4)
10.18+	Amgen Inc. Supplemental Retirement Plan (As Amended and Restated Effective November 1, 1999). (16)
10.19+	First Amendment to Amgen Inc. Change of Control Severance Plan. (17)
10.20+	Amended and Restated Amgen Performance Based Management Incentive Plan. (15)
10.21	Credit Agreement, dated as of May 28, 1998, among Amgen Inc., the Borrowing Subsidiaries named therein, the Banks named therein, Citibank, N.A., as Issuing Bank, and Citicorp USA, Inc., as Administrative Agent. (13)
10.22	G-CSF United States License Agreement dated June 1, 1987 (effective July 1, 1986) between Kirin-Amgen, Inc. and the Company. (20)
10.23	Amendment No. 1 dated October 20, 1988 to Kirin-Amgen, Inc./Amgen G-CSF United States License Agreement dated June 1, 1987 (effective July 1, 1986). (20)
10.24	Amendment No. 2 dated October 17, 1991 (effective November 13, 1990) to Kirin-Amgen, Inc./Amgen G-CSF United States License Agreement dated June 1, 1987 (effective July 1, 1986). (20)
10.25	Amendment No. 10 dated March 1, 1996 to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.26+	Amgen Inc. Change of Control Severance Plan effective as of October 20, 1998. (14)

10.27	Preferred Share Rights Agreement, dated as of December 12, 2000, between Amgen Inc. and American Stock Transfer and Trust Company, as Rights Agent. (19)
10.28+	First Amendment, effective January 1, 1998, to the Company's Amended and Restated Employee Stock Purchase Plan. (10)
10.29	Amendment No. 11 dated March 20, 2000 to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.30+	Agreement between Amgen Inc. and Dr. Fabrizio Bonanni, dated March 3, 1999. (16)
10.31	Amendment No. 1 dated June 1, 1987 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.32	Amendment No. 2 dated March 15, 1988 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.33	Amendment No. 3 dated October 20, 1988 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.34	Amendment No. 4 dated December 29, 1989 to Kirin-Amgen, Inc./Amgen G-CSF European License Agreement dated December 30, 1986. (20)
10.35+	Company's Amended and Restated 1987 Directors' Stock Option Plan. (7)
10.36+	Amgen Inc. Amended and Restated 1993 Equity Incentive Plan (formerly known as the Immunex Corporation 1993 Stock Option Plan). (32)
10.37+	Amgen Inc. Executive Incentive Plan. (28)
10.38+	Promissory Note of Dr. Fabrizio Bonanni, dated August 7, 1999. (16)
10.39+	Promissory Note of Dr. Fabrizio Bonanni, dated October 29, 1999. (16)
10.40+*	2002 Special Severance Pay Plan for Amgen Employees.
10.41+	Agreement between Amgen Inc. and Mr. Gordon M. Binder, dated May 10, 2000. (17)
10.42	Amendment No. 6 dated May 11, 1984 to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.43	Amendment No. 7 dated July 17, 1987 (effective April 1, 1987) to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.44	Amendment No. 8 dated May 28, 1993 (effective November 13, 1990) to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.45	Amendment No. 9 dated December 9, 1994 (effective June 14, 1994) to the Shareholders' Agreement of Kirin-Amgen, Inc. dated May 11, 1984. (20)
10.46+	Agreement between Amgen Inc. and Mr. George J. Morrow, dated March 3, 2001. (21)
10.47+	Promissory Note of Mr. George J. Morrow, dated March 11, 2001. (21)
10.48+	Agreement between Amgen Inc. and Dr. Roger M. Perlmutter, M.D., Ph.D., dated March 5, 2001. (21)
10.49+	Agreement between Amgen Inc. and Mr. Brian McNamee, dated May 5, 2001. (22)
10.50+	Agreement between Amgen Inc. and Mr. Richard Nanula, dated May 15, 2001. (22)
10.51+	Promissory Note of Mr. Richard Nanula, dated June 27, 2001. (22)
10.52+	Promissory Note of Dr. Roger M. Perlmutter, dated June 29, 2001. (22)
10.53+	Second Amendment to the Amgen Retirement and Savings Plan as amended and restated effective October 23, 2000. (23)
10.54+	Second Amendment to the Amgen Inc. Change of Control Severance Plan. (23)
10.55+	First Amendment to the Amgen Supplemental Retirement Plan as amended and restated effective November 1, 1999. (23)
10.56+	Agreement between Amgen Inc. and Dr. George Morstyn, dated July 19, 2001. (23)
10.57+	Promissory Note of Mr. Brian McNamee, dated May 30, 2001. (23)
10.58+	Restricted Stock Purchase Agreement between Amgen Inc. and Mr. Richard Nanula, dated May 16, 2001. (23)

10.59+	Restricted Stock Purchase Agreement between Amgen Inc. and Dr. Roger M. Perlmutter, dated January 8, 2001. (23)
10.60+	Agreement between Amgen Inc. and Dr. Beth C. Seidenberg, dated December 21, 2001. (26)
10.61+	Amendment to Agreement between Amgen Inc. and Dr. Beth C. Seidenberg, dated December 21, 2001. (26)
10.62+	Second Amendment to the Amgen Supplemental Retirement Plan (As Amended and Restated Effective November 1, 1999), effective January 1, 2002. (26)
10.63+	Third Amendment to the Amgen Retirement and Savings Plan (as amended and restated effective October 23, 2000), effective February 1, 2002. (26)
10.64+	Amgen Inc. Executive Nonqualified Retirement Plan, effective January 1, 2001. (26)
10.65+	Nonqualified Deferred Compensation Plan, effective January 1, 2002. (26)
10.66	Shareholder voting agreement dated as of December 16, 2001 by and among Amgen Inc., Wyeth (formerly American Home Products Corporation), MDP Holdings, Inc., and Lederle Parenterals, Inc. (24)
10.67+	Agreement between Amgen Inc. and Dr. Joseph Miletich, dated March 22, 2002. (29)
10.68+	Restricted Stock Purchase Agreement between Amgen Inc. and Dr. Joseph Miletich, dated April 1, 2002. (29)
10.69	Amended and Restated Promotion Agreement by and between Immunex Corporation, Wyeth (formerly American Home Products Corporation) and Amgen Inc. dated December 16, 2001 (with certain confidential information deleted therefrom). (28)
10.70	Agreement Regarding Governance and Commercial Matters by and among Wyeth (formerly American Home Products Corporation), American Cyanamid Company and Amgen Inc. dated December 16, 2001 (with certain confidential information deleted therefrom). (28)
10.71+	Amgen Inc. Amended and Restated 1999 Equity Incentive Plan (formerly known as the Immunex Corporation 1999 Stock Option Plan). (32)
10.72+	Amgen Inc. Amended and Restated 1999 Stock Purchase Plan (formerly known as the Immunex Corporation 1999 Stock Purchase Plan). (32)
10.73+	Immunex Corporation Stock Option Plan for Nonemployee Directors, as amended. (32)
10.74+	Amgen Inc. Profit Sharing 401(k) Plan and Trust (formerly know as the Immunex Corporation Profit Sharing 401(k) Plan and Trust). (32)
10.75	Enbrel® Supply Agreement among Immunex Corporation, American Home Products Corporation and Boehringer Ingelheim Pharma KG, dated as of November 5, 1998 (with certain confidential information deleted therefrom). (33)
10.76	Amendment No. 1 to the Enbrel® Supply Agreement among Immunex Corporation, American Home Products Corporation and Boehringer Ingelheim Pharma KG, dated June 27, 2000 (with certain confidential information deleted therefrom). (34)
10.77*	Amendment No. 2 to the Enbrel® Supply Agreement among Immunex Corporation, American Home Products Corporation and Boehringer Ingelheim Pharma KG, dated June 3, 2002 (with certain confidential information deleted therefrom).
10.78*	Asset Purchase Agreement, dated May 2, 2002, by and between Immunex Corporation and Schering Aktiengesellschaft (with certain confidential information deleted therefrom).
10.79*	Amendment No. 1 to the Asset Purchase Agreement dated as of June 25, 2002, by and between Immunex Corporation and Schering Aktiengesellschaft.

10.80*	Amendment No. 2 to the Asset Purchase Agreement dated as of July 17, 2002, by and between Immunex Corporation and Schering Aktiengesellschaft.
10.81+*	Promissory Note of Ms. Beth Seidenberg, dated March 20, 2002.
10.82+*	Agreement between Amgen Inc. and Edward Fritzky, dated July 15, 2002.
10.83+*	Restricted Stock Purchase Agreement between Amgen Inc. and Edward Fritzky, dated July 15, 2002.
10.84+*	Stock Option Agreement between Amgen Inc. and Edward Fritzky, dated July 15, 2002.
10.85+*	Agreement between Amgen Inc. and Dr. Douglas Williams, dated July 15, 2002.
10.86+*	Promissory Note of Dr. Hassan Dayem, dated July 10, 2002.

* Filed herewith.

\+ Management contract or compensatory plan or arrangement.

(1) Filed as an exhibit to Amendment No. 1 to Form S-1 Registration Statement (Registration No. 33-3069) on March 11, 1986 and incorporated herein by reference.

(2) Filed as an exhibit to Form 8 amending the Quarterly Report on Form 10-Q for the quarter ended June 30, 1988 on August 25, 1988 and incorporated herein by reference.

(3) Filed as an exhibit to Form S-3 Registration Statement dated December 19, 1991 and incorporated herein by reference.

(4) Filed as an exhibit to the Form 8-A dated March 31, 1993 and incorporated herein by reference.

(5) Filed as an exhibit to the Form 10-Q for the quarter ended September 30, 1996 on November 5, 1996 and incorporated herein by reference.

(6) Filed as an exhibit to the Form 8-K Current Report dated March 14, 1997 on March 14, 1997 and incorporated herein by reference.

(7) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 1996 on March 24, 1997 and incorporated herein by reference.

(8) Filed as an exhibit to the Form 8-K Current Report dated April 8, 1997 on April 8, 1997 and incorporated herein by reference.

(9) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 1997 on May 13, 1997 and incorporated herein by reference.

(10) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 1997 on August 12, 1997 and incorporated herein by reference.

(11) Filed as an exhibit to the Form 8-K Current Report dated and filed on December 5, 1997 and incorporated herein by reference.

(12) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 1998 on May 13, 1998 and incorporated herein by reference.

(13) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 1998 on August 14, 1998 and incorporated herein by reference.

(14) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 1998 on March 16, 1999 and incorporated herein by reference.

(15) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 1999 on August 3, 1999 and incorporated herein by reference.

(16) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 1999 on March 7, 2000 and incorporated herein by reference.

(17) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 2000 on August 1, 2000 and incorporated herein by reference.

(18) Filed as an exhibit to the Form 10-Q for the quarter ended September 30, 2000 on November 14, 2000 and incorporated herein by reference.
(19) Filed as an exhibit to the Form 8-K Current Report dated December 13, 2000 on December 18, 2000 and incorporated herein by reference.
(20) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2000 on March 7, 2001 and incorporated herein by reference.
(21) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 2001 on May 14, 2001 and incorporated herein by reference.
(22) Filed as an exhibit to the Form 10-Q for the quarter ended June 30, 2001 on July 27, 2001 and incorporated herein by reference.
(23) Filed as an exhibit to the Form 10-Q for the quarter ended September 30, 2001 on October 26, 2001 and incorporated herein by reference.
(24) Filed as an exhibit to the Form 8-K Current Report dated December 16, 2001 on December 17, 2001 and incorporated herein by reference.
(25) Filed as an exhibit to the Form S-4 Registration Statement dated January 31, 2002 and incorporated herein by reference.
(26) Filed as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2001 on February 26, 2002 and incorporated herein by reference.
(27) Filed as an exhibit to the Form 8-K Current Report dated February 21, 2002 on March 1, 2002 and incorporated herein by reference.
(28) Filed as an exhibit to Amendment No. 1 to the Form S-4 Registration Statement dated March 22, 2002 and incorporated herein by reference.
(29) Filed as an exhibit to the Form 10-Q for the quarter ended March 31, 2002 on April 29, 2002 and incorporated herein by reference.
(30) Filed as an exhibit to the Post-Effective Amendment No. 1 to the Form S-4 Registration Statement dated July 15, 2002 and incorporated herein by reference.
(31) Filed as an exhibit to Form 8-K Current Report of Immunex Corporation dated April 12, 2002 on May 7, 2002 and incorporated herein by reference.
(32) Filed as an exhibit to the Form S-8 dated July 16, 2002 and incorporated herein by reference.
(33) Filed as an exhibit to the Annual Report on Form 10-K of Immunex Corporation for the year ended December 31, 1998.
(34) Filed as an exhibit to the Form 10-Q of Immunex Corporation for the quarter ended June 30, 2000.

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

OF

AMGEN INC.

(AS AMENDED and RESTATED July 15, 2002)

AMENDED AND RESTATED BYLAWS

OF

AMGEN INC.
(a Delaware corporation)

ARTICLE I

Offices

Section 1. *Registered Office*. The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

Section 2. *Other Offices.* The corporation also shall have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and also may have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

Corporate Seal

Section 3. *Corporate Seal.* The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

Stockholders' Meetings

Section 4. *Place of Meetings.* Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the office of the corporation required to be maintained pursuant to Section 2 hereof.

Section 5. *Annual Meeting.* The annual meeting of the stockholders of the corporation shall be held on any date and time which may from time to time be designated by the Board of Directors. At such annual meeting, directors shall be elected and any other business may be transacted that may properly come before the meeting.

Section 6. *Special Meetings.* Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by the Chairman of the Board of Directors ("Chairman of the Board"), the Chief Executive Officer, the President, or the Board of Directors at any time.

Section 7. *Notice of Meetings.* Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date and hour and purpose or purposes of the meeting. Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. *Quorum.* At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Any shares, the voting of which at said meeting has been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at such meeting. In the absence of a quorum any meeting of stockholders may be adjourned, from time to time, by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the voting power represented at any meeting at which a quorum is present shall be valid and binding upon the corporation.

Section 9. *Adjournment and Notice of Adjourned Meetings.* Any meeting of stockholders, whether annual or special, may be adjourned from time to time by the vote of a majority of the shares, the holders of which are present either in person or by proxy. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. *Voting Rights.* For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted on after three

(3) years from its date of creation unless the proxy provides for a longer period. All elections of Directors shall be by written ballot, unless otherwise provided in the Certificate of Incorporation.

Section 11. *Joint Owners of Stock.* If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the General Corporation Law of Delaware, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection (c) shall be a majority or even-split in interest.

Section 12. *List of Stockholders.* The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall be produced and kept at the time and place of meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 13. *No Action Without Meeting.* Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders.

Section 14. *Organization.* At every meeting of stockholders, the Chairman of the Board, or, if the Chairman of the Board is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, the President, or, if the President is absent, the most senior Vice President present, or in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

Section 15. *Notifications of Nominations and Proposed Business.* Subject to the rights of holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation,

(x) nominations for the election of directors, and

(y) business proposed to be brought before any stockholder meeting,

may be made by the Board of Directors or a proxy committee appointed by the Board of Directors or by any stockholder entitled to vote in the election of directors generally. However, any such stockholder may nominate one or more persons for election as directors at a meeting or propose business to be brought before a meeting, or both, only if such stockholder has given timely notice in proper written form of his intent to make such nomination or nominations or to propose such business. To be timely, a stockholder's notice must be delivered to or mailed and received by the Secretary of the corporation not later than 90 days prior to such meeting; provided, however, that in the event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be received not later than the close of business on the 10th day following the date on which such notice of the date of such meeting was mailed or such public disclosure was made. To be in proper written form, a stockholder's notice to the Secretary shall set forth:

(a) the name and address of the stockholder who intends to make the nominations or propose the business and, as the case may be, of the person or persons to be nominated or of the business to be proposed;

(b) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and, if applicable, intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;

(c) if applicable, a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder;

(d) such other information regarding each nominee or each matter of business to be proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, or the matter been proposed, or intended to be proposed by the Board of Directors; and

(e) if applicable, the consent of each nominee to serve as director of the corporation if so elected.

The chairman of the meeting may refuse to acknowledge the nomination of any person or the proposal of any business not made in compliance with the foregoing procedure.

ARTICLE IV

Directors

Section 16. *Number.* The authorized number of directors of the corporation shall be fixed from time to time by the Board of Directors. The number of directors presently authorized is thirteen. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause the directors shall not have been elected at any annual meeting,

they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 17. *Classes of Directors.* The Board of Directors shall be divided into three classes: Class I, Class II and Class III, which shall be as nearly equal in number as possible. Each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting at which the director was elected. Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal.

Section 18. *Newly Created Directorships and Vacancies.* In the event of any increase or decrease in the authorized number of directors, the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of directors so as to maintain such classes as nearly equal in number as possible. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office (and not by stockholders), even though less than a quorum of the authorized Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successors shall have been elected and qualified.

Section 19. *Powers.* The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 20. *Resignation.* Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 21. *Removal.* At a special meeting of stockholders called for the purpose in the manner hereinabove provided, the Board of Directors, or any individual director, may be removed from office, with cause, and one or more new directors may be elected, by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of Directors.

Section 22. *Meetings.*

(a) *Annual Meetings.* The annual meeting of the Board of Directors shall be held on the date of the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) *Regular Meetings.* Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 hereof. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors also may be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all Directors.

(c) *Special Meetings.* Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer, the President or a majority of the Directors.

(d) *Telephone Meetings.* Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) *Notice of Meetings.* Written notice of the time and place of all regular and special meetings of the Board of Directors shall be given at least one (1) day before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) *Waiver of Notice.* The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the Directors not present sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 23. *Quorum and Voting.*

(a) *Quorum.* Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of Directors fixed from time to time in accordance with Section 16 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum is present or otherwise, a

majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) *Majority Vote.* At each meeting of the Board of Directors at which a quorum is present all questions and business shall be determined by a vote of a majority of the Directors present, unless a different vote is required by law, the Certificate of Incorporation or these Bylaws.

Section 24. *Action without Meeting.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 25. *Fees and Compensation.* Directors shall not receive any stated salary for their services as Directors, but by resolution of the Board of Directors a fixed fee, with or without expense of attendance, may be allowed for serving on the Board of Directors and/or attendance at each meeting and at each meeting of any committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, consultant, employee, or otherwise and receiving compensation therefor.

Section 26. *Committees.*

(a) *Executive Committee.* The Board of Directors may by resolution passed by a majority of the whole Board of Directors, appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and specifically granted by the Board of Directors, shall have and may exercise when the Board of Directors is not in session all powers of the Board of Directors in the management of the business and affairs of the corporation, including, without limitation, the power and authority to declare a dividend or to authorize the issuance of stock, except such committee shall not have the power or authority to amend the Certificate of Incorporation (except that the committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided by law, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation), to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution or to amend these Bylaws.

(b) *Other Committees*. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall

consist of one (1) or more members of the Board of Directors, and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall such committee have the powers denied to the Executive Committee in these Bylaws.

(c) *Term*. Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of subsections (a) or (b) of this Section 26, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) *Meetings*. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 26 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at the principal office of the corporation required to be maintained pursuant to Section 2 hereof, or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 27. *Organization*. At every meeting of the directors, the Chairman of the Board, or, if the Chairman of the Board is absent, the Chief Executive Officer, or if the Chief Executive Officer is absent, the President, or if the President is absent, the most senior Vice President, or, in the absence of any such officer, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, an Assistant Secretary directed to do so by the Chief Executive Officer, shall act as secretary of the meeting.

ARTICLE V

Officers

Section 28. *Officers Designated*. The officers of the corporation shall be the Chairman of the Board, the Chief Executive Officer, the President and Chief Operating Officer, one or more Vice Presidents, the Chief Financial Officer and the Secretary, all of whom shall be elected at the annual meeting of the Board of Directors. The Board of Directors also may appoint such other officers and agents with such powers and duties as it shall deem necessary. The order of the seniority of the Vice Presidents shall be in the order of their nomination, unless otherwise determined by the Board of Directors. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 29. *Tenure and Duties of Officers.*

(a) *General*. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) *Duties of Chairman of the Board.* The Chairman of the Board, subject to the control of the Board of Directors, shall perform such duties and functions as are necessary to further the strategic direction of the corporation. Unless the Board of Directors designates another person, the Chairman of the Board shall preside at all meetings of the stockholders, the Board of Directors and of the Executive Committee.

(c) *Duties of Chief Executive Officer*. The Chief Executive Officer, at the request of the Chairman of the Board or upon his absence or disability, or in the event of a vacancy in the office of Chairman of the Board, shall exercise all the powers of Chairman of the Board as provided in Subsection 29(b). The Chief Executive Officer shall, subject to the control of the Board of Directors, exercise general management and supervision over the property, affairs and business of the corporation and shall authorize officers of the corporation, other than the Chairman of the Board, to exercise such powers as he, in his discretion, may deem to be in the best interests of the corporation. The Chief Executive Officer shall in general perform all duties incident to general management and supervision of the corporation and such other duties as the Board of Directors shall designate from time to time.

(d) *Duties of President and Chief Operating Officer*. The President and Chief Operating Officer, at the request of the Chief Executive Officer or upon his absence or disability, or in the event of a vacancy in the office of Chief Executive Officer, shall exercise all the powers of Chief Executive Officer as provided in Subsection 29(c). The President and Chief Operating Officer shall, subject to the control of the Chief Executive Officer and the Board of Directors, exercise general management and supervision over the operating functions of the corporation,

and shall authorize officers of the corporation, other than the Chairman of the Board and the Chief Executive Officer, to exercise such powers with respect to the operating function of the corporation as he, in his discretion, may deem to be in the best interests of the corporation. The President and Chief Operating Officer shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(e) *Duties of Vice Presidents.* The Vice Presidents, in the order of their seniority, may assume and perform the duties of the President and Chief Operating Officer in the absence or disability of the Chief Executive Officer and the President and Chief Operating Officer or whenever the offices of Chief Operating Officer and President and Chief Operating Officer are vacant. The Vice Presidents shall perform other duties commonly incident to their office and also shall perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer, or the President and Chief Operating Officer shall designate from time to time.

(f) *Duties of Chief Financial Officer.* The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner, and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time. The Chief Executive Officer may direct any Assistant Chief Financial Officer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Assistant Chief Financial Officer shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

(g) *Duties of Secretary.* The Secretary shall attend all meetings of the stockholders and of the Board of Directors, and shall record all acts and proceedings thereof in the minute books of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders, and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and also shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

Section 30. *Resignations.* Any officer may resign at any time by giving written notice to the Board of Directors or to the Chief Executive Officer or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall

become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective.

Section 31. *Removal.* Any officer may be removed from office at any time, with or without cause, by the vote or written consent of a majority of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

Section 32. *Compensation.* The compensation of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such compensation by reason of the fact that such officer is also a director of the corporation.

ARTICLE VI

Execution of Corporate Instruments and Voting
of Securities Owned by the Corporation

Section 33. *Execution of Corporate Instruments.* The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board, or the Chief Executive Officer, or the President or any Vice President, and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Section 34. *Voting of Securities Owned by the Corporation.* All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized to do so by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

Shares of Stock

Section 35. *Form and Execution of Certificates.* The shares of the corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman of the Board or any vice-chairman of the Board of Directors, or the Chief Executive Officer, or the President or any Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation representing the number of shares registered in certificate form. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 36. *Lost Certificates.* The corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by the corporation alleged to have been lost, stolen or destroyed, and the corporation may require the owner of such lost, stolen or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against the corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 37. *Transfers.* Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

Section 38. *Fixing Record Dates.* In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed: (a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (b) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of

stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 39. *Registered Stockholders.* The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 40. *Issuance, Transfer and Resignation of Shares.* The Board of Directors may make such rules and regulations, not inconsistent with law or with these Bylaws, as it may deem advisable concerning the issuance, transfer and registration of certificates for shares of the capital stock of the corporation. The Board of Directors may appoint a transfer agent or registrar of transfers, or both, and may require all certificates for shares of the corporation to bear the signature of either or both.

ARTICLE VIII

Other Securities of the Corporation

Section 41. *Execution of Other Securities.* All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

Dividends

Section 42. *Declaration of Dividends.* Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 43. *Dividend Reserve.* Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

Fiscal Year

Section 44. *Fiscal Year.* Unless otherwise fixed by resolution of the Board of Directors, effective as of January 1, 1992, the fiscal year of the corporation shall end on the 31st day of the month of December in each calendar year.

ARTICLE XI

Indemnification of Directors, Officers
Employees and Other Agents

Section 45. *Indemnification of Directors, Officers, Employees and Other Agents.*

(a) *Directors and Officers.* The corporation shall indemnify its directors and officers to the full extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said Law permitted the corporation to provide prior to such amendment); *provided, further*, that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law, or (iv) such indemnification is required to be made under subsection (d) of this Article XI.

(b) *Other Employees and Other Agents.* The corporation shall have the power to indemnify its other employees and other agents as set forth in the Delaware General Corporation Law.

(c) *Expenses*. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of any such proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding upon receipt of any undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Bylaw or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (d) of this Bylaw, no advance shall be made by the corporation to an officer of the corporation in any action, suit or proceeding, whether civil, criminal, administrative or investigate, if a determination is reasonably and promptly made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (2) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion that, the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not reasonably believe to be in or not opposed to the best interests of the corporation, or, with respect to any criminal action or proceeding, such person believed or had reasonable cause to believe his conduct was unlawful, except by reason of the fact that such officer is or was a director of the corporation or is or was serving at the request of the corporation as a director of another corporation, joint venture, trust or other enterprise in which event this paragraph shall not apply.

(d) *Enforcement*. Without the necessity of entering into an express contract, all rights to indemnification and advances under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer who serves in such capacity at any time while this Bylaw and other relevant provisions of the Delaware General Corporation Law and other applicable law, if any, are in effect. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation or is or was serving at the request of the corporation as a director of

another corporation, partnership, joint venture, trust or other enterprise) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not reasonably believe to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, such person believed or had reasonable cause to believe his conduct was unlawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

(e) *Non-Exclusivity of Rights*. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, as provided by law.

(f) *Survival of Rights.* The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) *Insurance*. To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) *Amendments*. Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) *Savings Clause.* If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent permitted by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law.

(j) *Certain Definitions.* For the purposes of this Bylaw, the following definitions shall apply:

(i) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “director,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Bylaw.

ARTICLE XII

Notices

Section 46. *Notices.*

(a) *Notice to Stockholders*. Whenever under any provisions of these Bylaws notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent.

(b) *Notice to Directors.* Any notice required to be given to any director may be given by the method stated in subsection (a), or by telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) *Address Unknown*. If no address of a stockholder or director be known, notice may be sent to the office of the corporation required to be maintained pursuant to Section 2 hereof.

(d) *Affidavit of Mailing.* An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

(e) *Time Notices Deemed Given*. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by telegram shall be deemed to have been given as at the sending time recorded by the telegraph company transmitting the notices.

(f) *Methods of Notice.* It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(g) *Failure to Receive Notice.* The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such director to receive such notice.

(h) *Notice to Person with Whom Communication Is Unlawful.* Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of

such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE XIII

Amendments

Section 47. *Amendments.* These Bylaws may be repealed, altered or amended or new Bylaws adopted by the affirmative vote of the holders of not less than sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of stock entitled to vote upon the election of directors. The Board of Directors also shall have the authority, if such authority is conferred upon the Board of Directors by the Certificate of Incorporation, to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaw setting forth the number of directors who shall constitute the whole Board of Directors) subject to the foregoing power of the stockholders to change or repeal such Bylaws and provided that the Board of Directors shall not make or alter any Bylaws fixing the qualifications, classifications, term of office or compensation of directors.

ARTICLE XIV

Loans of Officers and Others

Section 48. *Certain Corporate Loans and Guaranties.* The corporation may make loans of money or property to, or guarantee the obligations of, or otherwise assist any officer or other employee who is a director of the corporation or its parent or any subsidiary, or adopt an employee benefit plan or plans authorizing such loans or guaranties, upon the approval of the Board of Directors alone if the Board of Directors determines that such a loan or guaranty or plan may reasonably be expected to benefit the corporation.

2002 SPECIAL SEVERANCE PAY PLAN
FOR AMGEN EMPLOYEES

This Plan provides severance benefits to employees of Amgen Inc. ("Amgen") and its subsidiaries (collectively, the "Employer") who meet the requirements set forth in Section 1 of this Plan. The Plan is administered by Amgen, which is the Plan Administrator.

1. *Eligibility*

(a) Generally, an employee will be eligible for this Plan if he or she is subject to one of the following qualifying events:

(i) *Group termination or job elimination*. Termination due to group terminations or job eliminations designated by Amgen as qualifying events.

(ii) *Job restructuring or reclassification*. Down grades of two salary grades or more as a result of job restructuring or reclassification, or reclassifications of a part-time position to a full-time position, designated by Amgen as qualifying events. This is not intended to include staff members who are demoted for performance or disciplinary reasons.

(iii) *Relocation*. Terminations due to employee's refusal of Employer's request to relocate employee's principal place of employment to a location more than 50 miles or more from that employee's current principal place of employment.

However, the Plan Administrator may, in its sole discretion, determine from time to time that an employee is eligible for this Plan even if he or she does not experience one of the foregoing qualifying events.

(b) Notwithstanding the foregoing, employees who are eligible for severance benefits under the following arrangements shall not also be eligible for this Plan unless the Plan Administrator determines otherwise in its sole discretion:

(i) the Immunex Corporation Amended and Restated Leadership Continuity Policy;

(ii) the Immunex Corporation Employee Severance Plan;

(iii) the Immunex Corporation Severance Plan;

(iv) the Purchase Agreement among American Home Products Corporation, AHP Subsidiary Holding Corporation, and Immunex Corporation; or

(v) any individual severance agreement.

(c) Each employee who is eligible for this Plan shall be hereafter referred to as a "Participant"

2. Benefits

(a) Basic Benefit

Each Participant will receive a Basic Benefit of one month of Base Pay, as set forth on the benefit schedule attached to this Plan. "Base Pay" shall mean the Participant's base salary or wages (excluding overtime pay, bonuses, commissions, premium pay, shift

differentials, MIP VEP, SRA, Stock Options, and/or other compensation) immediately prior to the last date of employment. The base monthly rate of pay of a Participant who is paid by the hour shall be his or her regular hourly rate multiplied times his or her regularly scheduled hours per week (which is 40 for full-time employees). The Plan Administrator's determination of Base Pay shall be final and binding.

(b) Enhanced Benefit

If a Participant agrees to terminate employment on good terms with the Employer by signing the release form prescribed by the Plan Administrator ("Release") and filing the Release with the Plan Administrator within the time period prescribed by the Plan Administrator, the Participant shall receive an Enhanced Benefit in addition to his or her Basic Benefit payable under Section 2(a). This Enhanced Benefit are set forth on the benefit schedule attached to this Plan.

(c) Form of Payment

(i) Basic and Enhanced Benefits payable under Sections 2(a) and (b) normally shall be paid as a cash lump sum subject to withholding as set forth under Section 3(a).

(ii) A Participant's Basic and Enhanced Benefits shall commence immediately after the Participant's last day of work, or as soon thereafter as is administratively practical.

(iii) A Participant shall not be an employee of the Employer during his or her Salary Continuation period.

(d) Additional Benefits

A Participant who receives Enhanced Benefits shall also be eligible for the following Additional Benefits:

(i) The Participant shall be offered outplacement counseling services selected by the Plan Administrator for the number of weeks of outplacement benefits shown on the benefit schedule attached to this Plan.

(ii) A Participant who purchases medical, dental or vision COBRA continuation coverage for himself or herself or for his or her spouse or dependents in accordance with the Employer's customary COBRA procedures and rules shall not be required to pay for that coverage period of time specified on the benefit schedule attached to this Plan. Thereafter, normal COBRA premiums shall be charged. "COBRA" refers to the health care continuation requirements of Part 6 of Title I of the Employee Retirement Income Security Act of 1974.

(e) Integration with WARN Act and Similar Laws

A Federal law, the WARN Act, requires that advance notice be given to employees of certain layoffs. Other laws may impose similar notice requirements or require that pay-in-lieu-of-notice, waiting-time penalties, severance pay, or similar benefits be paid. The Employer shall be entitled to subtract from any benefits payable to a Participant under this Plan any other amount it is legally required to pay to the Participant under such laws, plus any compensation and benefits paid to the Participant following distribution of such a legally-required notice of termination to the Participant. Similarly, benefits paid under this Plan shall be applied to satisfy any legal obligations the Employer may have under such laws. This subsection

shall also apply with respect to any amounts payable to a Participant under any employment law or doctrine on account of his or her termination of employment. The reductions authorized by this subsection shall be effected in the manner specified by the Plan Administrator, however, they shall not have the effect of reducing a Participant's Enhanced Benefit below the equivalent of one month Base Pay.

(f) Notwithstanding the foregoing, the Plan Administrator may, in its sole discretion, determine from time to time that different benefits be payable, or that such benefits not be subject to section 2(e).

3. Other Rules

(a) Taxes

Income and payroll taxes shall be withheld from benefits under the Plan as the Employer determines to be required by law.

(b) Relation to Other Plans

Benefits under this Plan shall not be counted as "compensation" for purposes of determining benefits under any other benefit plan or similar arrangement of the Employer or its affiliates, and all such plans or similar arrangements, to the extent inconsistent, are hereby so amended.

(c) Effective Date, Plan Year, Amendment, and Termination of Plan

This Plan is intended to be a temporary plan. It went into effect on January 1, 2002, and it shall expire when the Plan Administrator determines that no more Basic or Enhanced Benefits will be payable (although outplacement and subsidized COBRA benefits shall remain payable for the full period prescribed in Section 2(b)). The Plan's Plan Year is the 12-month period ending on December 31. Amgen Inc., acting through its Vice President of Human Resources, shall have the right, in its non-fiduciary capacity as settlor, to amend the Plan or to terminate it at any time (by a formal, written, and explicit instrument), prospectively or retroactively, for any reason, without notice to Employees or Participants and even if currently payable benefits are reduced or eliminated. No person shall have any vested right to benefits under this Plan. By letter or other written notice to an Employee, the Plan Administrator may elect to increase or decrease Plan benefits, or otherwise modify the terms of the Plan, as to that Employee.

(d) Claims Procedure

(i) Normally, a Participant need not present a formal claim in order to qualify for rights or benefits under this Plan. However, if any person ("Claimant") does not believe he or she will receive the benefits to which the person is entitled or believes that the Plan is not being operated properly, that fiduciaries of the Plan have breached their duty, or that his or her own legal rights are being violated with respect to the Plan, the Claimant must file a formal claim under the procedures set forth in this section. A formal claim must be filed within 90 days of the date on which the Claimant (or his or her predecessor in interest) first knew (or should have known) of the facts which the claim is based, unless the Plan Administrator in writing consents otherwise. The procedures in this section shall apply to all claims that any person has with respect to the Plan, including claims against fiduciaries and former fiduciaries, except to the

extent the Plan Administrator determines, in its sole discretion, that it does not have the power to grant, in substance, all relief reasonably being sought by the Claimant.

(ii) A claim by any person shall be presented to the Plan Administrator in writing. A claims official appointed by the Plan Administrator shall, within 90 days of receiving the claim, consider the claim and issue his or her determination thereon in writing. The claims official may extend the determination period for up to an additional 90 days by giving the Claimant written notice. If the claim is granted, the benefits or relief the Claimant seeks will be provided.

(iii) If the claim is wholly or partially denied, the claims official shall, within 90 days (or such longer period as described above), provide the Claimant with written notice of the denial, setting forth, in a manner calculated to be understood by the Claimant:

a. the specific reason or reasons for the denial;

b. specific references to pertinent Plan provisions on which the denial is based;

c. a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why the material or information is necessary; and

d. an explanation of the Plan's claim review procedure.

With the consent of the Claimant, this determination period can be extended further. If the claims official fails to respond to the claim in a timely manner, the Claimant may treat the claim as having been denied by the claims official.

(iv) Each Claimant shall have the opportunity to appeal in writing the claims official's denial of a claim to a review official designated by the Plan Administrator (which may be a person or a committee) for a full and fair review. A Claimant must request review of a denied claim within 60 days after receipt by the Claimant of written notice of denial of his or her claim or within 60 days after such written notice was due, if the written notice was not sent. In connection with the review proceeding, the Claimant or his or her duly authorized representative may review pertinent documents and may submit issues and comments in writing. The Claimant may only present evidence and theories during the review that the Claimant presented during the claims procedure, except for information that the claims official requested the Claimant to provide to perfect the claim (see clause (iii)(c)). Any claims that the Claimant does not in good faith pursue through the review stage of the procedure shall be treated as having been irrevocably waived.

(v) The Plan Administrator shall adopt procedures pursuant to which claims shall be reviewed and may adopt different procedures for different claims without being bound by past actions. Any procedures adopted, however, shall be designed to afford a Claimant a full and fair review of his or her claim.

(vi) The decision by the review official review of a claim shall be made not later than 60 days after the written request for review is received by the Plan Administrator, unless special circumstances require an extension of time for processing, in which case a

decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review, unless the Claimant agrees to a greater extension of that deadline.

(vii) The review decision shall be in writing and shall include specific reasons for the decision written in a manner calculated to be understood by the Claimant, with specific references to the pertinent Plan provisions on which the decision is based.

(viii) The Plan Administrator shall modify these claim procedures without amending the Plan to the extent it determines modifications are appropriate to comply with applicable law.

(e) Effect of Fiduciary Action

(i) The Plan shall be interpreted by the Plan Administrator and all Plan fiduciaries in accordance with the terms of the Plan and their intended meanings. However, the Plan Administrator and all Plan fiduciaries shall have the discretion to make any findings of fact needed in the administration of the Plan, and shall have the discretion to interpret or construe ambiguous, unclear or implied (but omitted) terms in any fashion they deem to be appropriate in their sole judgment. The validity of any such finding of fact, interpretation, construction, or decision shall not be given de novo review if challenged in court, by arbitration, or in any other forum, and shall be upheld unless clearly arbitrary or capricious.

(ii) To the extent the Plan Administrator or any Plan fiduciary has been granted discretionary authority under the Plan, the Plan Administrator's or Plan fiduciary's prior exercise of such authority shall not obligate it to exercise its authority in a like fashion thereafter.

(iii) If, due to errors in drafting, any Plan provision does not accurately reflect its intended meaning, as demonstrated by consistent interpretations or other evidence of intent, or as determined by the Plan Administrator in its sole and exclusive judgment, the provision shall be considered ambiguous and shall be interpreted by the Plan Administrator and all Plan fiduciaries in a fashion consistent with its intent, as determined by the Plan Administrator. The Plan Administrator shall amend the Plan retroactively to cure any such ambiguity, notwithstanding anything in the Plan to the contrary.

(iv) This Section may not be invoked by any person to require the Plan to be interpreted in a manner that is inconsistent with its interpretation by the Plan Administrator or by any Plan fiduciaries. All actions taken and all determinations made in good faith by the Plan Administrator or by Plan fiduciaries shall be final and binding on all persons claiming any interest in or under the Plan.

(f) Duties of the Plan Administrator

The Plan Administrator shall be responsible for the general administration and management of the Plan. The Plan Administrator shall have all powers and duties necessary to fulfill its responsibilities, including, but not limited to, the following powers and duties:

(i) To interpret and apply the Plan as it, in its sole discretion, determines to be appropriate; and

(ii) To determine all questions relating to the eligibility of persons to participate or receive benefits as it, in its sole discretion, deems to be appropriate.

(g) Costs and Indemnification

All costs of administering the Plan shall be paid by the Employer, with one exception: Any expenses incurred in resolving disputes among different Claimants as to their entitlement to a Plan benefit shall be charged against the benefit, which shall be reduced accordingly. To the extent permitted by applicable law, the Employer shall indemnify and save harmless its officers, directors, and employees against any and all expenses, liabilities, and claims (including legal fees incurred to defend against such liabilities and claims) arising out of their discharge in good faith of their administrative and fiduciary responsibilities with respect to the Plan. Expenses and liabilities arising out of willful misconduct shall not be covered under this indemnity. This indemnity shall not preclude such further indemnities as may be available under insurance purchased by the Employer or provided by the Employer or under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise.

(h) Duty To Provide Data

Every person claiming a benefit under this Plan is responsible for informing the Plan Administrator of his or her mailing address and each change of mailing address. If a person fails to give notice of his or her correct address, the Plan Administrator, the Employer, and Plan fiduciaries shall not be obliged to search for, or to ascertain, his or her whereabouts.

(i) Limitation on Rights of Employees

The Plan is strictly a voluntary undertaking on the part of the Employer and shall not constitute a contract between the Employer and any person, or consideration for, or an inducement or condition of, the employment of any employee. Except as otherwise required by statute, nothing in the Plan shall give any employee the right to be retained in the service of the Employer or to interfere with or restrict the right of the Employer, which is hereby expressly reserved, to discharge or retire any employee at any time for any reason not prohibited by statute, without the Employer being required to show cause for the termination. Except as otherwise required by statute, inclusion under the Plan will not give any employee any right or claim to any benefit hereunder except to the extent such right has specifically become fixed under the terms of the Plan. The doctrine of substantial performance shall have no application to employees or Participants. Each condition and provision, including numerical items, has been carefully considered and constitutes the minimum limit on performance that will give rise to the applicable right.

(j) Governing Law

The Plan shall be interpreted, administered and enforced in accordance with the Employee Retirement Income Security Act of 1974, and the rights of Participants and all other persons shall be determined in accordance with that law. To the extent that state law is applicable, however, the statutes and common law of the State of California (excluding its choice of laws doctrines) shall apply.

(k) Status of Plan

This Plan is a welfare plan subject to ERISA.

(l) Plurals

Where the context so indicates, the singular shall include the plural and vice versa.

(m) Titles

Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of the Plan.

(o) References

Unless the context clearly indicates to the contrary, a reference to a statute or document shall be construed as referring to any subsequently enacted, adopted, or executed counterpart.

To record the Plan as set forth herein, effective as of January 1, 2002, the Company has caused its authorized officer to execute the same this 25th day of July, 2002.

AMGEN INC.

By: /s/ BRIAN MCNAMEE

Brian McNamee
Senior Vice President, Human Resources

Amgen Severance Plan (as of March 5, 2002)

	Group A Grades 11 to 21	Group B Grades 22 to 27	Group C Grades 28, 29, L1	Group D Grades 30, 31, L2, L3	Group E Grades 32, 33
Base Severance Amount	1 month of Base Pay(1)(2)	1 month of Base Pay(1)(2)	1 month of Base Pay(1)(2)	1 month of Base Pay(1)(2)	1 month of Base Pay(1)(2)
Enhanced Severance Benefits(3)					
• Additional Base Severance	2 months of Base Pay	2 months of Base Pay	2 months of Base Pay	5 months of Base Pay	1 year of Base Pay and Incentive(4) (less the Base Severance Amount)
• Service Premium	2 weeks Base Pay for each year of service (rounded up)(5)	2 weeks Base Pay for each year of service (rounded up)(5)	2 weeks Base Pay for each year of service (rounded up)(5)	2 weeks Base Pay for each year of service (rounded up)(5)	—
Additional Severance Benefits(3)					
• Company-Subsidized COBRA (6)	For length of severance period (7)	For length of severance period (7)	For length of severance period (7)	For length of severance period (7)	For length of severance period (7)
• Outplacement Services(8)	1 month	3 months	6 months	6 months	12 months
Minimum Base Severance	1 month of Base Pay (without signing Severance Agreement) or 4 months of Base Pay(9)	1 month of Base Pay (without signing Severance Agreement) or 4 months of Base Pay(9)	1 month of Base Pay (without signing Severance Agreement) or 4 months of Base Pay(9)	1 month of Base Pay (without signing Severance Agreement) or 6 months of Base Pay(9)	1 month of Base Pay (without signing Severance Agreement) or 1 year of Base Pay and Incentive(9)
Maximum Base Severance	12 months of Base Pay	12 months of Base Pay	12 months of Base Pay	12 months of Base Pay	1 year of Base Pay and Incentive

(1) "Base Pay" shall mean the Eligible Employee's base salary or wages (excluding overtime pay, bonuses, commissions, premium pay, shift differentials, MIP, VEP, SRA, Stock Options, and/or other compensation) immediately prior to the last date of employment.
(2) The Company shall be entitled to withhold from amounts to be paid to the severed Employee any federal, state or local withholding or other taxes which it is from time to time required by law to withhold.
(3) Enhanced and Additional Severance Benefits are provided only if Eligible Employee executes and does not revoke Severance Agreement.

[4] "Incentive" shall mean the Eligible Employee's target annual bonus (target % multiplied by annual base salary) immediately prior to the last date of employment.

[5] "Years of Service" shall mean, beginning on the Eligible Employee's date of hire, each full and partial year of an Eligible Employee's employment by the Company.

[6] So long as Eligible Employee and/or eligible dependents timely take the required steps to initiate such coverage. COBRA benefits are provided for the length of the severance period or until Eligible Employee and/or eligible dependents no longer qualify for COBRA continuation benefits, whichever is earlier.

[7] "Severance Period" shall mean with respect to each Group A, B, and C employee, three (3) months plus the number of weeks equal to two (2) times such Employee's Years of Service. With respect to each Group D employee, it shall mean six (6) months plus the number of weeks equal to two (2) times such Employer's Years of Service. With respect to each Group E employee, it shall mean one (1) year.

[8] Outplacement Services are provided for the lengths of time indicated above or until employee becomes re-employed, whichever is earlier.

[9] Only if Eligible Employee executes and does not revoke Severance Agreement.

This form is intended to be used for informational purposes only. Nothing in this form or told to you by any Amgen employee is a contract or an offer of a contract. Neither this form nor anything told to you by any Amgen employee creates a legally enforceable right or expectancy in any staff member. To the extent that this form or anything told to you by any Amgen employee differs from what is provided you in your Severance Agreement, the Severance Agreement controls. Additionally, nothing in this document modifies the at-will nature of employment at Amgen.

***Certain confidential information contained in this document, marked by the brackets, has been omitted and filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

EXHIBIT 10.77

AMENDMENT NO. 2
TO THE
***ENBREL*® SUPPLY AGREEMENT**

This Amendment No. 2 ("*Amendment No. 2*") is made this 3rd day of June, 2002 (the "*Amendment No. 2 Effective Date*") by and among IMMUNEX CORPORATION, a corporation of the State of Washington, having its principal place of business at 51 University Street, Seattle, Washington 98101, U.S.A., together with its Affiliates ("*Immunex*"), WYETH (formerly known as American Home Products Corporation), a corporation of the State of Delaware having its corporate headquarters at Five Giralda Farms, Madison, New Jersey 07940, U.S.A. ("*Wyeth*"), and BOEHRINGER INGELHEIM PHARMA KG, a German corporation having a place of business at Birkendorfer Straße 65, 88397 Biberach an der Riss, Federal Republic of Germany ("*BIP*"), and amends the *Enbrel* Supply Agreement effective as of November 5, 1998, by and among Immunex, Wyeth, and BIP, and amended in Amendment No. 1 as of June 27, 2000 (the "*Agreement*").

WHEREAS, Immunex, Wyeth and BIP have entered into a certain Agreement for BIP's supply of *Enbrel*® (etanercept) to Immunex and Wyeth;

WHEREAS, the Parties have determined that it would be advantageous for the manufacture of *Enbrel* to be relocated from the Original Biberach Facility, also known as H84, to [*], known as the [*] (the "[*] *Biberach Facility*");

WHEREAS, the Parties have also determined that it would be advantageous to change the [*] for manufacturing *Enbrel* from the [*];

WHEREAS, the development work related to the transfer to the [*] is addressed in the [*]; and

WHEREAS, pursuant to Section 23.9 of the Agreement, the Agreement may only be amended and supplemented by a written instrument signed by the Parties.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each intending to be legally bound, hereby agree as follows:

1. *Capitalized Terms*. All initially capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.

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2. *Amended Definitions*. Section 1.36 and 1.56 of the Agreement shall be amended and restated to read as follows:

1.36 [*]

1.56 [*]

3. *New Definitions*. Section 1.66 of the Agreement shall be amended to add the following new definitions:

	Section
"Additional H84 Unused Capacity"	5.10(a)(4)
"Baseline Accepted Unused Capacity"	5.10(a)(4)
[*]	5.3(c)(i)
[*]	5.3(c)(iii)
[*]	5.3(c)(iii)
"Post-Transition Years"	5.10(a)(3)
[*]	3.5(b)(3)
"[*]Pricing Runs"	24.1(g)
"Transition Years"	5.10(a)(2)

4. *Relocation* [*]. A new Section 3.5 shall be added to the Agreement as follows:

3.5 *Relocation of Manufacturing and* [*].

(a) *Relocation*. BIP shall undertake to relocate manufacture of the Product from the Original Biberach Facility to the [*] Biberach Facility, by performing the activities set forth on *Amendment No. 2 Exhibit A* and in accordance with the schedule set forth on *Amendment No. 2 Exhibit B*, each of which is attached hereto and made a part hereof.

(b) Conversion to [*]

(1) BIP shall undertake to convert from manufacturing the Product using the [*] to using the [*] by performing the activities set forth on Amendment No. 2 Exhibit A. Subject to Section 3.5(b)(2) below, BIP shall use all commercially reasonable efforts to convert manufacture of the Product [*] as soon as reasonably practicable.

(2) BIP shall begin manufacturing in the [*] Biberach Facility using the [*] and shall continue to perform the conversion activities described in Section 3.5(b)(1) above, according to the schedule set forth on *Amendment No. 2 Exhibit B* attached hereto and made a part hereof. Immunex and Wyeth shall bear the additional costs of

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the activities associated with using the [*] in the [*] Biberach Facility, which activities and costs are described on *Amendment No. 2 Exhibit C* attached hereto and made a part hereof. In the event that the Parties mutually agree to delay conversion to [*] beyond the schedule set forth in Amendment No. 2 Exhibit B, the Parties shall agree in writing on revised versions of Amendment No. 2 Exhibit A and Amendment No. 2 Exhibit B, as applicable, by incorporating the changes as are appropriate under the circumstances.

(3) Notwithstanding the foregoing, the [*] will not be used to manufacture Product in any other commercial manufacturing facility in the world prior to its implementation in the [*] Biberach Facility, except that Immunex may at its discretion use [*] to manufacture Product at [*] prior to use of such [*] in the [*] Biberach Facility. In the event that [*] is used in the [*] prior to its use in the [*] Biberach Facility, then (i) the Parties shall cooperate in good faith to transfer all applicable data and information about the [*] to BIP to facilitate implementation of [*] into the [*] Biberach Facility, and (ii) Immunex and Wyeth shall use all commercially reasonable efforts to facilitate BIP's validation and launch of the [*] to manufacture commercial Product in the [*] Biberach Facility within one (1) year following initial use of such [*] to manufacture commercial Product [*].

5. *Maximum Request; Annual Minimum; Unused Production Capacity*. Section 5.10(a) of the Agreement shall be amended and restated as follows:

5.10 *Maximum Request; Annual Minimum.*

(a) *Maximum Request.*

(1) *Maximum Request*. Subject to Section 5.10(c) below, beginning on [*] and continuing through [*], the annual Maximum Request in the Agreement shall be equal to the Annual Minimum as defined in Section 5.10(b) below. Immunex and Wyeth hereby waive their ability to reduce the Maximum Request below the Annual Minimum under Section 5.1(b) hereof until an effective date of [*] at the earliest, except to the extent otherwise permitted in Section 5.10(c) below. Subject to Section 5.10(c) below, beginning on [*] and continuing through the end of the Supply Term, Immunex and Wyeth shall be entitled to reduce the Maximum Request (unless otherwise agreed in writing among the Parties, to be calculated by using the original Maximum

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Request herein) by no more than [*] percent ([*]%) per Calendar Year by providing at least the required [*] prior written notice to BIP (e.g., notice by [*] for a potential reduction in the Maximum Request effective as of [*], etc.). Moreover, the absolute minimum of the Maximum Request after permitted reductions under Section 5.1(b) of the original Agreement shall always be the required capacity for [*] of Bulk Drug Substance calculated in accordance with the original Production Assumptions herein.

In addition to the Maximum Request, BIP shall be bound to provide the following Bulk Drug Substance Runs in the Original Biberach Facility to Immunex and Wyeth:

(i) To the extent that BIP acquires any Original Additional Run or Subsequent Additional Run as a result of its Outsourcing Activities, (A) all such Original Additional Runs shall be reserved for Buyer through [*] and (B) Buyer shall have a ROFR for any Subsequent Additional Run during Calendar Years [*] and [*], and such ROFR shall be exercised according to Section 24.1(d)(2) hereof.

(ii) To the extent that BIP enters into a binding commitment, pursuant to Section 5.10(a)(2) below, to provide a number of Bulk Drug Substance Runs that exceeds the Maximum Request in a Transition Year, such commitment shall be binding on the Parties.

(iii) BIP shall provide the Baseline Accepted Unused Capacity, as well as any Additional H84 Unused Capacity reserved by Immunex and Wyeth, in accordance with Section 5.10(a)(4) below.

(2) The number of Bulk Drug Substance Runs currently planned by BIP, as of the Amendment No. 2 Effective Date, for the Calendar Years [*] through [*] (each, a "*Transition Year*," and together, the "*Transition Years*") are set forth on *Amendment No. 2 Exhibit B* attached hereto and made a part hereof. The number of Bulk Drug Substance Runs set forth on Amendment No. 2 Exhibit B shall be binding on the Parties for the Calendar Year [*], subject to the other terms of this Agreement, but shall not be binding for Calendar Years [*] and [*]. By no later than June 30 of the Calendar Years [*] and [*], BIP shall inform Immunex in writing of the actual number of Bulk Drug

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Substance Runs scheduled for the immediately following Transition Year and such written statement shall be binding on the Parties, subject to the other terms of this Agreement. Notwithstanding anything herein to the contrary, BIP shall remain obligated to provide the Annual Minimum required under the Agreement for each Transition Year.

(3) For Calendar Years [*] through [*] (each, a "*Post-Transition Year*," and together, the "*Post-Transition Years*"), BIP shall be obligated to provide the Annual Minimum of Bulk Drug Substance Runs in the [*] Biberach Facility.

(4) BIP hereby offers Immunex and Wyeth, and Immunex and Wyeth hereby accept, [*] Bulk Drug Substance Runs, using [*], in the Original Biberach Facility, for each Post-Transition Year. Such [*] additional Bulk Drug Substance Runs shall be considered Accepted Unused Capacity subject to Section 5.1(a)(3) of the Agreement and shall be hereinafter referred to as the "*Baseline Accepted Unused Capacity*". [*]

In addition, BIP shall offer to Immunex and Wyeth the then available additional unused production capacity in the Original Biberach Facility beyond the Baseline Accepted Unused Capacity (the "*Additional H84 Unused Capacity*") and shall make such offer in writing for each Post-Transition Year at least [*] Calendar Years prior to the commencement of such Post-Transition Year. Any such Additional H84 Unused Capacity shall be for manufacture of the Product [*]. Upon receipt of such written notice from BIP, Immunex and Wyeth shall have a period of [*] days in which to provide written notice to BIP that Immunex and Wyeth wish to reserve all or any portion of such Additional H84 Unused Capacity for the production of additional kg of Bulk Drug Substance and, if Immunex and Wyeth accept any such capacity, it shall be deemed Accepted Unused Capacity subject to Section 5.1(a)(3) of the Agreement. [*]

Notwithstanding the foregoing, beginning on [*] and continuing through the end of the Supply Term, Immunex and Wyeth shall be entitled to reduce the Baseline Accepted Unused Capacity by no more than [*] per Calendar Year by providing at least [*] prior written notice to BIP (*e.g.*, notice by [*] for a potential reduction in the Baseline Accepted Unused Capacity effective as of [*], etc.).

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* Confidential Treatment Requested.

(5) BIP's obligations under Sections 5.1(a)(3) and 24.1(d) of the Agreement shall be deemed satisfied by: (A) BIP's offer of Bulk Drug Substance Runs during the Transition Years, as set forth in Section 5.10(a)(2) above, and (B) BIP's offer of the Baseline Accepted Unused Capacity and any Additional H84 Unused Capacity, as set forth in Section 5.10(a)(4) above. BIP shall have no obligation under Sections 5.1(a)(3) and 24.1(d) of the Agreement to offer Immunex and Wyeth unused production capacity in the [*] Biberach Facility.

6. *Pricing of* [*]. Section 5.3(c) of the Agreement shall be amended and restated as follows:

5.3 *Adjustment of Bulk Drug Substance Pricing Based on Production Assumptions.*

(c) [*]

7. *Price Adjustments Applicable to* [*]. New Section 5.3(d) shall be added to the Agreement as follows:

5.3 *Adjustment of Bulk Drug Substance Pricing Based on Production Assumptions.*

(d) [*]

8. *Extension of Supply Term of Agreement*. Section 19.1 of the Agreement shall be amended and restated as follows:

19.1 *Term; Renewal.*

Unless sooner terminated pursuant to the terms of this Agreement, the term of this Agreement shall commence upon the Effective Date and shall continue thereafter until at least [*] (the "*Supply Term*"). This Agreement and the Supply Term shall automatically continue from Calendar Year-to-Calendar Year thereafter unless terminated by either Party by providing at least [*] prior written notice to the other Party, provided that neither Party may provide such notice prior to the end of the [*] Contract Year, i.e., [*]. For purposes of this Section 19.1, Immunex and Wyeth shall be deemed the same Party.

9. [*]

10. *[*] Pricing.*

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* Confidential Treatment Requested.

(a) Section 24.1(c)(3) of the Agreement shall be amended and restated as follows:

(3) [*] that is performed per year for Calendar Years [*], [*] and [*] (for each of these [*] Calendar Years, the additional Bulk Drug Substance Runs made available by BIP to Immunex and Wyeth in the particular Calendar Year shall be referred to as the "*Subsequent Additional Runs*"), *provided, however*, that the number of Bulk Drug Substance Runs that are performed in each of [*] (for the last [*] of [*]), [*], [*] and [*] that are eligible for the DM [*] pricing shall not exceed the difference between the number of actual Bulk Drug Substance Runs that are performed between [*] to [*] and [*] Bulk Drug Substance Runs (comprised of the [*] carryover Bulk Drug Substance Runs + [*] Bulk Drug Substance Runs in [*] + [*] Bulk Drug Substance Runs in [*]), and provided further that [*] pricing as set forth in this Section 24.1(c)(3) shall be available for no more than [*] Bulk Drug Substance Runs per Calendar Year in each of [*], [*], and [*].

(b) A new Section 24.1(g) shall be added to the Agreement as follows:

(g) [*] *Pricing*. In addition to the runs that are eligible for [*] pricing in each of the Calendar Years [*], [*] and [*] as calculated under Amendment No. 1, BIP will be eligible to receive new [*] pricing, instead of [*] pricing, on certain additional Bulk Drug Substance Runs of the Product [*] in each of the years [*], [*], [*] and [*] (the "[*]*Pricing Runs*"). The Bulk Drug Substance Runs that are eligible to be [*] Pricing Runs are:

(1) any Bulk Drug Substance Runs beyond the initial [*] Bulk Drug Substance Runs in each of Calendar Years [*], [*] and [*] (i.e., those Bulk Drug Substance Runs beyond the initial [*] per Calendar Year that are not already eligible to receive [*] pricing as calculated under Amendment No. 1) and

(2) any Bulk Drug Substance Runs beyond the initial [*] Bulk Drug Substance Runs in Calendar Year [*].

For purposes of calculating the [*] runs in [*] through [*] and the [*] runs in [*], Bulk Drug Substance Runs [*] shall be included; provided, however, that only Bulk Drug Substance Runs [*] are eligible to be [*] Pricing Runs that receive the [*]

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* Confidential Treatment Requested.

pricing described in this paragraph. The [*] pricing for the [*] Pricing Runs shall be the then current Product Price, plus a payment of DM [*] for each successful [*] Pricing Run of the Product [*] that results in Finished Product meeting the Specifications. Notwithstanding anything in this Agreement to the contrary, BIP shall not be entitled to receive (x) any [*] pricing under Amendment No. 1 or any [*] pricing under this Amendment No. 2 on Bulk Drug Substance Runs [*], or (y) any [*].

11. *Effect of Amendment No. 2 on Agreement*. Except as otherwise set forth in this Amendment No. 2, all other terms and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms and conditions of the Agreement, as amended by Amendment No. 1, and the terms and conditions of this Amendment No. 2, the terms and conditions of this Amendment No. 2 shall control.

12. *Counterparts*. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

[This space is intentionally left blank.]

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IN WITNESS WHEREOF, the Parties have, by their duly authorized persons, executed this Amendment No. 2 as of the Amendment No. 2 Effective Date.

IMMUNEX CORPORATION

By: /S/ PEGGY V. PHILLIPS

Name: Peggy V. Phillips

Title: Executive Vice President Chief Operating Officer

Date: June 3, 2002

WYETH

By: /S/ JEFFREY S. SHERMAN

Name: Jeffrey S. Sherman

Title: Vice President & Associate General Counsel

Date: June 5, 2002

BOEHRINGER INGELHEIM PHARMA KG

PPA

By: /S/ ROLF WERNER

Name: Rolf Werner

Title: Head CD Biopharma

Date: June 18, 2002

PPA

By: /S/ WOLFRAM CARIUS

Name: Wolfram Carius

Title: Head Biopharmaceuticals

Date: June 18, 2002

Appendices:

Amendment No. 2 Exhibit A:	[*] (former Appendix LOI—1)
Amendment No. 2 Exhibit B:	Implementation [*] in [*] Plant (former Appendix LOI—2.2)
Amendment No. 2 Exhibit C:	Master Plan [*] BackUp (former Appendix LOI—5.2)
Amendment No. 2 Exhibit D:	Implementation [*] into [*] Plant (former Appendix LOI—2.1) (attached for reference)

* Confidential Treatment Requested.

***Certain confidential information contained in this document, marked by the brackets, has been omitted and filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.**

Exhibit 10.78

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and between

Immunex Corporation

as Seller,

and

Schering Aktiengesellschaft

as Purchaser

Dated as of May 2, 2002

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EXECUTION VERSION

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") is made as of the 2nd day of May, 2002, by and between Immunex Corporation, a Washington corporation ("*Seller*"), and Schering Aktiengesellschaft, a stock corporation organized under the laws of The Federal Republic of Germany ("*Purchaser*").

WITNESSETH:

WHEREAS, Seller and Seller Sub are engaged in researching, developing, manufacturing, marketing, and selling certain biopharmaceutical products, including LEUKINE®;

WHEREAS, Purchaser has agreed to acquire from Seller and Seller Sub, and Seller has agreed to sell and to cause Seller Sub to sell to Purchaser, the Conveyed Assets on the terms and subject to the conditions set forth herein so that Purchaser may succeed to the Business; and

WHEREAS, Purchaser has agreed to assume the Assumed Liabilities on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises, covenants, representations and warranties contained herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

SECTION 1.1 *Definitions.*

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

"Accounts Receivable" shall mean all accounts receivable, notes receivable and indebtedness for borrowed money or overdue accounts receivable, in each case, due and owing by any third party.

"Actual Credit" shall have the meaning ascribed to it in Section 2.5(g)(ii).

"Affiliate" of a specified Person shall mean another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person; *provided*, *however*, that, unless otherwise specified herein, neither Wyeth nor Amgen Inc., nor their respective successor entities, nor any other Person that

would be an Affiliate of Seller solely by reason of Amgen Inc. or Wyeth being an Affiliate of Seller, shall be deemed an "Affiliate" of Seller for purposes hereof.

"Agreement" shall have the meaning ascribed to it in the preamble hereto.

"Assignment of Intellectual Property" shall mean the Assignment of Intellectual Property in the form of *Exhibit C* hereto.

"Assumed Contracts" shall mean all (i) Contracts pursuant to which any third party purchases LEUKINE from Seller or Seller Sub, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(i) of the Seller Disclosure Letter, (ii) Contracts pursuant to which Seller or Seller Sub purchases any materials from any third party for use in connection with the manufacture of LEUKINE, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(ii) of the Seller Disclosure Letter, (iii) Contracts relating to any clinical trial involving LEUKINE, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(iii) of the Seller Disclosure Letter, (iv) Contracts constituting material transfer agreements involving the transfer of LEUKINE, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(iv) of the Seller Disclosure Letter, (v) Contracts relating to the marketing of LEUKINE or educational matters relating to the Business, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(v) of the Seller Disclosure Letter, (vi) Contracts relating to the manufacture (including fill or finish) of LEUKINE, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(vi) of the Seller Disclosure Letter, (vii) Contracts constituting confidentiality agreements involving LEUKINE, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(vii) of the Seller Disclosure Letter, (viii) Contracts involving any royalty, licensing or similar arrangement involving LEUKINE, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(viii) of the Seller Disclosure Letter, (ix) Contracts pursuant to which any services are provided to Seller or Seller Sub with respect to LEUKINE or the Business, including consultation agreements, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(ix) of the Seller Disclosure Letter, (x) Contracts pursuant to which any third party collaborates with Seller or Seller Sub in the performance of research or development of LEUKINE or the Business, all of which Contracts in effect on the date hereof are set forth on Section 1.1(a)(x) of the Seller Disclosure Letter, (xi) in the case of those Contracts referred to in clauses (i) through (x) above which are Dual Use Contracts and which are bifurcated into two or more Contracts prior to Closing, Contracts entered into by Seller or Seller Sub in connection with such bifurcation that relate to LEUKINE, the Conveyed Assets or the Business, (xii) other Contracts entered into by Seller or Seller Sub from the date hereof to the Closing Date to the extent relating to LEUKINE, the Conveyed Assets or the Business (other than any Contracts for which the consent of Purchaser was required to be obtained pursuant to Section 5.1 but was not so obtained), and (xiii) any other contract similar to the foregoing Contracts which are no longer in effect and under which Seller or Seller Sub has any rights; *provided*, that "Assumed Contracts" shall not be deemed to include any Excluded Contracts.

"Assumed Liabilities" shall have the meaning ascribed to it in Section 2.2(a).

"Bill of Sale and Assumption Agreement" shall mean the Bill of Sale and Assumption Agreement in the form of *Exhibit A* hereto.

"BLA" shall mean a Biologic License Application or Establishment License Application / Product License Application filed with the FDA for LEUKINE pursuant to 21 CFR 601.2, et seq., and Section 351 of the Public Health Service Act, and all supplements, amendments and revisions thereto.

"Bothell Facility" shall mean that portion of Seller's facility located at 21511 23rd Drive SE, Bothell, Washington that is the subject of the Bothell Facility Lease.

"Bothell Facility Lease" shall mean the Bothell Facility Lease in the form of Exhibit H hereto.

"Business" shall mean the business of researching, developing, manufacturing, marketing and selling LEUKINE.

"Business Day" means any day on which banks are not required or authorized to close in New York, New York, or Berlin, Germany.

"Closing" shall have the meaning ascribed to it in Section 2.4(a).

"Closing Date" shall have the meaning ascribed to it in Section 2.4(a).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" shall have the meaning ascribed to it in Section 5.2(b).

"Contracts" shall mean any and all purchase orders, sales orders, leases, subleases, licenses, indentures, contracts, agreements and other legally binding arrangements, whether oral or written, in effect between Seller (or Seller Sub), on the one hand, and one or more third parties, on the other hand.

"Control" (including the terms "controlled by" and "under common control with") means, with respect to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of securities or as trustee or executor, by contract or credit arrangement or otherwise.

"Conveyed Assets" shall have the meaning ascribed to it in Section 2.1(a).

"Conveyed Intellectual Property" shall mean: (i) the Intellectual Property set forth on Section 2.1(a)(iv) of the Seller Disclosure Letter; (ii) any Software that is set forth on Section 1.1(b) of the Seller Disclosure Letter, (iii) web site content primarily related to the Business, (iv) Software embedded in hardware included in the Conveyed Assets, and (v) any other Intellectual Property that is acquired by Seller or Seller Sub or to which Seller or Seller Sub obtains rights, in each case, from the date hereof to the Closing Date and that is primarily related to LEUKINE or the Business, but only to the extent Seller or Seller Sub is permitted to transfer such Intellectual Property; *provided*, *however*, that in the event Seller or Seller Sub acquires Intellectual Property or obtains rights to Intellectual Property referred to in the

foregoing clause (v) ”Conveyed Intellectual Property” shall only include such Intellectual Property to the extent it relates to LEUKINE.

[*]

[*]

“Designated Employee” shall have the meaning ascribed to it in Section 5.8(a).

“Designated Purchaser Subsidiary” shall have the meaning ascribed to it in Section 2.8(a).

“Dual Use Contract” means any Assumed Contract, the subject matter of which relates to both (a) LEUKINE, the Business or the Conveyed Assets and (b) a product of Seller or one of its Subsidiaries (other than LEUKINE) or any business of Seller or one of its Subsidiaries (other than the Business) or any assets of Seller or one of its Subsidiaries (other than the Conveyed Assets), all of which Dual Use Contracts in effect on the date hereof are set forth on Section 1.1(c) of the Seller Disclosure Letter.

“Dual Use Contract Rights” shall have the meaning ascribed to it in Section 2.1(b)(ii).

“Employee” shall mean an employee of Seller or Seller Sub who, as of the date of this Agreement, is employed primarily in the Business.

“Employee Benefits Liability” shall mean any and all existing or potential liabilities of Seller and/or one or more ERISA Affiliates (a) under Sections 302, 405 and 409 and/or Title IV of ERISA, (b) under Sections 412, 4971 and/or 4975 of the Code and/or (c) under any corresponding or similar provisions of any applicable federal, state, local or non-U.S. Laws.

“Employment Agreement” shall mean an employment or other individual agreement relating to the terms and conditions of employment between Seller and/or one or more of its Subsidiaries, on the one hand, and an Employee on the other hand, but excluding any agreement that is only a confidentiality, invention disclosure or similar type of agreement.

“Environmental Laws” means any Federal, state, local or non-U.S. Law and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, judgment, stipulation, injunction, Permit, authorization, policy, opinion, or agency requirement, in each case having the force and effect of Law, relating to the pollution, protection, investigation or restoration of the environment, health, safety as affected by the environment or natural resources, including those relating to the use, handling, presence, transportation, treatment, storage, disposal, release, threatened release or discharge of Hazardous Materials or noise, odor, wetlands, pollution or contamination.

“Equity Awards” shall have the meaning ascribed to it in Section 5.8(f).

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"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"ERISA Affiliate" means any entity or trade or business (whether or not incorporated) other than Seller that together with Seller is considered under common control and treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"Excluded Assets" shall have the meaning ascribed to it in Section 2.1(b).

"Excluded Contracts" shall mean (i) all Contracts identified on Section 1.1(d) of the Seller Disclosure Letter and (ii) in the case of those Contracts which are Dual Use Contracts and which are bifurcated into two or more Contracts prior to Closing, all Contracts entered into by Seller or one of its Subsidiaries in connection with such bifurcation that do not relate to LEUKINE, the Conveyed Assets or the Business.

"Excluded Liabilities" shall have the meaning ascribed to it in Section 2.2(b).

"Excluded Software" shall have the meaning ascribed to it in Section 3.7(b).

"FDA" shall have the meaning ascribed to it in Section 3.4(a).

"FDCA" shall have the meaning ascribed to it in Section 3.4(a).

"Fees" shall have the meaning ascribed to it in Section 2.5(c).

"Financial Information" shall have the meaning ascribed to it in Section 3.5.

"GAAP" shall mean United States generally accepted accounting principles in effect on the date hereof.

"Governmental Entity" shall mean any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.

"Hazardous Materials" means (A) any petroleum, petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls or (B) any chemical, material or other substance defined or regulated as toxic or hazardous or as a pollutant or contaminant or waste under any applicable Environmental Law.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

"IND" shall mean an Investigational New Drug Application filed with the FDA for LEUKINE pursuant to 21 CFR 312.1 et seq., for which Seller is the "Sponsor" (as defined in 21 CFR 312.3), and all supplements, amendments and revisions thereto.

"Indemnified Party" shall have the meaning ascribed to it in Section 8.3(a).

"Indemnifying Party" shall have the meaning ascribed to it in Section 8.3(a).

"Initial Inventory Amount" shall have the meaning ascribed to it in Section 2.3(a)(i).

"Initial Purchase Price" shall have the meaning ascribed to it in Section 2.3(a)(i).

"Instrument of Assignment and Assumption" shall mean the Instrument of Assignment and Assumption in the form of *Exhibit B* hereto.

"Intellectual Property" shall mean all: (i) patents, patent applications and statutory invention registrations, including reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto; (ii) mask works and copyrights in works of authorship of any type, including Software and industrial designs, registrations and applications for registration thereof; (iii) trademarks, servicemarks, registrations and applications for registration thereof and the goodwill relating thereto; and (iv) trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business and other information, and all rights in any jurisdiction to limit the use or disclosure thereof; *provided*, *however*, that "Intellectual Property" shall not include the name "Immunex" or any related logo or any software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preferences).

"Intellectual Property License Agreement" shall mean the Intellectual Property License Agreement in the form of *Exhibit D* hereto.

"Intellectual Property Transfer Agreements" shall mean the agreements substantially in the form of *Exhibit G* hereto (or such other documents or instruments assigning or conveying the rights and obligations relating to LEUKINE which may be reasonably acceptable to Purchaser).

"Inventory" shall have the meaning ascribed to it in Section 2.1(a)(v).

"Inventory Certificate" shall have the meaning ascribed to it in Section 2.3(b)(i).

"Inventory Value" shall have the meaning ascribed to it in Section 2.3(b)(i).

"IRS" shall mean the Internal Revenue Service.

"knowledge" of (i) Seller means, with respect to any specific matter, the actual knowledge of any person listed on Section 1.1(e) of the Seller Disclosure Letter or any other officer of Seller or Seller Sub having primary responsibility for such matter, and (ii) Purchaser means, with respect to any specific matter, the actual knowledge of any officer of Purchaser or Berlex Laboratories, Inc. having primary responsibility for such matter.

"Law" shall mean any Federal, state, local or non-U.S. law, statute, code, ordinance, regulation, order, judgment, writ, injunction, decision, ruling or decree.

"LEUKINE" shall mean the product that contains the active ingredient generically known as sargramostim (i.e., that certain modified human granulocyte-macrophage colony-stimulating factor produced by recombinant DNA technology) that is or was researched, developed, manufactured, marketed and sold by or on behalf of Seller or Seller Sub.

"Lien" shall mean any lien, security interest, pledge, mortgage, easement, right of way or hypothecation or any other similar encumbrance.

"Losses" shall have the meaning ascribed to it in Section 8.2(a).

"Master Lease" shall have the meaning ascribed to it in the Sublease.

"Material Adverse Effect" means any change, event, development, effect or occurrence that, individually or in the aggregate, has been or would reasonably be expected to be materially adverse to the (i) business, (ii) assets or (iii) results of operations of the Business or of Seller and its Subsidiaries taken as a whole (but only with respect to the Business), other than any change, event, development, effect or occurrence to the extent (A) relating to national, international or regional economic or financial conditions, (B) affecting the biotechnology industry generally, which changes, events, developments, effects or occurrences do not disproportionately adversely affect the Business relative to the other participants in the biotechnology industry, (C) due to, resulting from or otherwise attributable to the identity of Purchaser, (D) resulting from the introduction, marketing or sale of any product in competition with LEUKINE, [*], or (E) relating to the Excluded Liabilities or Excluded Assets. For purposes of analyzing whether any change, event, development, effect or occurrence constitutes a "Material Adverse Effect" under this definition, Seller and Purchaser agree that (x) Purchaser will be deemed to have no knowledge of any change, event, development, effect or occurrence that is not disclosed or cross-referenced in Section 3.6(a) of the Seller Disclosure Letter, and (y) each of the terms contained in (i) through (iii) above is intended to be separate and distinct.

"Merger" shall have the meaning ascribed to it in the Merger Agreement.

"Merger Agreement" shall mean the Amended and Restated Agreement and Plan of Merger, dated as of December 16, 2001, by and among Seller, Amgen Inc. and AMS Acquisition Inc.

"Nonassignable Asset" shall have the meaning ascribed to it in Section 2.6.

"Objection Period" shall have the meaning ascribed to it in Section 2.3(b)(i).

"Other Bid" shall have the meaning ascribed to it in Section 5.15.

"Other Employee" shall mean each employee of Seller and/or one or more of its Subsidiaries who is not an Employee.

"Outside Date" shall have the meaning ascribed to it in Section 7.1(c).

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“Permits” shall have the meaning ascribed to it in Section 3.4(a).

“Permitted Liens” shall mean any and all: (i) Liens for Taxes or assessments which are not due and payable, or are being contested in good faith by appropriate proceedings, that may thereafter be paid without penalty; (ii) mechanics’, warehousemens’, materialmens’, contractors’, workmens’, repairmens’, carriers’ and other similar Liens incurred in the ordinary course of business which secure or relate to obligations as to which Seller and Seller Sub are not delinquent; (iii) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; and (iv) Liens that, individually or in the aggregate, do not materially impair, and would not reasonably be expected to materially impair, the continued use and operation of the assets to which they relate in the conduct of the Business as presently conducted.

“Person” shall mean any individual, group, corporation, partnership, limited liability company, Governmental Entity or other organization or entity.

“Personnel” shall have the meaning ascribed to it in Section 3.9(g).

“Post-Transfer Period” means, in the case of any taxable period that includes (but does not end on) the Closing Date, the portion of such period that begins on the day immediately after the Closing Date and ends on the last day of such period.

“Pre-Estimated Credit” shall have the meaning ascribed to it in Section 2.5(g)(ii).

“Pre-Transfer Period” means, in the case of any taxable period that includes (but does not end on) the Closing Date, the portion of such period that begins on the first day of such period and ends on the Closing Date.

“Process Agent” shall have the meaning ascribed to it in Section 9.15.

“Property Taxes” shall have the meaning ascribed to it in Section 5.5(b).

“Purchase Price” shall have the meaning ascribed to it in Section 2.3(a)(i).

“Purchase Price Adjustment” shall have the meaning ascribed to it in Section 2.3(b)(iii).

“Purchaser” shall have the meaning ascribed to it in the preamble hereto.

“Purchaser Benefit Plan” shall have the meaning ascribed to it in Section 5.8(b).

“Purchaser Indemnified Parties” shall have the meaning ascribed to it in Section 8.2(a).

“Rebates” shall have the meaning ascribed to it in Section 2.5(c).

“Related Instruments” shall mean the Bill of Sale and Assumption Agreement, the Instrument of Assignment and Assumption, the Sublease, the Transitional Services Agreement,

the Assignment of Intellectual Property, the Intellectual Property License Agreement and the Bothell Facility Lease, and with respect to Purchaser shall include the Intellectual Property Transfer Agreements to which Purchaser or a Purchaser Designated Subsidiary is a party, and with respect to Seller shall include the Intellectual Property Transfer Agreements to which Seller or Seller Sub is a party.

"Release" shall mean any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal or leaching of Hazardous Materials into the environment.

"Required Permits" shall have the meaning ascribed to it in Section 3.4(a).

"Returns" shall have the meaning ascribed to it in Section 2.5(b).

"Royalty Agreement" shall have the meaning ascribed to it in Section 2.5(g)(ii).

"Sales Information" shall have the meaning ascribed to it in Section 5.10(e).

"Sell-off Period" shall mean the period from the Closing Date until the later of (i) the date at which Purchaser has sold all of the Inventory that consists of LEUKINE and (ii) the date which is three months after the date the FDA has approved Purchaser's new packaging, displays, signs, promotional materials, manuals and forms for use in the packaging, marketing, promoting, advertising and selling of LEUKINE.

"Seller" shall have the meaning ascribed to it in the preamble hereto.

"Seller Benefit Plan" shall have the meaning ascribed to it in Section 3.13(b).

"Seller Disclosure Letter" shall mean the disclosure letter delivered by Seller to Purchaser in connection with the execution of this Agreement.

"Seller Indemnified Parties" shall have the meaning ascribed to it in Section 8.2(b).

"Seller's Trademarks and Logos" shall have the meaning ascribed to it in Section 5.9.

"Seller Sub" shall mean Immunex Manufacturing Corporation, a Washington corporation, and each other Subsidiary of Seller to which any assets are transferred pursuant to Section 2.8(b). References to "Seller Sub" in this Agreement shall mean each Seller Sub or any Seller Sub, as applicable.

"Software" shall mean computer programs, including any and all software implementations of algorithms, models and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any web site; provided, however, that "Software" shall not include software that is readily purchasable or licensable and which has not been

modified in a manner material to the use or function thereof (other than through user preferences).

"Sublease" shall mean the Sublease in the form of *Exhibit E* hereto.

"Subsidiary" of any Person means any corporation, partnership, limited liability company, joint venture or other legal entity of which such Person owns, directly or indirectly, a majority of the stock or other equity interests the holders of which are generally entitled to vote for the election of the Board of Directors or other governing body of such corporation or other legal entity, or of which such Person is a general partner or managing member.

"Survival Period" shall have the meaning ascribed to it in Section 8.1.

"Tax Return" shall mean any report, declaration, statement, return or other information filed in respect of Taxes, and any claim for refund of Taxes, including any amendment or supplement to any of the foregoing, with any taxing authority with respect to Taxes imposed upon or attributable to the operations of the Business.

"Taxes" shall mean any and all taxes, levies or other like assessments, including income, transfer, gains, gross receipts, excise, inventory, property (real, personal or intangible), custom, duty, sales, use, license, withholding, payroll, employment, capital stock and franchise taxes (including any fee, assessment or other charge in the nature of or in lieu of any tax), imposed by the United States, or any state, local or non-U.S. government or subdivision or agency thereof, any interest, penalties, additions to tax or additional amounts in respect of the foregoing (whether disputed or not), any transferee or secondary liability in respect of tax (whether imposed by law, contractual agreements or otherwise) and any liability in respect of any tax as a result of being a member of any affiliated, consolidated, combined, unitary or similar group.

"Third-Party Claim" shall have the meaning ascribed to it in Section 8.3(a).

"Transaction Taxes" shall mean any and all sales, use, transfer, documentary, filing, conveyance, recording, gross receipts, value added and similar taxes imposed by the United States, or any state, local or non-U.S. government or subdivision or agency thereof, any interest, penalties, additions to tax or additional amounts in respect of the foregoing (whether disputed or not), and any transferee or secondary liability in respect of the foregoing (whether imposed by Law, contractual agreement or otherwise).

"Transferred Employees" shall have the meaning ascribed to it in Section 5.8(a).

"Transitional Services Agreement" shall mean the Transitional Services Agreement in the form of *Exhibit F* hereto.

"Vendor Chargebacks" shall have the meaning ascribed to it in Section 2.5(a).

"WBP" shall have the meaning ascribed to it in Section 5.10(f).

"Workers' Compensation Event" shall have the meaning ascribed to it in Section 5.8(h).

"Wyeth" shall mean Wyeth, a Delaware corporation (previously named American Home Products Corporation).

SECTION 1.2 *Interpretation*.

Unless otherwise indicated to the contrary in this Agreement by the context or use thereof: (a) the words "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (b) words importing the masculine gender shall also include the feminine and neutral genders, and vice versa; (c) words importing the singular shall also include the plural, and vice versa; and (d) the word "including" means "including without limitation."

ARTICLE II

SALE AND PURCHASE OF ASSETS

SECTION 2.1 *Transfer of Assets(a)*

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign and transfer (and Seller shall cause Seller Sub to sell, assign and transfer) to Purchaser, and Purchaser shall purchase from Seller and Seller Sub, all of Seller's and Seller Sub's rights, title and interest in, to and under those certain rights and assets set forth below, but excluding the Excluded Assets (collectively, the "*Conveyed Assets*"):

(i) (A) the [*] equipment located on the third floor at Seller's microbial facility located at 51 University Street, Seattle, Washington (excluding any equipment located in Rooms 346 and 348 on such third floor) and (B) any other equipment which is similar to the equipment that is specified in the foregoing clause (A) that is acquired by Seller or Seller Sub from the date hereof to the Closing and which is primarily used or held for use primarily in the operation and conduct of the Business;

(ii) (A) the quality control equipment located at the Bothell Facility and which is used or held for use in the operation and conduct of the Business, (B) the equipment located at the Bothell Facility set forth on Section 2.1(a)(ii)(B) of the Seller Disclosure Letter, and (C) any other equipment which is similar to the equipment specified in the foregoing clause (A) that is acquired by Seller or Seller Sub from the date hereof to the Closing and which is primarily used or held for use primarily in the operation and conduct of the Business;

(iii) the equipment located at Abbott Laboratories set forth on Section 2.1(a)(iii) of the Seller Disclosure Letter;

(iv) the Conveyed Intellectual Property;

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(v) all inventories held for use in the operation and conduct of the Business in existence at the Closing, including raw materials, cell bank inventories in existence at Closing described on Section 2.1(a)(v) of the Seller Disclosure Letter, goods in process, finished goods and LEUKINE specific packaging and labels (collectively, the "*Inventory*");

(vi) the Assumed Contracts;

(vii) all pre-clinical, clinical and process development data and reports relating to the research or development of LEUKINE or of any materials used in the research, development, manufacture, marketing or sale of LEUKINE, including all raw data relating to clinical trials of LEUKINE, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user preferences)) to analyze clinical data; all market research data, market intelligence reports, statistical programs (if any) used for marketing and sales research; customer information, promotional and marketing materials, LEUKINE sales forecasting models, medical education materials, sales training materials, web site content and advertising and display materials; all records relating to Transferred Employees (excluding any personnel records the transfer of which is prohibited by applicable Law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists; all data contained in laboratory notebooks relating to LEUKINE or relating to its biology; all adverse experience reports and files related thereto (including source documentation) and all periodic adverse experience reports and all data contained in electronic data bases relating to adverse experience reports and periodic adverse experience reports; all analytical and quality control data; and all correspondence with the FDA; in the case of each foregoing clause, to the extent related to LEUKINE or the Business; provided, that, in the case of any of the foregoing which relate to LEUKINE or the Business and other businesses or assets of Seller or its Subsidiaries (and with respect to personnel records which may legally be provided, employees of Seller or any of its Subsidiaries, other than Transferred Employees), Seller shall have the right to redact the same with respect to such other businesses and assets and, with respect to personnel records, such non-Transferred Employees; *provided*, *further*, that (i) Seller shall only be required to physically deliver any of the foregoing in accordance with Section 2.4(d) to the extent the same is in the possession or control of Seller or one of its Subsidiaries as of the date hereof or at the Closing and (ii) notwithstanding the foregoing or Section 2.4(d), Seller shall not be required to deliver any of the foregoing to the extent the same constitutes legal opinions, memoranda, notes or advice of counsel if, in Seller's reasonable judgment, such delivery would nullify, render unavailable or result in a waiver of a claim of attorney-client privilege or the protection of the attorney-work product doctrine (*provided*, *however*, that, with respect to clause (ii), (1) Seller shall provide Purchaser with a list of any of the foregoing promptly following the Closing, (2) Seller shall keep the same in Seller's confidential legal files, and (3) access to the same shall be restricted to Seller's legal counsel and such employees of Seller who have a "need to know" the information contained in the same, provided, that, with respect to clause (3) in the immediately preceding proviso, if any such employee engages in competitive business activities with respect to the Business, the prior consent of Purchaser (which shall not be unreasonably withheld) must be obtained in advance of any access by such employee to such information);

(viii) (A) all Required Permits and applications for Required Permits, in each case, set forth on Section 2.1(a)(viii) of the Seller Disclosure Letter and all files related thereto, to the extent that Seller or Seller Sub is permitted under Law to transfer such Required Permits, applications and files, (B) any Required Permits obtained or applications for Required Permits filed by Seller or Seller Sub from the date hereof to the Closing and all files related thereto, to the extent that Seller or Seller Sub is permitted under Law to transfer such Required Permits, applications and files and (C) all inactive INDs relating to LEUKINE;

(ix) all intangible assets (other than Intellectual Property) directly related to the Business; and

(x) all rights, claims and credits, including all guarantees, warranties, indemnities and similar rights, in favor of Seller or any of its Affiliates or any of their respective employees to the extent relating to any Conveyed Asset or any Assumed Liability.

(b) The term "Excluded Assets" shall mean:

(i) any Accounts Receivable (including Accounts Receivable with respect to LEUKINE which has been shipped prior to the Closing), cash, cash equivalents, bank deposits or similar cash items, or prepaid expenses (other than royalties) of Seller and its Subsidiaries, in each case as of the Closing (whether or not reflected on the books of Seller or its Subsidiaries as of the Closing Date);

(ii) in the case of each Assumed Contract that is a Dual Use Contract, rights under such Assumed Contract relating to any product of Seller or its Subsidiaries (other than LEUKINE), any business of Seller or its Subsidiaries (other than the Business) or any assets of Seller or its Subsidiaries (other than Conveyed Assets) (the "*Dual Use Contract Rights*"), *provided*, that in the case of Dual Use Contract Rights that are not specific to LEUKINE, the Business or the Conveyed Assets, on the one hand, or a product of Seller or its Subsidiaries (other than LEUKINE), a business of Seller or its Subsidiaries (other than the Business) or any assets of Seller or its Subsidiaries (other than Conveyed Assets), on the other hand, such Dual Use Contract Rights shall, (A) to the extent that such rights relate to LEUKINE, the Business or Conveyed Assets, be rights of Purchaser and shall constitute "Conveyed Assets" hereunder and (B) to the extent that such rights relate to a product of Seller or its Subsidiaries (other than LEUKINE) or a business of Seller or its Subsidiaries (other than the Business) or any assets of Seller or its Subsidiaries (other than Conveyed Assets), be rights of Seller or one of its Subsidiaries and shall constitute "Excluded Assets" hereunder;

(iii) any interests in any real estate (other than interests provided under the Sublease and under the Bothell Facility Lease);

(iv) any rights, claims and credits, including all guarantees, warranties, indemnities and similar rights, in favor of Seller or any of its Affiliates or any of their respective employees to the extent relating to (A) any other Excluded Asset, (B) any Excluded Liability or (C) any matter to the extent Seller indemnifies any Purchaser Indemnified Party pursuant to Article VIII hereof;

(v) subject to Section 5.12, any insurance policies of Seller or its Subsidiaries or rights thereunder or proceeds thereof;

(vi) Software (other than (A) web site content primarily related to the Business, (B) Software embedded in hardware included in the Conveyed Assets and (C) Software set forth in Section 1.1(b) of the Seller Disclosure Letter) and software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preferences);

(vii) any Excluded Contracts; and

(viii) any assets set forth on Section 2.1(b) of the Seller Disclosure Letter.

(c) Seller shall have the right to retain in Seller's confidential legal files, following the Closing, one copy of any book, record, literature, list, and any other written or recorded information constituting Conveyed Assets which Seller in good faith determines it is reasonably likely to need access to in connection with the defense (or any counterclaim, cross-claim or similar claim in connection therewith) of any suit, claim, action, proceeding or investigation against or by Seller or any of its Affiliates pending or threatened as of the Closing Date; *provided* that (i) Seller shall provide Purchaser with a list of any such information retained by Seller promptly following the Closing, (ii) Seller shall only use such information in connection with the defense (or any counterclaim, cross-claim or similar claim in connection therewith) of any such suit, claim, action, proceeding or investigation or any related or derivative suit, claim, action, proceeding or investigation, and (iii) access to such information shall be restricted to Seller's legal counsel and such employees of Seller who have a "need to know" such information in connection therewith; *provided*, *however*, that, with respect to clause (iii) in the immediately preceding proviso, if any such employee engages in competitive business activities with respect to the Business, the prior consent of Purchaser (which shall not be unreasonably withheld) must be obtained in advance of any access by such employee to such information. Upon final resolution of any such suit, claim, action, proceeding or investigation, Seller shall destroy any such copies to the extent the same relates to such suit, claim, action, proceeding or investigation. Seller shall also have the right to retain in Seller's confidential files, following the Closing, one copy of any book, record, literature, list, and any other written or recorded information constituting Conveyed Assets reasonably necessary in connection with any payment of any rebates to state Medicaid and other state and local governmental programs. Upon payment of any such rebates to state Medicaid and other state and local governmental programs, Seller shall deliver any such copies to Purchaser.

SECTION 2.2 *Assumed Liabilities*.

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume from Seller and Seller Sub all of the following liabilities and obligations (whether or not fixed, contingent or absolute, accrued or unaccrued, known or unknown), other than any Excluded Liabilities (collectively, the "*Assumed Liabilities*"):

(i) all product liability or similar claims to the extent arising out of the sale of LEUKINE by or on behalf of Purchaser from and after the Closing (regardless of when manufactured);

(ii) all liabilities and obligations under the Assumed Contracts that are not Dual Use Contracts, to the extent arising out of or relating to events or conditions occurring after the Closing;

(iii) all liabilities and obligations under the Assumed Contracts that are Dual Use Contracts, to the extent such liability or obligation relates to LEUKINE, the Conveyed Assets or the Assumed Liabilities and arises out of or relates to events or conditions occurring after the Closing;

(iv) all liabilities and obligations with respect to the Required Permits that are Conveyed Assets to the extent relating to the operation or conduct of the Business by or on behalf of Purchaser from and after the Closing;

(v) all liabilities and obligations to the extent relating to voluntary and involuntary recalls of LEUKINE occurring after the Closing;

(vi) all liabilities and obligations assumed by Purchaser under Section 5.8 and (except as otherwise provided in Section 5.8 hereof) any other liability or obligation that relates to any Transferred Employee in connection with his or her hiring, non-hiring, termination or employment by the Purchaser from and after the Closing, including any such liability or obligation relating to wages, severance payments, bonuses, medical and workers compensation, claims, vacation pay and any other employee benefit plans or arrangements or payroll practices; and

(vii) all liabilities and obligations under Environmental Laws to the extent arising out of or relating to the operation or conduct of the Business or the use or ownership of the Conveyed Assets, in each case, from and after the Closing.

(b) Regardless of any disclosure to Purchaser, Purchaser shall not assume any of the following liabilities and obligations (whether or not fixed, contingent or absolute, accrued or unaccrued, known or unknown) (the "*Excluded Liabilities*"), all of which shall be retained by Seller or Seller Sub:

(i) any liability or obligation of Seller or Seller Sub (including any liability or obligation to the extent resulting from the ownership, use, operation, maintenance or sale of the Conveyed Assets by or on behalf of Seller or Seller Sub prior to the Closing, or the operation or conduct of the Business by or on behalf of Seller or Seller Sub prior to the Closing) not specifically listed in Section 2.2(a);

(ii) any product liability or similar claims to the extent arising out of the sale of LEUKINE by or on behalf of Seller or Seller Sub prior to the Closing;

(iii) any liability or obligation of Seller or Seller Sub (A) arising out of any actual or alleged breach by Seller or Seller Sub of, or nonperformance by Seller or Seller

Sub under, any Contract (including any Assumed Contract) prior to the Closing, (B) accruing under any Assumed Contract with respect to any period prior to the Closing or (C) arising under any Contract entered into after the date hereof for which the consent of Purchaser was required to be obtained pursuant to Section 5.1 but was not so obtained;

(iv) any liability or obligation under any Dual Use Contract that is not expressly assumed under Section 2.2(a)(iii);

(v) any liability or obligation of Seller or Seller Sub related to any product of Seller or any of its Subsidiaries (other than LEUKINE) or the operation or conduct by Seller or any of its Subsidiaries of any business (other than the Business);

(vi) any liability or obligation of Seller or Seller Sub to the extent arising out of (A) any suit, action or proceeding pending or, to the knowledge of Seller, threatened as of the Closing or (B) any actual or alleged violation by Seller or any of its Affiliates of any Law applicable to Seller or any of its Affiliates;

(vii) any account payable of Seller or Seller Sub, including any retainages or similar amounts relating to work performed in connection with LEUKINE that is sold by or on behalf of Seller or Seller Sub prior to the Closing;

(viii) any liability or obligation of Seller or Seller Sub that relates to any Excluded Asset;

(ix) any liability or obligation under Environmental Laws arising out of or relating to the operation or conduct of the Business or the use or ownership of the Conveyed Assets, in each case, before the Closing;

(x) any liability or obligation that relates to any Transferred Employee and that is retained by Seller pursuant to this Agreement, including Section 5.8 hereof;

(xi) except for liabilities and obligations assumed by Purchaser under Section 2.2(a)(vi): (1) any liability or obligation that relates to any Employee, any Other Employee, any former employee of Seller or Seller Sub or any individual who applied for employment with Seller or Seller Sub in connection with his or her hiring, non-hiring termination or employment by Seller or Seller Sub on, prior to or after the Closing, including any such liability or obligation relating to wages, severance payments, bonuses, medical and workers' compensation claims, vacation pay, any other employee benefit plans or arrangements or payroll practices, and (2) any liability or obligation under any Seller Benefit Plan; and

(xii) any liability or obligation of Seller or Seller Sub to any of their respective Affiliates.

SECTION 2.3 *Purchase Price; Purchase Price Adjustment; Purchase Price Allocation*.

(a) In consideration for the sale of the Conveyed Assets:

(i) At the Closing, Purchaser shall (1) assume the Assumed Liabilities and (2) pay to Seller an aggregate amount equal to the sum of the following amounts (collectively, the "*Initial Purchase Price*"): (A) $380,000,000 plus (B) $[*] (clause (B), the "*Initial Inventory Amount*"). The Initial Purchase Price shall be payable in cash by wire transfer of immediately available funds to an account designated by Seller to Purchaser in writing at least two (2) Business Days prior to Closing. The Initial Purchase Price shall be subject to the Purchase Price Adjustment specified in Section 2.3(b)(iii) hereof (the Initial Purchase Price, after giving effect to the Purchase Price Adjustment, shall be referred to as the "*Purchase Price*").

(ii) Upon such date that the [*], Purchaser shall pay to Seller within five (5) Business Days of [*], $[*] in cash by wire transfer of immediately available funds to an account designated by Seller to Purchaser in writing at least two (2) Business Days prior to such payment.

(iii) In the event that [*], Purchaser shall pay to Seller within five (5) Business Days of the [*] $[*] in cash by wire transfer of immediately available funds to an account designated by Seller to Purchaser in writing at least two (2) Business Days prior to such payment; *provided*, *however*, that the payment set forth in this clause (iii) shall not be due and payable unless and until the payment set forth in Section 2.3(a)(ii) is required to be made. For the avoidance of doubt, the amount required to be paid pursuant to this Section 2.3(a)(iii) (if required to be paid) shall only be required to be paid once and [*].

(b) (i) Within thirty (30) Business Days after Closing, Seller shall calculate the Inventory Value as of the Closing Date and deliver to Purchaser a certificate (the "*Inventory Certificate*"), signed by an officer of Seller, certifying such Inventory Value. For purposes of this Agreement, "*Inventory Value*" shall mean the value of the Inventory calculated from Seller's financial systems, based upon the standard material, labor and burden costs of the inventories of the Business (subject to customary reserves) applied by Seller, determined in accordance with GAAP consistently applied, and as set forth in reasonable detail on Section 2.3(b)(i) of the Seller Disclosure Letter; provided, that such calculation shall exclude any Inventory excluded in connection with the determination of the Initial Inventory Amount under Section 3.12(b) with the date of March 31, 2002 in clause (ii) of the proviso to Section 3.12(b) deemed to be a reference to the Closing Date. At Purchaser's option and upon reasonable notice to Seller, a physical inventory may be conducted by Purchaser on or before the Closing Date, and each of Seller and Purchaser and their respective independent auditors shall have the right to observe the taking of such physical inventory. If Purchaser does not object in writing to Seller's determination of the Inventory Value within ten (10) Business Days after Seller delivers the Inventory Certificate to Purchaser (the "*Objection Period*"), then the Inventory Value as listed on the Inventory Certificate shall be deemed to be final and binding upon the parties hereto and, as appropriate, the Purchase Price Adjustment shall be paid in accordance with Section 2.3(b)(iii) below; provided, that if Purchaser objects in writing to Seller's determination of the Inventory Value during the Objection Period, then Section 2.3(b)(ii) below shall apply. During the Objection Period, Purchaser and its representatives shall be permitted to review the working papers of Seller relating to the

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Inventory Certificate and to discuss with Seller any questions which Purchaser may have regarding the preparation of the Inventory Certificate.

(ii) In the event that Purchaser delivers to Seller a written objection to Seller's determination of the Inventory Value during the Objection Period, Seller and Purchaser shall reasonably cooperate to resolve such dispute, but if they are unable to reach a resolution within fifteen (15) Business Days after Seller delivers the Inventory Certificate, Seller and Purchaser shall jointly retain PricewaterhouseCoopers and shall submit such dispute to such firm for resolution; *provided*, *however*, that if PricewaterhouseCoopers refuses such retention, Seller and Purchaser (or, if Seller and Purchaser are unable to so agree within ten (10) days of PricewaterhouseCoopers refusing to be so retained, Seller's and Purchaser's respective independent accounting firms) shall jointly select another independent accounting firm of recognized national standing. Seller and Purchaser shall submit all information deemed relevant by such firm and shall make any records relating to or bearing upon such dispute available to the other party and to such firm. Each party shall further instruct such firm to render its decision within ten (10) Business Days after such firm accepts its selection pursuant to this Section 2.3(b)(ii) and shall reasonably cooperate with such firm and each other to enable such firm to render the decision within such period. The decision of such firm shall be the final determination of such dispute and shall be final and binding on both Seller and Purchaser. Seller and Purchaser shall bear the fees and expenses of such firm as such firm shall determine after considering the positions asserted by the parties in light of its decision. Nothing in this Agreement (other than the provisions of Sections 2.5(e), (f) and (h)) shall require that any matter other than disputes under this Section 2.3(b) be resolved by the procedure described above.

(iii) The "*Purchase Price Adjustment*" shall be equal to the difference determined by subtracting (x) the Inventory Value as finally determined under Section 2.3(b)(i) or, if applicable, Section 2.3(b)(ii), from (y) the Initial Inventory Amount. If the Purchase Price Adjustment is a positive number, Seller shall pay to Purchaser the full amount of the Purchase Price Adjustment by wire transfer of immediately available funds to an account indicated by Purchaser. If the Purchase Price Adjustment is a negative number, Purchaser shall pay to Seller the absolute value of the full amount of the Purchase Price Adjustment by wire transfer of immediately available funds to the account previously indicated by Seller for payment of the Initial Purchase Price. Any payment required to be made pursuant to this Section 2.3(b)(iii) shall be made as follows: if Purchaser does not object in writing to Seller's determination of the Inventory Value specified on the Inventory Certificate during the Objection Period, then the payment required hereunder shall be made within two (2) Business Days after the expiration of the Objection Period; and, if Purchaser objects in writing to Seller's determination of the Inventory Value during the Objection Period, then the payment required hereunder shall be made within two (2) Business Days after the determination of the Inventory Value in accordance with Section 2.3(b)(ii).

(c) Prior to the Closing Date, Seller and Purchaser shall negotiate in good faith to agree on an allocation of the Purchase Price and the Assumed Liabilities among the Conveyed Assets in accordance with applicable Laws, including Section 1060 of the Code. If Seller and Purchaser are able to agree on such allocation on or prior to the Closing Date, Seller and Purchaser shall not take any position on any Tax Return following the Closing Date inconsistent with the agreed allocation. If Seller and Purchaser are unable to agree on such

allocation on or prior to the Closing Date, neither Seller nor Purchaser shall have any further obligation to cooperate with the other party regarding such allocation or to prepare any Tax Return in a manner consistent with the position taken by the other party regarding such allocation.

SECTION 2.4 *Closing*.

(a) The consummation of the transactions contemplated by this Agreement (the "*Closing*") will take place on the third Business Day following the satisfaction or waiver of the conditions set forth in Article VI hereof (other than those conditions which, by their nature, can only be satisfied at Closing and other than the condition set forth in Section 6.2(e)(ii) which shall only be required to be satisfied at the Closing), at 10:00 a.m. (Los Angeles time), at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Los Angeles, California, or at such other time and place as shall be mutually agreed upon by the parties; *provided*, *however*, that the Closing hereunder shall occur on the Closing Date (as such term is defined in the Merger Agreement) (unless Seller shall have advised Purchaser that the Closing hereunder may occur following the Closing Date (as defined in the Merger Agreement)) at such time as is requested by Seller upon three (3) Business Days prior written notice to Purchaser, subject to the satisfaction or waiver of the conditions set forth in Article VI hereof. The date on which the Closing under this Agreement occurs is referred to herein as the "*Closing Date*."

(b) At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following: (i) the Bill of Sale and Assumption Agreement duly executed by Seller and Seller Sub; (ii) the Instrument of Assignment and Assumption duly executed by Seller and Seller Sub; (iii) the Intellectual Property License Agreement duly executed by Seller and Seller Sub; (iv) the Assignment of Intellectual Property duly executed by Seller and Seller Sub; (v) the Transitional Services Agreement duly executed by Seller; (vi) the Sublease duly executed by Seller; (vii) the Intellectual Property Transfer Agreements duly executed by Seller; (viii) the Bothell Facility Lease duly executed by Seller; (ix) the officer's certificate specified in Section 6.2(c); (x) opinions of counsel to Seller in the form of *Exhibit I*; (xi) a certificate of existence/authorization of Seller and Seller Sub and a certificate evidencing that Seller and Seller Sub have paid all excise taxes required by the Washington Department of Revenue; and (xii) a customary secretary's and incumbency certificate of each of Seller and Seller Sub attaching articles of incorporation, bylaws and copies of resolutions authorizing the transactions contemplated by this Agreement.

(c) At the Closing, Purchaser shall deliver or cause to be delivered to Seller the following: (i) cash in the amount of the Initial Purchase Price by wire transfer of immediately available funds to an account designated by Seller; (ii) the Bill of Sale and Assumption Agreement duly executed by Purchaser and any Designated Purchaser Subsidiary; (iii) the Instrument of Assignment and Assumption duly executed by Purchaser and any Designated Purchaser Subsidiary; (iv) the Intellectual Property License Agreement duly executed by Purchaser; (v) the Assignment of Intellectual Property duly executed by Purchaser; (vi) the Transitional Services Agreement duly executed by Purchaser; (vii) the Sublease duly executed by Purchaser and any Designated Purchaser Subsidiary; (viii) the Intellectual Property Transfer Agreements duly executed by Purchaser; (ix) the Bothell Facility Lease duly executed by Purchaser and any Designated Purchaser Subsidiary; (x) the officer's certificate specified in

Section 6.3(c); (xi) opinions of counsel to Purchaser in the form of *Exhibit J*; and (xii) a customary secretary's and incumbency certificate of Purchaser and any such Designated Purchaser Subsidiary attaching articles of incorporation and bylaws (or comparable organizational documents) and copies of resolutions (if any) authorizing the transactions contemplated by this Agreement.

(d) At or promptly following the Closing, Seller shall deliver or cause to be delivered to Purchaser the following: (i) Required Permits (to the extent such Required Permits are Conveyed Assets and only to the extent not required by Seller or any of its Subsidiaries to perform services under the Transitional Services Agreement) and (ii) books, records, literature, lists and any other written or recorded information of Seller and Seller Sub required to be conveyed pursuant to Section 2.1(a)(vii) or which otherwise constitute Conveyed Assets. At such time as any Required Permit retained by Seller or any of its Subsidiaries to perform services under the Transitional Services Agreement is not longer needed by Seller or such Subsidiary to perform such services, Seller shall promptly deliver or cause to be delivered to Purchaser such Required Permit (to the extent such Required Permit is a Conveyed Asset).

SECTION 2.5 *Chargebacks; Returns; Rebates and Fees; Invoices*.

(a) With respect to vendor chargebacks related to sales of LEUKINE by or on behalf of Seller or Purchaser ("*Vendor Chargebacks*"), the parties agree that, from and after the Closing, Seller shall be liable for all "qualified" Vendor Chargebacks in connection with sales of LEUKINE by or on behalf of Seller that occurred prior to the Closing Date, and that Purchaser shall be liable for all other Vendor Chargebacks. From and after the Closing, Purchaser shall issue credits for or otherwise pay all Vendor Chargebacks and, to the extent Seller is liable for any "qualified" Vendor Chargebacks in accordance with the terms of this paragraph, Purchaser shall invoice Seller for such amounts in accordance with the payment terms set forth in Section 2.5(d) below. To be a "qualified" Vendor Chargeback, the Vendor Chargeback must have an invoice date, evidencing the date LEUKINE was sold by a distributor or a wholesaler to a customer prior to Closing. Purchaser shall provide Seller with all related supporting documentation in connection with Vendor Chargebacks in the possession or control of Purchaser or its Subsidiaries that has been reasonably requested by Seller, such supporting documentation to include (i) the name of the wholesaler or distributor, (ii) description of the product and National Drug Code, (iii) the customer name and Drug Enforcement Agency identification number for such customer, (iv) the customer contract identification number or other identification number, (v) the invoice date, and (vi) the chargeback quantity and the chargeback amount.

(b) With respect to returns of LEUKINE ("*Returns*"), the parties agree that from and after the Closing Seller shall be liable for all Returns of LEUKINE which was sold prior to the Closing, and Purchaser shall be liable for all other Returns; provided, that with respect to Returns related to any lots of finished goods Inventory acquired by Purchaser at the Closing that have been partially depleted, Purchaser and Seller agree to share equally the cost of any Returns of those lots. Purchaser shall issue credits for or otherwise pay for all Returns, and to the extent Seller is liable for any Returns (in accordance with the terms of the immediately preceding sentence), Purchaser shall invoice Seller for such amounts in accordance with the payment terms set forth in Section 2.5(d) below. Purchaser will continue to enforce the returns

policy of Seller with respect to Returns for which Seller is liable. Seller shall not be responsible for reimbursing Purchaser for Returns of LEUKINE that is sold after the Closing and Returns that are credited or otherwise paid by Purchaser not in accordance with the returns policy of Seller. For Returns (for which Seller is liable pursuant to the first sentence of this Section 2.5(b)) to be reimbursed by Seller, Purchaser shall provide Seller with all related supporting documentation in connection with such Return in the possession or control of Purchaser or its Subsidiaries that has been reasonably requested by Seller, such supporting documentation to include (i) a description of the product and National Drug Code, (ii) the customer name and Drug Enforcement Agency identification number for such customer, (iii) the lot number for such product, (iv) the expiration date for such product, and (v) the Return quantity and the Return amount.

(c) With respect to (A) rebates to state Medicaid and other state and local governmental programs and to health plans, insurance companies, mail service pharmacies and other health care providers (collectively, "*Rebates*") based upon the utilization of LEUKINE that is sold by or on behalf of Seller prior to the Closing (the "*Seller Rebates*") and (B) credits, chargebacks, reimbursements, administrative fees and other payments to wholesalers and other distributors, group purchasing organization, insurers and other institutions (collectively, "*Fees*") with respect to LEUKINE that is sold by or on behalf of Seller prior to the Closing (the "*Seller Fees*"), the parties agree that from and after the Closing Seller shall be liable for all Seller Rebates and Seller Fees and Purchaser shall be liable for all other Rebates and Fees. Purchaser shall pay all Rebates and Fees and, to the extent such Rebates or Fees constitute Seller Rebates or Seller Fees, Purchaser shall invoice Seller for the amount of such Seller Rebates and Seller Fees and Seller shall reimburse Purchaser for such amounts in accordance with the payment terms set forth in Section 2.5(d) below.

(d) With respect to any amounts that are payable by Seller to Purchaser under this Section 2.5 (other than Sections 2.5(f), (g) and (h)), Purchaser shall, on a quarterly basis, submit an invoice to Seller for such amounts, together with evidence of payment and all related supporting documentation in the possession or control of Purchaser or its Subsidiaries and required by Sections 2.5(a) or 2.5(b) and, subject to Section 2.5(e) below, each such invoice shall be paid by Seller within thirty (30) days of receipt thereof.

(e) To the extent Seller disputes any amount payable by Seller to Purchaser under this Section 2.5, Seller shall notify Purchaser in writing of the nature and amount of such dispute prior to the thirtieth day following Seller's receipt of the invoice which relates thereto. If Seller and Purchaser cannot resolve such dispute within twenty (20) Business Days of Purchaser's receipt of the notice from Seller relating to such dispute, Seller and Purchaser shall retain PricewaterhouseCoopers to resolve such dispute in accordance with the procedures, time limits, expense payment and other provisions specified in Section 2.3(b)(ii) hereof; *provided, however*, that if PricewaterhouseCoopers shall not agree to be so retained, Seller and Purchaser (or, if Seller and Purchaser are unable to so agree within ten (10) days of PricewaterhouseCoopers refusing to be so retained, Seller's and Purchaser's respective independent accounting firms) shall jointly select another independent accounting firm of recognized national standing.

(f) Notwithstanding Section 2.5(a) and (c) hereof, Seller and Purchaser agree to a one-time settlement for Vendor Chargebacks, Rebates and Fees relating to inventories of LEUKINE held by wholesalers and distributors as of the Closing Date that are not otherwise reimbursed to Purchaser by Seller pursuant to this Agreement, pursuant to the following procedure: Once IMS Pipeline data (or such other pharmaceutical industry reporting service data as Purchaser and Seller shall agree if IMS Pipeline data is not available) is available after the Closing, Purchaser and Seller shall reasonably cooperate to agree on (A) an estimate of the sales value, where sales value represents Seller's invoiced price, of LEUKINE (expressed in dollars) that is in wholesaler and distributor inventory as of the Closing Date; (B) the average amount of Vendor Chargebacks, Rebates and Fees paid by Seller per each complete month during the six month period immediately prior to the Closing Date; and (C) the average amount of total sales, where total sales represents Seller's invoiced price, of LEUKINE to wholesalers and distributors per each complete month during the six month period immediately prior to the Closing Date. Once Purchaser and Seller have agreed to the items in the previous sentence, Purchaser shall invoice Seller for an amount equal to the amount set forth in clause (A) above, multiplied by a fraction, the numerator of which is the amount set forth in clause (B) above and the denominator of which is the amount set forth in clause (C) above. Purchaser's invoice for such amount shall not be submitted to Seller until at least thirty (30) days have elapsed following the Closing Date. Seller shall pay Purchaser's invoice in accordance with the payment terms set forth in Section 2.5(d). If Purchaser and Seller are unable to agree on any of the amounts set forth in clauses (A), (B) or (C) above, such dispute shall be subject to the dispute resolution procedures in Section 2.5(e).

(g) (i) If the Closing occurs prior to the last day of any calendar quarter, Purchaser shall prepare and submit all royalty reports and pay all royalties payable under Assumed Contracts with respect to sales of LEUKINE for the whole of such calendar quarter. Seller shall, within thirty (30) days of the end of such calendar quarter, provide Purchaser information reasonably necessary for Purchaser to determine Seller's obligations for royalties incurred during that portion of the calendar quarter prior to the Closing. Purchaser shall invoice Seller for Seller's share of the quarterly royalty payment amount (less Pre-Estimated Credit to be given to Seller pursuant to Section 2.5(g)(ii) hereof) within forty-five (45) days after the end of such calendar quarter. Seller shall pay the amounts owed by Seller and indicated on such invoice within thirty (30) days after receipt thereof.

(ii) Seller shall be entitled to a credit from Purchaser for royalties prepaid by Seller prior to the Closing under the Assumed Contracts but attributable to sales of LEUKINE by Purchaser subsequent to the Closing (the "*Actual Credit*"). Seller shall calculate a pre-estimate of such credit (the "*Pre-Estimated Credit*") in accordance with the following formula:

$$A \times (B - C)$$

where:

A is equal to net sales of LEUKINE (as "net sales" is defined in each applicable Assumed Contract under which prepaid royalties have been paid (in each case a "*Royalty Agreement*")) in the year 2002 up to and including the Closing Date;

B is equal to the royalty rate(s) applicable under the Royalty Agreements calculated on the basis of actual net sales of LEUKINE in the year 2002 up to and including the Closing Date; and

C is equal to the royalty rate(s) applicable to the Royalty Agreements calculated on the basis of estimated net sales of LEUKINE for the entire calendar year 2002 of $[*].

Seller shall, within thirty (30) days of the end of the calendar quarter in which the Closing occurs, deliver to Purchaser a statement setting out the amount of the Pre-Estimated Credit and the basis for Seller's calculation thereof. Within 60 days after the end of calendar year 2002, Purchaser shall calculate the amount of the Actual Credit based on actual net sales of LEUKINE in calendar year 2002. If the adjustment results in an additional reimbursement of prepaid royalties due to Seller, such reimbursement shall be made within 90 days after the end of calendar year 2002. If the Actual Credit exceeds the Pre-Estimated Credit, Purchaser shall pay to Seller the difference. If the Pre-Estimated Credit exceeds the Actual Credit, Seller shall pay to Purchaser the difference. Any amount payable under the two preceding sentences will be paid within thirty (30) days of receipt of invoice.

(h) Once IMS Pipeline data (or such other pharmaceutical industry report service data as Purchaser and Seller shall agree if IMS Pipeline data is not available) is available for the calendar month in which the Closing occurs, Purchaser and Seller shall reasonably cooperate to agree, on the basis of IMS Pipeline data, on the number of months of inventory that is in wholesaler and distributor inventory as of the date selected by IMS Pipeline to measure wholesaler and distributor inventory for the calendar month in which the Closing occurs (the "*Closing Inventory*"). If the Closing Inventory is greater than [*] (the "*Upper Inventory Limit*"), then Seller shall remit to Purchaser an amount equal to (A) the Closing Inventory; less (B) the Upper Inventory Limit; multiplied by (C) [*]. Once Purchaser and Seller have agreed to the items in this Section 2.5(h), if any amount is owing from Seller to Purchaser, Purchaser shall invoice Seller for such amount. Purchaser's invoice for such amount shall not be submitted to Seller until at least thirty (30) days have elapsed following the Closing Date. Seller shall pay Purchaser's invoice in accordance with the payment terms set forth in Section 2.5(d). If Purchaser and Seller are unable to agree on any matter arising under this Section 2.5(h), such dispute shall be subject to the dispute resolution procedures in Section 2.5(e).

(i) If Seller is legally required or is authorized by Purchaser to pay any amounts under this Section 2.5 that are the obligation of Purchaser, Seller shall invoice Purchaser and Purchaser shall reimburse Seller in a manner consistent with Section 2.5(d).

SECTION 2.6 *Nonassignable Assets*.

Nothing in this Agreement, nor the consummation of the transactions contemplated hereby, shall be construed as an attempt or agreement to assign or transfer any Conveyed Asset (including any Assumed Contract) to Purchaser which by its terms or by Law is nonassignable without the consent of a third party or is cancelable by a third party in the event of an assignment or transfer (a "*Nonassignable Asset*"), unless and until such consent shall have been obtained. To the extent permitted by applicable Law and by the terms of the applicable

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* Confidential Treatment Requested.

Nonassignable Asset, such Nonassignable Asset shall be held, as of and from the Closing, by Seller or Seller Sub for the benefit and burden of Purchaser and the covenants and obligations thereunder shall be fully performed by Purchaser on Seller's or Seller Sub's behalf (to the extent such covenants and obligations are Assumed Liabilities) and all rights (to the extent such rights are Conveyed Assets) existing thereunder shall be for Purchaser's account. To the extent permitted by applicable Law and by the terms of the applicable Nonassignable Asset, Seller or Seller Sub shall take or cause to be taken, at Purchaser's expense, such actions as Purchaser may reasonably request which are required to be taken or appropriate in order to provide Purchaser with the benefits and burdens of the Nonassignable Asset. Seller or Seller Sub shall promptly pay over to Purchaser the net amount (after expenses and taxes) of all payments received by it in respect of all Nonassignable Assets.

SECTION 2.7 *Risk of Loss*.

Until the Closing, Seller shall bear the risk of any loss or damage to the Conveyed Assets from fire, casualty or any other occurrence. Following the Closing, Purchaser shall bear the risk of any loss or damage to the Conveyed Assets from fire, casualty or any other occurrence.

SECTION 2.8 *Subsidiaries*.

(a) Purchaser shall, upon ten (10) Business Days prior written notice to Seller, have the right to designate one or more of its wholly-owned direct or indirect Subsidiaries (each, a "*Designated Purchaser Subsidiary*") to purchase all or any of the Conveyed Assets or assume all or any of the Assumed Liabilities or enter into the Bothell Facility Lease or the Sublease so long as Purchaser shall remain liable for all of its liabilities and obligations hereunder, under the Related Instruments and under the Intellectual Property Transfer Agreements; *provided, however*, that Purchaser shall not be permitted to make such a designation if such designation would, or would reasonably be expected to, (w) result in any material costs, or any material liabilities, to Seller or its Subsidiaries, (x) materially delay or prevent the consummation of the transactions contemplated hereby, (y) materially adversely affect the obtaining of consents and approvals in connection with the transactions contemplated hereby (or require that material consents and approvals be resolicited) or (z) otherwise cause the conditions to Closing set forth in Article VI hereof to not be satisfied.

(b) Notwithstanding anything in Section 5.1 to the contrary, Seller shall, upon ten (10) Business Days prior written notice to Purchaser, have the right to transfer any assets related to the Business (including the Excluded Assets) to a wholly-owned direct or indirect Subsidiary of Seller; *provided, however,* that (1) Seller shall remain liable for all of its liabilities and obligations hereunder, under the Related Instruments and under the Intellectual Property Transfer Agreements, (2) Purchaser shall have the opportunity to review and comment on the documents effecting such transfer and (3) such documents shall be reasonably satisfactory to Purchaser in form and substance; *provided further,* that Seller shall not be permitted to transfer such assets if such transfer would, or would reasonably be expected to, (w) result in any material costs, or any material liabilities, to Purchaser or its Subsidiaries, (x) materially delay or prevent the consummation of the transactions contemplated hereby, (y) materially adversely affect the obtaining of consents and approvals in connection with the transactions contemplated hereby (or

require that material consents and approvals be resolicited) or (z) otherwise cause the conditions to Closing set forth in Article VI hereof to not be satisfied.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as follows:

SECTION 3.1 *Organization*.

Each of Seller and Seller Sub is a corporation duly organized and validly existing under the Laws of the State of Washington and has paid all excise taxes required by the Washington Department of Revenue. Seller and Seller Sub have the requisite power and authority to own, lease and operate the Conveyed Assets and to conduct the Business as it is now being conducted, and are duly qualified and in good standing to do business as a foreign corporation or organization in each jurisdiction where such qualification is necessary to own, lease or operate the Conveyed Assets or conduct the Business as it is now being conducted, except where the failure to have such power and authority, or to be so qualified or in good standing, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Affiliate of Seller, other than Seller Sub (and other than employees of Seller or its Subsidiaries), is presently or has in the past engaged in the research, development, manufacturing, marketing or sale of LEUKINE or the operation or conduct of the Business.

SECTION 3.2 *Authority*.

Seller and, to the extent applicable, Seller Sub have the requisite power and authority to execute and deliver this Agreement and the Related Instruments, to perform their obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Related Instruments and the consummation by Seller and Seller Sub of such transactions have been duly authorized by all requisite corporate action on the part of Seller and Seller Sub and no other authorization of Seller or Seller Sub or Seller's shareholders is required to authorize the execution and delivery of this Agreement or the Related Instruments or the consummation of the transactions contemplated hereby or thereby. This Agreement has been validly executed and delivered by Seller and constitutes, and each Related Instrument that is to be executed and delivered by Seller or Seller Sub will constitute when executed and delivered by Seller or Seller Sub, a legal, valid and binding obligation of Seller or Seller Sub enforceable against Seller or Seller Sub in accordance with its terms.

SECTION 3.3 *No Conflict; Required Filings and Consents*.

(a) Except as set forth in Section 3.3(a) of the Seller Disclosure Letter, the execution and delivery of this Agreement by Seller do not, and the execution and delivery of the Related Instruments will not, and the performance by Seller and Seller Sub of their respective obligations under this Agreement and the Related Instruments will not, (i) conflict with or violate any provision of Seller's or Seller Sub's articles of incorporation or Seller's or Seller Sub's bylaws, or (ii) assuming that all consents, approvals, authorizations and Permits described in

Section 3.3(b) have been obtained and that all filings and notifications described in Section 3.3(b) have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to Seller or Seller Sub or by which any of the Conveyed Assets is bound, or (iii) assuming that all consents, approvals, authorizations and Permits described in Section 3.3(b) have been obtained and that all filings and notifications described in Section 3.3(b) have been made and any waiting periods thereunder have terminated or expired, require any consent or approval under, result in any breach of, any loss of any benefit under or constitute a change of control or default (or an event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, modification, acceleration or cancellation of, or result in the creation of a Lien or other encumbrance on any Conveyed Asset or any Contract, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, consents, approvals, breaches, losses, changes in control, defaults, rights, Liens or other occurrences which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or materially increase the cost to Purchaser of consummating the transactions contemplated hereby or by any of the Related Instruments or subject Purchaser or any of its Affiliates to any criminal or material civil liability.

(b) The execution and delivery of this Agreement by Seller and the Related Instruments by Seller and Seller Sub do not, and the performance of this Agreement and the Related Instruments by Seller and Seller Sub and the consummation of the transactions contemplated hereby and thereby will not, require any consent, approval, authorization or Permit of, or filing with or notification to, any Governmental Entity, except (i) under the HSR Act, to the extent necessary, (ii) as set forth on Section 3.3(b) of the Seller Disclosure Letter, (iii) for those requirements which become applicable to Seller or Seller Sub as a result of the specific regulatory status of Purchaser or any of its Affiliates (as opposed to any other third party) or as a result of any other facts that specifically relate to the business or activities in which Purchaser or any of its Affiliates (as opposed to any other third party) is or proposes to be engaged and (iv) where the failure to obtain such consents, approvals, authorizations or Permits, or to make such filings or notifications, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or materially increase the cost to Purchaser of consummating the transactions contemplated hereby or by any of the Related Instruments or subject Purchaser or any of its Affiliates to any criminal or material civil liability.

SECTION 3.4 *Permits; Compliance With Law*.

(a) Section 2.1(a)(viii) of the Seller Disclosure Letter sets forth a true and complete list of all authorizations, licenses, permits, certificates, approvals, consents, confirmations, orders, waivers and clearances of Governmental Entities (including all authorizations under the Federal Food, Drug and Cosmetic Act of 1938, as amended (the "*FDCA*") and the Public Health Services Act, and the regulations of the United States Food and Drug Administration (the "*FDA*") promulgated thereunder) (each, a "*Permit*") necessary for Seller and Seller Sub to own, lease and operate the Conveyed Assets and to carry on the Business as it is being conducted as of the date hereof (the "*Required Permits*"). Except as set forth on Section 3.4(a) of the Seller Disclosure Letter, (i) Seller or Seller Sub is in possession of all Required Permits, (ii) the Business has been and is conducted in compliance with all Required Permits and Laws applicable to the Business or by which any Conveyed Asset is bound or affected, (iii) all Required Permits are valid and in full force and effect, (iv) since January 1,

1998, no Governmental Entity has served written notice upon Seller or Seller Sub that Seller or Seller Sub, the Business or the Conveyed Assets were or are in violation of any Law or Required Permit in any jurisdiction where the Business is conducted and, to the knowledge of Seller, there are no grounds for the same, and (v) since January 1, 1998, neither Seller nor Seller Sub has received written notice from any Governmental Entity that there are any circumstances existing which would lead to any loss of any Required Permit or refusal to renew any Required Permit on terms not substantially less advantageous, in the aggregate, to Seller or Seller Sub than the terms of those Required Permits currently in force, except, in the case of each of clauses (i) through (v) above, for such notices, violations, grounds, circumstances and losses which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the date hereof, except as set forth in Section 3.4(a) of the Seller Disclosure Letter, there are no outstanding orders, injunctions or decrees of any Governmental Entity that apply to the Conveyed Assets that restrict the ownership, disposition or use of the Conveyed Assets by Seller or Seller Sub or the conduct of the Business by Seller or Seller Sub, in each case, in any material respect.

(b) (i) Except as set forth on Section 3.4(b)(i) of the Seller Disclosure Letter, Seller has prepared and submitted each BLA and IND to the FDA in compliance, in all material respects, with all applicable Laws. Each BLA has been approved by, and, since January 1, 1998, through to the date hereof, neither Seller nor Seller Sub has received any notice in writing from any Governmental Entity which has, or reasonably should have, led Seller or Seller Sub to believe that any BLA is not currently in good standing with the FDA. Since January 1, 1998, through to the date hereof, no IND has been the subject of a clinical hold notice from the FDA, and since January 1, 1998, through to the date hereof, neither Seller nor Seller Sub has received any notice in writing from any Governmental Entity which has, or reasonably should have, led Seller or Seller Sub to believe that any currently active IND is not currently in good standing with the FDA. To Seller's knowledge, since January 1, 1998, Seller has filed with the FDA all material notices, supplemental applications and annual or other reports required to be filed by Seller, including adverse experience reports, with respect to each BLA and IND which is material to the conduct of the Business. To Seller's knowledge, with respect to each BLA that has been approved by the FDA and each IND, the applicant for such BLA or IND, as applicable, and all Persons performing operations on behalf of Seller covered by such BLA or IND, as applicable, acted in compliance in all material respects with all applicable Laws, including the FDCA, the Public Health Service Act, and applicable FDA regulations, including 21 C.F.R. Parts 312 et seq., and 21 C.F.R. Parts 600 et seq., respectively, and in all material respects with the terms and conditions of each such BLA and IND.

(ii) Except as set forth on Section 3.4(b)(ii) of the Seller Disclosure Letter, since January 1, 1998 through to the date hereof: (A) Seller has not received any notice in writing that any Governmental Entity (including the FDA) has commenced, or threatened to, initiate any action to withdraw its approval or request the recall, market withdrawal or replacement of LEUKINE, or commenced or threatened to initiate any action to enjoin production of LEUKINE at any facility; and (B) Seller has not issued a "Dear Doctor" letter and there has not been any occurrence of any product recall, market withdrawal or replacement conducted by or on behalf of Seller with respect to LEUKINE.

(iii) To Seller's knowledge, all manufacturing operations currently conducted by Seller or Seller Sub relating to the manufacturing of LEUKINE are being conducted in compliance in all material respects with applicable current good manufacturing practices as set forth in 21 C.F.R. Parts 210, 211, and 610.

(iv) Seller has made available to Purchaser copies of all material (A) reports of inspection observations generated between January 1, 1998 and the date hereof, (B) establishment inspection reports generated between January 1, 1998 and the date hereof and (C) warning letters as well as any other documents received by Seller from the FDA between January 1, 1998 and the date hereof, in each case, relating to LEUKINE or arising out of the conduct of the Business that assert ongoing material lack of compliance with any applicable Laws (including those of the FDA) by Seller.

SECTION 3.5 *Financial Information*.

Section 3.5 of the Seller Disclosure Letter contains a true and complete copy of certain unaudited special purpose financial information (the "*Financial Information*") relating to the Business for the twelve months ended December 31, 1999, 2000 and 2001. The Financial Information was derived from the books and records of Seller and its Subsidiaries. The sales, cost of goods sold and research and development expenses as set forth in such Financial Information have been calculated in accordance with Seller's historical accounting practices consistently applied, which are in accordance with GAAP, except, in each case, as set forth in Section 3.5 of the Seller Disclosure Letter. The sales and marketing expense and general and administrative expense as set forth in such Financial Information have been calculated in accordance with Seller's historical accounting practices consistently applied and are based on assumptions and other information set forth in Section 3.5 of the Seller Disclosure Letter. Except as set forth in Section 3.5 of the Seller Disclosure Letter, the Financial Information fairly presents, in all material respects, in accordance with the methodologies described in Section 3.5 of the Seller Disclosure Letter, the operating results of the Business for the years ended December 31, 1999, 2000 and 2001.

SECTION 3.6 *Absence of Certain Changes or Events*.

(a) Except as set forth on Section 3.6(a) of the Seller Disclosure Letter, since December 31, 2001, there has not been any change, event, development, effect or occurrence that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Except as set forth in Section 3.6(b) of the Seller Disclosure Letter, since December 31, 2001 to the date of this Agreement, Seller has conducted the Business in the ordinary course consistent with past practice, and neither Seller nor Seller Sub has, with respect to the Business or any of the Conveyed Assets:

(i) subjected any of the Conveyed Assets to any material Liens, other than Permitted Liens;

(ii) sold, transferred, leased, subleased, licensed or otherwise disposed of, to any third party, any material Conveyed Assets (other than Intellectual Property) or other

material properties or material assets (other than Intellectual Property) necessary for the conduct of the Business, except for sales of inventory and the disposition of obsolete equipment in the ordinary course of business consistent with past practice;

(iii) sold, licensed or sublicensed or otherwise transferred any rights to any third party under (i) any Conveyed Intellectual Property or (ii) any Intellectual Property that is the subject of the Intellectual Property Transfer Agreements or the Intellectual Property License Agreement, other than in the case of Intellectual Property subject to the Intellectual Property License Agreement, transfers that would be permitted by the Intellectual Property License Agreement;

(iv) entered into any Assumed Contract or accelerated, cancelled, modified or terminated any Assumed Contract, in each case, which is material to the Business, other than in the ordinary course of business consistent with past practice;

(v) assigned any duties and/or responsibilities to any Other Employee, which employee, but for such assignment, would have been classified as an Employee;

(vi) increased benefits payable to Employees under existing severance, change of control or termination pay policies or employment agreements, or increased compensation, bonus or other benefits payable to Employees, other than in accordance with normal, recurring compensation increases and as required under any Seller Benefit Plans;

(vii) surrendered, revoked or otherwise terminated any Required Permit, except in connection with any renewal or reissuance of any such Required Permit;

(viii) incurred Assumed Liabilities, other than in the ordinary course of business consistent with past practice;

(ix) waived, released or assigned any material rights, which rights, but for such waiver, release or assignment, would have been classified as Conveyed Assets, other than in the ordinary course of business consistent with past practice;

(x) experienced any material damage, destruction or casualty loss (whether or not covered by insurance) with respect to any material Conveyed Asset other than as a result of ordinary wear and tear;

(xi) delayed or postponed the payment of any Assumed Liability outside the ordinary course of business consistent with past practice; or

(xii) agreed, whether in writing or otherwise, to do any of the foregoing, except as expressly contemplated by this Agreement.

SECTION 3.7 *Title to Assets; Sufficiency of Assets*.

(a) Seller (or Seller Sub) has, and at the Closing Seller (or Seller Sub) will deliver to Purchaser, good and valid title to or, in the case of leased or licensed assets, a valid and

binding leasehold interest in or license to or rights under (as the case may be), all of the Conveyed Assets free and clear of all Liens, other than Permitted Liens.

(b) The Conveyed Assets and the rights of Purchaser under the Intellectual Property Transfer Agreements and the Intellectual Property License Agreement include all tangible assets and Intellectual Property (other than the Excluded Software) that are necessary for the conduct of the Business immediately following the Closing in substantially the same manner as currently conducted by Seller and Seller Sub, except for (i) the assets that will be used in connection with providing services under the Transitional Services Agreement, (ii) the real property that is the subject of the Sublease or the Bothell Facility Lease, (iii) Employees that are not Transferred Employees and (iv) the Excluded Assets. For purposes of this Agreement, the term "Excluded Software" means any (i) Software listed on Section 3.9(h) of the Seller Disclosure Letter which does not constitute Conveyed Intellectual Property and (ii) software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preferences).

(c) Each item of equipment which is a Conveyed Asset (other than equipment set forth on Section 2.1(a)(ii)(B) of the Seller Disclosure Letter) is in good operating condition for the purposes for which it is currently being used, subject to ordinary wear and tear and has been maintained in all material respects in accordance with generally accepted industry practice, but is otherwise being transferred on a "where is" and, as to condition, "as is" basis, including with respect to the Software used in connection with such equipment. Each item of equipment set forth on Section 2.1(a)(ii)(B) of the Seller Disclosure Letter is being transferred on a "where is" and, as to condition, "as is" basis, including with respect to the Software used in connection with such equipment.

(d) The items of equipment located in Rooms 346 and 348 of the third floor of Seller's microbial facility at 51 University Street, Seattle, Washington are not used in the conduct of the Business as conducted as of the date hereof. The items of equipment which constitute Excluded Assets (other than equipment that is used only for administrative or clerical services) are not necessary for the conduct of Business as conducted as of the date hereof.

(e) Except as set forth on Section 3.7(e) of the Seller Disclosure Letter, since January 1, 1999 through to the date hereof, Seller has not experienced any out-of-stock or back-order situation of LEUKINE finished product.

SECTION 3.8 *Material Contracts*.

(a) Section 3.8(a) of the Seller Disclosure Letter sets forth a list of each Assumed Contract that exists as of the date hereof and falls within any of the following categories: (i) Contracts pursuant to which payments were made to Seller and Seller Sub in excess of $1,000,000 with respect to the Business during the year ended December 31, 2001 or pursuant to which Seller and Seller Sub are required to be paid in excess of $1,000,000 with respect to the Business for the year ending December 31, 2002, (ii) Contracts pursuant to which Seller and Seller Sub paid in excess of $500,000 with respect to the Business during the year ended December 31, 2001 or pursuant to which Seller and Seller Sub are required to make payments in excess of $500,000 with respect to the Business for the year ending December 31,

2002, (iii) Contracts establishing joint ventures or partnerships relating to the Business, (iv) Contracts containing covenants which materially limit the freedom of Seller or Seller Sub or (from and after the Closing) Purchaser to operate the Business in any geographic area, or which contain a covenant of Seller or Seller Sub or (from and after the Closing) Purchaser not to compete in any material respect in the conduct of the Business, (v) Contracts between Seller or Seller Sub and any of Seller's other Affiliates, (vi) Contracts requiring royalty or similar payments in excess of $500,000 with respect to the Business during the year ended December 31, 2001 or that require payments in excess of $500,000 with respect to the Business during the year ending December 31, 2002, (vii) Contracts for the sale by Seller or Seller Sub of any Conveyed Asset (other than sales of LEUKINE in the ordinary course of business) or the grant of any preferential rights to purchase any Conveyed Asset (other than sales of LEUKINE in the ordinary course of business), (viii) Contracts relating to LEUKINE or the Business with any Governmental Entity, (ix) Contracts for the performance of clinical trials of LEUKINE for which Seller is the sponsor, (x) to Seller's knowledge, material Contracts the purpose of which are primarily the research or development of LEUKINE for the treatment of [*] and (xi) to Seller's knowledge, material Contracts the purpose of which are primarily the development of formulations of LEUKINE.

(b) No Employment Agreement exists as of the date hereof, and no Employee was a party to any Employment Agreement at any time during the three years preceding the date hereof.

(c) To the knowledge of Seller, each of the Assumed Contracts set forth in Section 3.8(a) of the Seller Disclosure Letter is valid, binding and in full force and effect, except to the extent such Assumed Contract has expired in accordance with its terms between the date hereof and the Closing Date. Except as set forth on Section 3.8(c) of the Seller Disclosure Letter, Seller and Seller Sub (as the case may be) and, to the knowledge of Seller, any other party thereunder, has performed in all material respects the obligations required to be performed by such party under the Assumed Contracts set forth in Section 3.8(a) of the Seller Disclosure Letter. Neither Seller nor Seller Sub is in material breach or default under any Assumed Contract set forth in Section 3.8(a) of the Seller Disclosure Letter and, to the knowledge of Seller, no other party to any Assumed Contract set forth on Section 3.8(a) of the Seller Disclosure Letter (with or without the lapse of time or the giving of notice, or both) in material breach or default thereunder. Since January 1, 1998 through to the date hereof, neither Seller nor Seller Sub has received any written notice of the intention of any party to terminate any Assumed Contract set forth in Section 3.8(a) of the Seller Disclosure Letter. Complete and correct copies of all Assumed Contracts (and amendments thereto), in each case, in effect on the date hereof, have been made available to Purchaser or its representatives.

(d) (i) Section 1.1(a)(i) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof pursuant to which any third party purchases LEUKINE from Seller or Seller Sub, (ii) Section 1.1(a)(ii) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof pursuant to which Seller or Seller Sub purchases any materials from any third party for use in connection with the manufacture of LEUKINE, (iii) Section 1.1(a)(iii) of the Seller Disclosure Letter sets forth all Contracts in effect on the date

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hereof relating to any clinical trial involving LEUKINE, (iv) Section 1.1(a)(iv) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof constituting material transfer agreements involving the transfer of LEUKINE, (v) Section 1.1(a)(v) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof relating to the marketing of LEUKINE or educational matters relating to the Business, (vi) Section 1.1(a)(vi) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof relating to the manufacture (including fill or finish) of LEUKINE, (vii) Section 1.1(a)(vii) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof constituting confidentiality agreements involving LEUKINE, (viii) Section 1.1(a)(viii) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof involving any royalty, licensing or similar arrangement involving LEUKINE, (ix) Section 1.1(a)(ix) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof pursuant to which any services are provided to Seller or Seller Sub with respect to LEUKINE or the Business, including consultation agreements, and (x) Section 1.1(a)(x) of the Seller Disclosure Letter sets forth all Contracts in effect on the date hereof pursuant to which any third party collaborates with Seller or Seller Sub in the performance of research or development of LEUKINE or the Business.

(e) Section 1.1(c) of the Seller Disclosure Letter sets forth all Dual Use Contracts in effect on the date hereof.

SECTION 3.9 *Conveyed Intellectual Property*.

Except as set forth in Section 3.9 of the Seller Disclosure Letter:

(a) Seller owns the Conveyed Intellectual Property and owns or has a valid right to grant the licenses granted under the Intellectual Property that is the subject of the Intellectual Property License Agreement free and clear of all Liens other than Permitted Liens;

(b) The Conveyed Intellectual Property and the Intellectual Property that is the subject of the Intellectual Property License Agreement have been duly maintained, in all material respects, and have not been cancelled, expired or abandoned, and Section 2.1(a)(iv) of the Seller Disclosure Letter sets forth a list of all jurisdictions in which such Intellectual Property is registered or in which registrations for such Intellectual Property are pending and all registration and application numbers;

(c) As of the date hereof, Seller has not received written notice from any third party regarding any actual or potential infringement or misappropriation by Seller of any Intellectual Property of such third party relating to the Conveyed Assets or any Intellectual Property that is the subject of the Intellectual Property Transfer Agreements or the Intellectual Property License Agreement, and Seller has no knowledge of any reasonable basis for such a claim against Seller;

(d) As of the date hereof, none of the Conveyed Intellectual Property or the Intellectual Property that is the subject of the Intellectual Property Transfer Agreements or the Intellectual Property License Agreement has expired or been declared invalid, in whole or in part, by any Governmental Entity. As of the date hereof, there are no currently ongoing interferences, oppositions, reissues, reexaminations or other proceedings involving any of the

patents or patent applications set forth on Section 2.1(a)(iv) of the Seller Disclosure Letter, including ex parte and post-grant proceedings, in the United States Patent and Trademark Office or in any foreign patent office or similar administrative agency;

(e) Seller has not received written notice from any third party regarding any assertion or claim challenging the validity of any Conveyed Intellectual Property or any Intellectual Property that is the subject of the Intellectual Property Transfer Agreements or the Intellectual Property License Agreement, and Seller has no knowledge of any reasonable basis for such a claim;

(f) To the knowledge of Seller, as of the date hereof, no third party is misappropriating, infringing, diluting or violating any Conveyed Intellectual Property or any Intellectual Property that is the subject of the Intellectual Property Transfer Agreements or the Intellectual Property License Agreement;

(g) (i) All Intellectual Property that is the subject of the Assignment of Intellectual Property or the Intellectual Property License Agreement, to the extent confidential, has been maintained in confidence by Seller in all material respects in accordance with commercially reasonable protection procedures, (ii) all former and current employees of Seller or any of its Subsidiaries who primarily worked in the Business have executed and delivered to Seller a proprietary information agreement restricting such person's right to disclose proprietary information of Seller or any of its Subsidiaries with respect to the Business, (iii) all former and current employees of Seller or any of its Subsidiaries and all former and current agents, consultants, collaborators and independent contractors who have contributed to or participated in the conception or development of the Intellectual Property that is the subject of the Assignment of Intellectual Property or the Intellectual Property License Agreement ("*Personnel*") have executed and delivered to the Seller a proprietary information agreement restricting such Person's right to disclose proprietary information of Seller or any of its Subsidiaries with respect to the Business and (iv) all Personnel either (1) have been party to a "work-for-hire" arrangement or agreement with the Seller, in accordance with all applicable Laws, that has accorded Seller full, effective, exclusive and original ownership of all tangible and intangible property thereby arising or (2) have executed appropriate instruments of assignment in favor of Seller or as assignee that have conveyed to Seller full, effective and exclusive ownership of all tangible and intangible property thereby arising. To Seller's knowledge, no Personnel has any claim against Seller or any of its Subsidiaries in connection with such Personnel's involvement in the conception or development of any Intellectual Property that is the subject of the Assignment of Intellectual Property or the Intellectual Property License Agreement, and no such claim has been asserted or, to the knowledge of Seller, is threatened. To Seller's knowledge, none of Seller's officer's or employees has any patents issued or applications pending for any device, process, design or invention of any kind now used or necessary for the conduct of the Business, which patents or applications have not been assigned to Seller, with such assignment duly recorded in the United States Patent and Trademark Office;

(h) Except for web site content related to the Business, the Software embedded in hardware included in the Conveyed Assets, Software used solely for general and administrative purposes, and except as listed in Section 3.9(h) of the Seller Disclosure Letter, no Software is necessary for the conduct of Business as conducted as of the date hereof; and

(i) [*].

Bothell Facility.

(j) Except for (i) Permitted Liens, (ii) defects in title or encumbrances which do not impair the current use of the Bothell Facility in any material respect or (iii) those encumbrances set forth on Exhibit C to the Bothell Facility Lease, Seller has good and marketable fee simple title to the Bothell Facility. Complete and correct copies of all such encumbrances specified in the foregoing clause (iii), and any amendments thereto, have been made available to Purchaser.

(k) The buildings, structures and improvements included in the Bothell Facility are in all material respects structurally sound and are in all material respects in reasonable operating condition and repair (subject to ordinary wear and tear) and are adequate for the uses to which they are currently being put. As of the date hereof, neither Seller nor Seller Sub have received written notification from any Governmental Entity that it is in violation of any applicable and material building, zoning, subdivision, health or other law, ordinance or regulation with respect to the Bothell Facility or any encumbrance affecting title to the Bothell Facility.

(l) Seller has a current, valid certificate of occupancy *("CO"*) or equivalent thereof for the Bothell Facility and Seller uses the Bothell Facility in conformity, in all material respects, with such CO. As of the date hereof, (i) no proceeding is pending or, to the knowledge of Seller, threatened regarding the revocation or limitation of any CO applicable to the Bothell Facility and (ii) Seller has no knowledge of any reasonable basis or grounds for any such revocation or limitation regarding the Bothell Facility.

(m) As of the date hereof, no fact or condition exists which would prohibit adequate rights of access to and from the Bothell Facility from and to public highways and roads, and Seller has not received written notice of any pending or threatened restriction or denial, governmental or otherwise, upon such ingress and egress which would materially adversely affect the use of the Bothell Facility as used as of the date hereof.

(n) As of the date hereof, Seller has not received written notice that the Bothell Facility is subject to any pending suit for condemnation or other taking by any Governmental Entity or other Person, and to the knowledge of Seller, no such condemnation or other taking is threatened or contemplated.

SECTION 3.10 *Environmental Matters*

(a) Except as set forth on Section 3.11 of the Seller Disclosure Letter and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(i) Seller and Seller Sub, to the extent related to any property or facility owned, leased or operated by Seller in the conduct of the Business (the "*Properties*"),

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have obtained those Permits required by Environmental Law and necessary for the conduct of the Business, and Seller and Seller Sub are in compliance with such Permits and other requirements of applicable Environmental Laws;

(ii) Seller and Seller Sub, to the extent related to the Business or the Properties, have not received any written notice from any Governmental Entity or any other Person alleging a violation of, or liability under, any Environmental Laws related to any matter which has not been fully resolved;

(iii) there has been no Release of any Hazardous Materials at, on or under the Properties, and the Properties do not contain any underground storage tanks or surface impoundments containing any Hazardous Materials; and

(iv) no notice, registration, reporting or other filing or investigation, response or corrective action is required by Sellers or Seller Sub under any Environmental Law in connection with, or as a result of, the execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby.

(b) Notwithstanding anything to the contrary contained in this Agreement, the only representations and warranties given in this Agreement in respect of environmental matters which are the subject of this Section 3.11 are those contained in this Section 3.11, and none of the other representations and warranties in this Agreement shall be deemed to constitute, directly or indirectly, a representation or warranty in respect of such environmental matters.

SECTION 3.11 *Inventory*.

(a) Other than items covered by Seller's inventory reserves, each item of Inventory is (i) free of any material defect or deficiency, and (ii) is in good, usable and currently marketable condition in the ordinary course of business (subject, in the case of raw materials and work-in-process, to the completion of the production process) and, at Closing, all materials on hand and work-in-process will meet, in all material respects, all applicable governmental and internal quality control standards.

(b) The Initial Inventory Amount represents the value of the inventory of the Business as of March 31, 2002 and was calculated from Seller's financial systems and is based upon the standard material, labor and burden costs of the inventories of the Business (subject to customary reserves), applied by Seller, determined in accordance with GAAP consistently applied; *provided*, that for purposes of calculating the Initial Inventory Amount, the inventory of the Business shall not include any inventory that, according to Seller's inventory policy, is (i) damaged, defective, unusable, unsaleable or which otherwise fails to meet the requirements of Section 3.12(a) or (ii) finished goods with an expiration date that as of March 31, 2002 is less than required by Seller's inventory policies in effect at such time.

SECTION 3.12 *Employee Matters*.

(a) Section 3.13(a)(i) of the Seller Disclosure Letter contains a complete and accurate list of the names of each Employee as of the date of this Agreement. Seller has made available to Purchaser the following information with respect to each such Employee: (i) date of

hire and effective service date, (ii) job title or position held, (iii) base salary or current wages, (iv) most recent bonus paid, aggregate annual compensation for the Seller's last fiscal year and current target or guaranteed bonus, if any, (v) employment status (i.e., active or on leave or disability and full-time or part-time), (vi) accrued unused vacation days and other time off rights and the potential number of such days and rights such Employee may accrue annually, (vii) whether such Employee is entitled to benefits under the grandfathered provisions for Rhode Island Employees and (viii) any other material terms and conditions of employment in regard to such Employee that are not otherwise generally available to similarly situated employees. Section 3.13(a)(ii) of the Seller Disclosure Letter contains a complete and accurate organization chart setting forth categories of Employees as of the date specified on such list. Other than as disclosed in Section 3.13(a)(iii) of the Seller Disclosure Letter or as contemplated by Section 5.8, none of the Transferred Employees (i) is as of the date hereof covered by any union, collective bargaining agreement or other similar labor agreement, (ii) has any loan from Seller or any ERISA Affiliates, (iii) has received from Seller or any of its ERISA Affiliates any discretionary severance or any severance under any formal or informal policy or practice, and neither Seller nor any of its ERISA Affiliates has agreed to provide any Transferred Employee any such severance or (iv) is, or at any time will become, entitled to any payment, benefit or right, or any increased or accelerated payment, benefit or right as a result of (A) such Transferred Employee's termination of employment with Seller and/or one or more of its Subsidiaries or any of their respective successors or (B) the execution of this Agreement or the consummation of the transactions contemplated hereby.

(b) Section 3.13(b) of the Seller Disclosure Letter sets forth a true and complete list of each "employee benefit plan" as defined in Section 3(3) of ERISA and any other material plan, policy, program, practice, agreement, understanding or arrangement, in each case, providing compensation or other benefits to any Employee, maintained, sponsored or contributed to by Seller or any ERISA Affiliate (each, a "*Seller Benefit Plan*").

(c) Neither Seller nor any of its ERISA Affiliates sponsors, maintains or contributes to any "employee pension benefit plan" (as defined in Section (2) of ERISA) that is subject to Title IV of ERISA or Section 412 of the Code, or any "multiemployer plan" as defined in Section 3(37) of ERISA and there does not exist as of the date of this Agreement, nor do any circumstances exist that could result in, any Employee Benefits Liability that could reasonably be expected to become a liability of Purchaser and/or one or more of its Affiliates on or following the Closing Date.

(d) Except as required by Law or as set forth on Section 3.13(d) of the Seller Disclosure Letter, no Seller Benefit Plan provides any medical, disability or life insurance benefits to any Employees after termination of employment.

(e) As of the date hereof, Seller has not, to its knowledge, employed (and, to its knowledge, has not hired a contractor or consultant that has employed) any Person in the conduct of the Business who during the term of such employment was debarred by the FDA or, to the knowledge of Seller, any Person who during the term of such employment was the subject of an FDA debarment investigation or proceeding.

SECTION 3.13 *Litigation*.

(a) Section 3.14(a) of the Seller Disclosure Letter sets forth a list as of the date of this Agreement of each pending or threatened suit, claim, action, proceeding or investigation against Seller or Seller Sub and as to which Seller or Seller Sub has been contacted in writing by the plaintiff or claimant or by their counsel, arising out of the conduct of the Business or against or affecting any Conveyed Asset and that (i) seeks damages in excess of $100,000 or (ii) seeks any material injunctive relief. To the knowledge of Seller, except as set forth in Section 3.14(a) of the Seller Disclosure Letter, as of the date hereof, none of Seller or any of its Affiliates is a party or subject to or in default in any material respect under any judgment, order, injunction or decree applicable to the conduct of the Business or any Conveyed Asset or Assumed Liability.

(b) Except as set forth in Section 3.14(b) of the Seller Disclosure Letter, as of the date hereof, there is not any suit, claim, action, proceeding or investigation by Seller or Seller Sub pending and as to which Seller or Seller Sub has sent any letter or other written notice to any Person or such Person's counsel to the effect that Seller or Seller Sub intends to initiate any suit, claim, action, proceeding or investigation against any other Person, in each case, arising out of the conduct of the Business and that (i) seeks material damages or (ii) seeks any material injunctive relief.

(c) Except as set forth in Section 3.14(c) of the Seller Disclosure Letter, none of the suits, claims, actions, proceedings or investigations listed in Section 3.14(a) of the Seller Disclosure Letter as to which there is at least a reasonable possibility of adverse determination would have, if so determined, individually or in the aggregate, a Material Adverse Effect.

(d) Except as set forth in Section 3.14(d) of the Seller Disclosure Letter, as of the date hereof, there is no suit, claim, action, proceeding or investigation pending or, to the knowledge of Seller, threatened against Seller or Seller Sub which challenges the transactions contemplated by this Agreement and would be reasonably expected to prevent or materially delay the performance of this Agreement by Seller or consummation of the transactions contemplated hereby.

SECTION 3.14 *Brokers*.

No broker, finder or investment banker (other than Merrill Lynch & Co., all fees of which shall be paid by Seller in connection with the transactions contemplated hereby) is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

SECTION 3.15 *Disclosure*.

As of the date hereof, Seller has made available to Purchaser all material written information in existence as of the date hereof which Seller has knowledge of concerning the safety, efficacy, side effects or toxicity of LEUKINE, associated with or derived from any clinical use, studies, investigations or tests of LEUKINE in all indications for which LEUKINE

has been approved by the FDA or, with respect to [*] indications for LEUKINE, studied by Seller or Seller Sub.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

SECTION 4.1 *Organization*.

Purchaser is a stock corporation duly organized and validly existing under the Laws of The Federal Republic of Germany. Purchaser has the requisite power and authority to own, lease and operate its properties and to conduct its business as it is now being conducted.

SECTION 4.2 *Authority*.

Purchaser has the requisite power and authority to execute and deliver this Agreement and the Related Instruments, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Related Instruments and the consummation by Purchaser of such transactions have been duly authorized by all requisite corporate action on the part of Purchaser and no other authorization of Purchaser or its shareholders is required to authorize the execution and delivery of this Agreement or the Related Instruments or the consummation of the transactions contemplated hereby or thereby. This Agreement has been validly executed and delivered by Purchaser and constitutes, and each Related Instrument that is to be executed and delivered by Purchaser will constitute when executed and delivered by Purchaser, a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.

SECTION 4.3 *No Conflict; Required Filings and Consents*.

(a) The execution and delivery of this Agreement by Purchaser do not, and the execution and delivery of the Related Instruments will not, and the performance by Purchaser of its obligations under this Agreement and the Related Instruments will not, (i) conflict with or violate any provision of the Satzung of Purchaser, (ii) assuming that all consents, approvals, authorizations and Permits described in Section 4.3(b) have been obtained and that all filings and notifications described in Section 4.3(b) have been made and any waiting periods thereunder have terminated or expired, conflict with or violate any Law applicable to Purchaser or by which any property or asset of Purchaser is bound or (iii) assuming that all consents, approvals, authorizations and Permits described in Section 4.3(b) have been obtained and that all filings and notifications described in Section 4.3(b) have been made and any waiting periods thereunder have terminated or expired, require any consent or approval under, result in any breach of, any loss of any benefit under or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, modification, acceleration or cancellation of, or result in the creation of a Lien or other encumbrance on any contract to which Purchaser is a party or any property or asset of Purchaser, except, with respect

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to clauses (ii) and (iii), for any such conflicts, violations, consents, approvals, breaches, losses, defaults, rights, Liens or other occurrences which would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the performance of this Agreement by Purchaser.

(b) The execution and delivery of this Agreement and the Related Instruments by Purchaser do not, and the performance of this Agreement and the Related Instruments by Purchaser and the consummation of the transactions contemplated hereby and thereby will not, require any consent, approval, authorization or Permit of, or filing with or notification to, any Governmental Entity, except (i) under the HSR Act, to the extent necessary, (ii) for those requirements which become applicable to Purchaser as a result of the specific regulatory status of Seller or any of its Affiliates (as opposed to any other third party) or as a result of any other facts that specifically relate to the Business or any Conveyed Asset or the business or activities in which Seller or any of its Affiliates (as opposed to any other third party) is or proposes to be engaged, and (iii) where failure to obtain such consents, approvals, authorizations or Permits, or to make such filings or notifications, would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the performance or consummation of this Agreement by Purchaser.

SECTION 4.4 *Litigation*.

As of the date hereof, there is no suit, claim, action, proceeding or investigation pending or, to the knowledge of Purchaser, threatened against Purchaser, which challenges the transactions contemplated by this Agreement and would be reasonably expected to prevent or materially delay the performance of this Agreement by Purchaser or consummation of the transactions contemplated hereby.

SECTION 4.5 *Financing*.

At Closing, Purchaser will have sufficient funds available in cash to pay the Initial Purchase Price and all other amounts payable by Purchaser at the Closing and, if required, to pay the Purchase Price Adjustment.

SECTION 4.6 *Brokers*.

No broker, finder or investment banker (other than Dresdner Kleinwort Wasserstein, all fees of which shall be paid by Purchaser in connection with the transactions contemplated hereby) is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Purchaser.

SECTION 4.7 *Investigation by Purchaser*.

Purchaser has conducted its own independent review and analysis of the Conveyed Assets, the Assumed Liabilities and the Business and the Intellectual Property that is the subject of the Intellectual Property Transfer Agreements and the Intellectual Property License Agreement and acknowledges that Purchaser has been provided access to the personnel, properties, premises and records of Seller relating to the Conveyed Assets, the Assumed

Liabilities and the Business and the Intellectual Property that is the subject of the Intellectual Property Transfer Agreements and the Intellectual Property License Agreement for such purpose. In entering into this Agreement, Purchaser has relied solely upon the express representations and warranties of Seller set forth in Article III of this Agreement and in the Related Instruments (if any) and the covenants of Seller set forth in this Agreement and in the Related Instruments and Purchaser's own investigation and analysis. Purchaser acknowledges that, except as set forth in Article III of this Agreement and in the Related Instruments, none of Seller or any of its Affiliates (including in the case of Seller, for purposes of this Section 4.7 only, Wyeth and Amgen Inc. and their respective Affiliates) or any of their respective directors, officers, employees, Affiliates, agents, advisors or representatives makes any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to Purchaser or any of its Affiliates or any of their respective directors, officers, employees, Affiliates, agents, advisors or representatives. Purchaser acknowledges that, except as expressly set forth in the representations and warranties in Article III of this Agreement and in the Related Instruments (if any): (i) there are no representations or warranties by Seller of any kind, express or implied, with respect to the Business, the Conveyed Assets or the Assumed Liabilities and the Intellectual Property that is the subject of the Intellectual Property Transfer Agreements and the Intellectual Property License Agreement, and (ii) that Purchaser is purchasing the Conveyed Assets "where is" and "as is" and "with all faults". Without limiting the generality of the foregoing, except as expressly set forth in the representations and warranties in Article III of this Agreement and in the Related Instruments (if any), THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE V

COVENANTS

SECTION 5.1 *Conduct of the Business*.

(a) During the period from the date hereof to the Closing, except as set forth in Section 5.1 of the Seller Disclosure Letter or as otherwise permitted by the terms of this Agreement and except as may be required under Law, or unless Purchaser shall otherwise agree, Seller shall, and shall cause Seller Sub to, conduct the Business in the usual, regular and ordinary course in substantially the same manner as previously conducted and use, and cause Seller Sub to use, commercially reasonable efforts to keep intact the Business and preserve the relationships of the Business with customers, suppliers, licensors, licensees, distributors, regulatory authorities and other third parties, in each case, who are material to the Business. Without limiting the generality of the foregoing, and except as set forth in Section 5.1 of the Seller Disclosure Letter or as otherwise permitted by the terms of this Agreement and except as may be required under Law, from the date of this Agreement to the Closing, without the prior written consent of Purchaser, neither Seller nor Seller Sub shall:

(i) subject any Conveyed Asset to any Lien, other than Permitted Liens;

(ii) sell, transfer, lease, sublease, license or otherwise dispose of, or grant any option or rights in, to or under, any Conveyed Assets (other than Intellectual Property), except for the sale of inventory and the disposition of obsolete equipment in the ordinary course of business consistent with past practice;

(iii) sell, license or sublicense, or otherwise transfer any rights to any third party under, (A) any Conveyed Intellectual Property or (B) any Intellectual Property that is the subject of the Intellectual Property License Agreement, other than sales, licenses, sublicenses or other transfers of Intellectual Property referred to in this clause (B) that would not be inconsistent with the exclusive license to be granted to Purchaser under such Intellectual Property License Agreement;

(iv) enter into any Contract that would have been required to be set forth on Section 3.8(a) of the Seller Disclosure Letter if such Contract had existed as of the date hereof, or terminate, extend or amend any Assumed Contract set forth on Section 3.8(a) of the Seller Disclosure Letter other than extensions and immaterial amendments in the ordinary course of business consistent with past practice; provided however, that Purchaser shall not unreasonably withhold or delay its consent, if Seller requests the consent of Purchaser, in connection with the matters in this Section 5.1(a)(iv);

(v) enter into any Employment Agreement or increase the compensation or benefits provided to any Designated Employee, or otherwise modify any of the terms or conditions of any Designated Employee's employment, other than as may be required under the terms of any Seller Benefit Plan;

(vi) (A) abandon or terminate any clinical trials with respect to LEUKINE sponsored by Seller relating to [*], mucositis or melanoma, other than for safety concerns or in accordance with the terms of existing arrangements with respect to such clinical trials, or (B) terminate Seller's support of clinical trials sponsored by clinical investigators with respect to LEUKINE;

(vii) (A) commence any new clinical trials with respect to LEUKINE sponsored by Seller or (B) make any commitment not set forth on Section 5.1(a)(vii)(B) of the Seller Disclosure Letter to sponsor or support a new clinical trial with respect to LEUKINE;

(viii) modify, amend, terminate or permit the lapse of any lease of, or reciprocal easement agreement, operating agreement or other agreement relating to, the real property subject to the Sublease or the Bothell Facility Lease, except modifications or amendments associated with renewals of existing leases in the ordinary course of business consistent with past practice with respect to which modifications or amendments Purchaser shall have the right to reasonably participate;

(ix) engage in any practice which is intended to increase, or should reasonably be expected to have the effect of increasing, the levels of inventory of LEUKINE in the distributor or wholesaler channels above historic levels or the levels of LEUKINE sales (including lowering prices, increasing discounts, rebates, allowances and warranties, or making

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more favorable return, credit, chargeback or other trade practices or policies), in each case, other than in the ordinary course of business consistent with past practice or in response to changes in market prices or other terms of sale or the trade practices or policies of competitors of Seller;

(x) abandon any patents or patent filings or any litigation seeking to enforce Seller's interest in any Intellectual Property that is the subject of the Assignment of Intellectual Property or the Intellectual Property License Agreement; or

(xi) agree, whether in writing or otherwise, to do any of the foregoing set forth in clauses (i) through (x) above.

(b) Until the Closing, Seller shall, and shall cause Seller Sub to, use commercially reasonable efforts to:

(i) upon any material damage, destruction or loss to any tangible Conveyed Asset, apply any and all proceeds received with respect thereto to the prompt repair, replacement and restoration thereof to the condition of such Conveyed Asset before such event or, if required, to such other (better) condition as may be required by applicable Law;

(ii) maintain its level and quality of inventories in the ordinary course of business consistent with past practice;

(iii) maintain in all material respects its levels of productivity, yield and lot success rate in manufacturing LEUKINE; and maintain compliance with GMP guidelines, including conducting preventative maintenance of process equipment and utility systems; and

(iv) maintain its entire master cell bank and working cell bank in connection with LEUKINE, as well as any available product-specific antibodies, under appropriate storage conditions.

(c) Until the Closing, Seller shall consult from time to time with Purchaser, at its request, with respect to material developments in the Business.

SECTION 5.2 *Access to Information; Confidentiality; Cooperation*.

(a) After the date hereof and prior to the Closing, Seller shall permit Purchaser and its Subsidiaries and their authorized representatives to have reasonable access during normal business hours, upon reasonable prior notice to Seller, to the Conveyed Assets, to the real property that is the subject of the Sublease or the Bothell Facility Lease and to Seller's and Seller Sub's personnel, the Assumed Contracts and the Tax returns and the books and records of Seller and Seller Sub to the extent relating to the Conveyed Assets, the Assumed Liabilities or the Business (including historical performance data, but excluding personnel records to the extent prohibited by law or, after the written list specifying the Designated Employees is delivered pursuant to Section 5.8(a), with respect to non-Designated Employees), and Seller shall furnish promptly to Purchaser such information in Seller's or Seller Sub's possession concerning the Conveyed Assets, the Assumed Liabilities or the Business as Purchaser may reasonably request; *provided*, *however*, that any such access shall be conducted in such a manner as not to unreasonably interfere with the operation of the Business.

Notwithstanding the foregoing, Seller need not disclose to Purchaser any information: (i) relating to pricing or other matters that are highly sensitive if (A) providing such portions of documents or information, in the opinion of Seller's counsel, might reasonably result in antitrust difficulties for Seller and (B) Seller designates such information as "outside counsel and retained experts only" and discloses such information to Purchaser's outside counsel and retained experts or (ii) which Seller is prohibited from disclosing by applicable Law or by a confidentiality agreement with a third party if, in the case of a confidentiality agreement, Seller has used commercially reasonable efforts to obtain the consent of such third party to such disclosure. If any material is withheld by Seller pursuant to the immediately preceding sentence, Seller shall inform Purchaser as to the general nature of what is being withheld. Seller may redact such portions of its books and records that do not relate to the Conveyed Assets, the Assumed Liabilities and the Business.

(b) Information disclosed to Purchaser pursuant to this Agreement (including in the Seller Disclosure Letter) shall be held as Evaluation Material (as defined in the Confidentiality Agreement, dated as of February 4, 2002, by and between Seller and Berlex Laboratories, Inc. (the "*Confidentiality Agreement*")) and shall be subject to the Confidentiality Agreement and Purchaser, in accordance therewith, shall cause its Representatives (as defined in the Confidentiality Agreement) to treat as Evaluation Material all of the information provided by Seller pursuant to this Agreement; *provided*, that Purchaser and its Representatives may use such information for any purpose contemplated by this Agreement or the Related Instruments (i.e., Purchaser is not limited to using such information solely for purposes of determining whether or not to enter into this Agreement). Effective upon the Closing, the Confidentiality Agreement shall terminate only with respect to the use and maintenance of the Evaluation Material (other than with respect to information deemed Evaluation Material under Section 4.1 of the Intellectual Property License Agreement). Effective upon Closing, upon written request of Purchaser, from time to time, Seller shall (at Purchaser's cost and expense) use reasonable efforts to enforce Seller's rights with respect to the use and maintenance of the Evaluation Material relating to the Business under all other confidentiality agreements between Seller and any potential purchaser of the Business that were entered into in contemplation of the sale of the Business. Seller shall not waive or release its rights under such confidentiality agreements with respect to the use and maintenance of such Evaluation Material with respect to the Business.

(c) Following the Closing, Seller shall implement procedures to keep confidential (including from Amgen and its Subsidiaries), and cause its Affiliates and its and their officers, directors and employees to keep confidential, all information relating to the Business, except as required by Law; *provided*, *however*, that neither Seller nor its Affiliates nor their officers, directors and employees shall be required to implement procedures with respect to maintaining such information confidential which are more stringent than the procedures Seller (or its successors) has generally adopted with respect to maintaining its own information confidential; *provided*, *further*, that the provisions of this Section 5.2(c) shall not apply to information which is or becomes generally available to the public other than as a result of a disclosure by Seller or its Affiliates or its or their officers, directors or employees. Seller shall not, and shall cause its Affiliates and its and their officers, directors or employees not to, disseminate any such information other than to those employees of Seller who have a business need to have access to such information (i) in connection with the preparation of Seller's accounting records, (ii) in connection with the preparation of any Tax Returns or with any Tax

audits, (iii) in connection with any suit, claim, action, proceeding or investigation relating to the Conveyed Assets, the Assumed Liabilities or the Business or (iv) in connection with any required regulatory filing relating to LEUKINE; *provided* that Seller shall not, and shall cause its Affiliates and its and their officers, directors and employees not to, transmit any information relating to pricing or discounting by Purchaser to Seller's or its Affiliates' marketing, sales or customer contracting employees for any reason.

(d) Following the Closing, for so long as such information is retained by Purchaser (which shall be for a period of at least eight (8) years), Purchaser shall permit Seller and its authorized representatives to have reasonable access and duplicating rights during normal business hours, upon reasonable prior notice to Purchaser, to the books and records included in the Conveyed Assets and, subject to the second proviso of Section 5.2(f), the employees of Purchaser or its Subsidiaries, to the extent that such access may reasonably be required: (i) in connection with the preparation of Seller's accounting records or with any audits, (ii) in connection with the preparation of any Tax Returns or with any tax audits, (iii) in connection with any suit, claim, action, proceeding or investigation relating to the Conveyed Assets, the Assumed Liabilities or the Business, or (iv) in connection with any required regulatory filing relating to LEUKINE; provided that Seller shall reimburse Purchaser promptly for all reasonable and necessary out-of-pocket costs and expenses incurred by Purchaser in connection with any such request. Notwithstanding the foregoing, Purchaser need not disclose to Seller any information: (i) relating to pricing or other matters that are highly sensitive if (A) providing such portions of documents or information, in the opinion of Purchaser's counsel, might reasonably result in antitrust difficulties for Purchaser and (B) Purchaser designates such information as "outside counsel and retained experts only" and discloses such information to Seller's outside counsel and retained experts or (ii) which Purchaser is prohibited from disclosing by applicable Law or by a confidentiality agreement with a third party if, in the case of a confidentiality agreement, Purchaser has used commercially reasonable efforts to obtain the consent of such third party to such disclosure. If any material is withheld by Purchaser pursuant to the immediately preceding sentence, Purchaser shall inform Seller as to the general nature of what is being withheld.

(e) Following the Closing, for so long as such information is retained by Seller (which shall be for a period of at least eight (8) years), Seller shall permit Purchaser and its authorized representatives to have reasonable access and duplicating rights during normal business hours, upon reasonable prior notice to Seller, to the books, records and, subject to the second proviso of Section 5.2(g), personnel to the extent relating to the Conveyed Assets, the Assumed Liabilities or the Business, to the extent such access may reasonably be required: (i) in connection with the preparation of Purchaser's accounting records or with any audits, (ii) in connection with the preparation of any Tax Returns or with any tax audits, (iii) in connection with any suit, claim, action, proceeding or investigation relating to the Conveyed Assets, the Assumed Liabilities or the Business or (iv) in connection with any required regulatory filing relating to the Conveyed Assets, the Assumed Liabilities or the Business; provided, that Purchaser shall reimburse Seller promptly for all reasonable and necessary out-of-pocket costs and expenses incurred by Seller in connection with any such request. Notwithstanding the foregoing, Seller need not disclose to Purchaser any information: (i) relating to pricing or other matters that are highly sensitive if (A) providing such portions of documents or information, in the opinion of Seller's counsel, might reasonably result in antitrust difficulties for Seller and

(B) Seller designates such information as "outside counsel and retained experts only" and discloses such information to Purchaser's outside counsel and retained experts; or (ii) which Seller is prohibited from disclosing by applicable Law or by a confidentiality agreement with a third party if, in the case of a confidentiality agreement, Seller has used commercially reasonable efforts to obtain the consent of such third party to such disclosure. If any material is withheld by Seller pursuant to the immediately preceding sentence, Seller shall inform Purchaser as to the general nature of what is being withheld. Seller may redact such portions of such books and records that do not relate to the Conveyed Assets, the Assumed Liabilities or the Business.

(f) Purchaser shall, and shall instruct its employees to, at Seller's request, cooperate with Seller as may be reasonably required in connection with the investigation and defense of any suit, claim, action, proceeding or investigation relating to the Conveyed Assets, the Assumed Liabilities or the Business that is brought against Seller or any of its Affiliates at any time after the Closing; *provided*, *however*, that Seller shall reimburse Purchaser promptly for all reasonable out-of-pocket costs and expenses incurred by Purchaser in connection with any such request; *provided*, *further*, that Seller shall not be permitted to have access to any employee to the extent such access would cause such employee to be unavailable to Purchaser during Purchaser's normal business hours for more than twenty (20) hours in the aggregate.

(g) Seller shall, and shall instruct its employees to, at Purchaser's request, cooperate with Purchaser as may be reasonably required in connection with the investigation and defense of any suit, claim, action, proceeding or investigation relating to the Conveyed Assets, the Assumed Liabilities or the Business that is brought against Purchaser or any of its Affiliates at any time after the Closing; *provided, however*, that Purchaser shall reimburse Seller promptly for all reasonable out-of-pocket costs and expenses incurred by Seller in connection with any such request; *provided*, *further*, that Purchaser shall not be permitted to have access to any employee to the extent such access would cause such employee to be unavailable to Seller during Seller's normal business hours for more than twenty (20) hours in the aggregate.

SECTION 5.3 *Appropriate Action; Consents; Filings*.

(a) Subject to Section 5.3(d) hereof, Seller and Purchaser shall use their reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, including to: (i) obtain from Governmental Entities any consents, licenses, permits, waivers, approvals, authorizations or orders required (A) to be obtained by Seller or Purchaser of any of their Affiliates to consummate the transactions contemplated by this Agreement or (B) to avoid any action or proceeding by any Governmental Entity (including those in connection with the HSR Act to the extent necessary) in connection with the authorization, execution and delivery of this Agreement and to permit the consummation of the transactions contemplated hereby to occur as soon as reasonably possible and (ii) promptly make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement required under (A) the HSR Act, to the extent necessary, (B) the FDCA or (C) any other applicable Law. Seller and Purchaser shall cooperate with each other in connection with the taking of all actions referenced in the preceding sentence, including providing (i) such reasonable assistance as the other party may request in connection with its preparation of any required filings or submissions and

(ii) copies of all such filings and submissions to the non-filing party and its advisors prior to filing or submission and, if requested, to accept all reasonable additions, deletions or changes suggested in connection therewith. Seller and Purchaser may, as each deems reasonably advisable and necessary, designate any competitively sensitive information provided to the other under this Section 5.3(a) as "outside counsel only." Such information shall be given only to outside counsel of the recipient. In addition, Purchaser and Seller may redact any information from such documents shared with the other party or its counsel that is not pertinent to the subject matter of the filing or submission.

(b) Without limiting Sections 5.3(a) or 5.3(c), but subject to Section 5.3(d):

(i) Purchaser and Seller shall as promptly as practicable following the execution and delivery of this Agreement, file with the United States Federal Trade Commission and the United States Department of Justice the notification and report form required for the transactions contemplated hereby, if applicable, and any supplemental information requested in connection therewith pursuant to the HSR Act and promptly provide to the Federal Trade Commission such information as may be requested by the Federal Trade Commission, and shall cause their respective officers and employees to respond to any information or other requests from the Federal Trade Commission (including complying with requests for in-person meetings), in connection with the Federal Trade Commission's review of this Agreement and the Related Instruments and the transactions contemplated hereby and thereby;

(ii) Purchaser and Seller shall provide information reasonably requested by the landlord of Seller's 51 University Street facility or any of such landlord's lenders in order to consummate the transactions contemplated by the Sublease;

(iii) Seller shall use its reasonable best efforts to [*] on behalf of Purchaser;

(iv) Seller shall (A) permit Purchaser and its Subsidiaries to correspond and meet with the FDA to discuss the acquisition by one of Purchaser's Subsidiaries of each BLA and IND and the transfer of manufacturing and distribution of LEUKINE to one of Purchaser's Subsidiaries, (B) use its reasonable efforts to include Purchaser in any discussions with the FDA regarding any BLA or IND, (C) if reasonably requested by Purchaser, upon reasonable notice, attend meetings or conference calls involving Purchaser or one of its Subsidiaries and the FDA related to any of the foregoing and (D) reasonably cooperate with Purchaser in endeavoring to have the FDA agree to the transfer of each BLA and IND to one of Purchaser's Subsidiaries and to Purchaser's Subsidiaries becoming the manufacturer and distributor of LEUKINE as of the Closing Date;

(v) Purchaser and Seller shall use their reasonable best efforts to cooperate to obtain the written consents and Permits required by Section 6.2(e); and

(vi) (A) at such time as Purchaser shall reasonably request, Seller shall request a pre-Closing inspection of Seller's facilities involved in researching, developing, manufacturing, marketing and selling of LEUKINE by the Washington State Board of Pharmacy

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and shall notify Purchaser of the date and results of such inspection; (B) Seller shall cooperate with Purchaser and provide such information and documents as Purchaser reasonably requests, and such access to Seller's facilities as Purchaser reasonably requests, in connection with Purchaser's application for an In-State Wholesaler/Manufacturer License from the Washington State Board of Pharmacy; and (C) in connection with Purchaser's application for such license, Purchaser may disclose to the Board of Pharmacy the proposed acquisition of LEUKINE by Purchaser and the identity of the facilities to be used by Purchaser in connection with Purchaser's researching, developing, manufacturing, marketing and selling of LEUKINE.

(c) Without limiting Sections 5.3(a) or 5.3(b), but subject to Section 5.3(d), Purchaser and Seller shall use their respective reasonable best efforts to obtain, or to cause to be obtained, any consent, substitution, approval or amendment required to assign or transfer any Conveyed Asset to Purchaser and to novate all obligations and liabilities that constitute Assumed Liabilities and to obtain in writing the unconditional release of Seller and its Affiliates with respect to Assumed Liabilities so that, in any such case, Purchaser shall be solely responsible for the Assumed Liabilities.

(d) Notwithstanding anything in this Agreement to the contrary (including paragraphs (a), (b) and (c) of this Section 5.3 and Section 5.4), (i) neither Seller nor its Affiliates (including, for purposes of this Section 5.3(d) only, Wyeth and Amgen Inc. and their respective Affiliates) nor Purchaser nor its Affiliates shall be required to (A) pay any material consideration to any Person or (B) reimburse the other party (or any of its Affiliates) for any costs or expenses of such other party (or any of its Affiliates) incurred in connection with Section 2.6 or paragraphs (a), (b) and (c) of this Section 5.3 and (ii) neither Purchaser nor its Affiliates nor Seller nor its Affiliates shall be required to (A) commit to any divestitures, licenses or hold separate or similar arrangements with respect to its assets or conduct of business arrangements, whether as a condition to obtaining any approval from a Governmental Entity or any other Person or for any other reason or (B) commence any litigation. Purchaser shall not, and shall cause its Representatives (as defined in the Confidentiality Agreement) not to, contact any suppliers to, or customers of, the Business, counterparties (other than Seller or Seller Sub) to any Assumed Contracts, or any Governmental Entity in connection with or pertaining to the transactions contemplated by this Agreement or any of the Related Instruments prior to Purchaser and Seller consulting in good faith with each other with respect to the approach to be taken by Purchaser with respect to such Persons, unless Seller shall give its prior written consent (which shall not be unreasonably withheld); it being understood that Purchaser will need to contact all customers of and suppliers to the Business prior to the Closing, and Purchaser must be able to comply with its obligations under Sections 5.3(a), (b) and (c).

SECTION 5.4 *Further Assurances*.

From time to time following the Closing, Seller and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquittances and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Related Instruments and to assure fully to Seller and its Affiliates and their successors and assigns, the

assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the transactions contemplated hereby and by the Related Instruments.

SECTION 5.5 *Tax Matters*.

(a) Purchaser and Seller shall share equally any Transaction Taxes imposed in connection with the transfer of the Conveyed Assets, the assumption of the Assumed Liabilities and the execution or performance of any of the Related Instruments and the Intellectual Property Transfer Agreements, provided that the aggregate amount of such Transaction Taxes do not exceed $[*]. Any such Transaction Taxes in excess of $[*] shall be paid by Seller.

(b) As promptly as practicable following the Closing, all state and local real and personal property Taxes, assessments and similar ad valorem obligations ("*Property Taxes*") that are past due or have become due and payable in the normal course of business upon any of the Conveyed Assets on or before the Closing Date will be paid by Seller together with any penalty or interest thereon. As soon as practicable after Property Taxes for a taxable period beginning before and ending after the Closing Date become due and owing and, to the extent such Taxes are paid by Seller, Purchaser shall pay to Seller the amount of such Property Taxes for which Purchaser is liable under this Section 5.5(b). For purposes of Section 5.5, all Property Taxes levied with respect to the Conveyed Assets for a taxable period that includes (but does not end on) the Closing Date shall be apportioned between Seller and Purchaser based upon the number of days of such period on or prior to the Closing Date and the number of days of such period after the Closing Date.

(c) Except as otherwise provided in Section 5.5(a), Seller shall pay all Taxes relating to the operation or ownership of the Business or the Conveyed Assets regardless of when due and payable, (i) with respect to all taxable periods ending on or prior to the Closing Date and (ii) with respect to all taxable periods beginning before the Closing Date and ending after the Closing Date, but only with respect to the portion of such period up to and including the Closing Date.

(d) Except as otherwise provided in Section 5.5(a), Purchaser shall pay all Taxes relating to the operation or ownership of the Business or the Conveyed Assets, regardless of when due and payable, (i) with respect to all taxable periods beginning after the Closing Date and (ii) with respect to all taxable periods beginning before the Closing Date and ending after the Closing Date, but only with respect to the portion of such periods commencing after the Closing Date.

(e) After the Closing Date, refunds of Taxes paid by Seller that are attributable to periods ending on or before the Closing Date or to the Pre-Transfer Period shall be for the account of Seller. Purchaser shall take such actions as reasonably requested by Seller to obtain such refunds and shall deliver to Seller any such refunds immediately upon receipt thereof. All refunds of Taxes paid by Purchaser attributable to periods beginning after the Closing Date or to the Post-Transfer Period shall be for the account of Purchaser.

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(f) At the Closing, Purchaser shall provide Seller with a "State of Washington Resale Certificate," form number 27-0020, for the Inventory and a "State of Washington Manufacturer's Sales and Use Tax Exemption Certificate," form number 27-0021, to the extent applicable. To the extent that the transfer of the Inventory originates in Washington, the receipt of the Inventory will occur, to the extent possible, outside Washington to comply with Washington Administrative Code 458-20-193.

(g) In connection with the transfer of the Conveyed Assets and the assumption of the Assumed Liabilities pursuant to the terms of this Agreement, Purchaser shall either (i) remit the portion of any resulting retail sales Tax for which Purchaser is responsible pursuant to Section 5.5(a) directly to Seller or (ii) provide Seller with documentation of payment of the required use Tax, which may include (but not be limited to) a copy of the "Washington State Excise Tax Return" or a "Use Tax Return" form.

(h) Seller shall deliver to Purchaser at the Closing a certificate in form and substance consistent with Treasury Regulations Section 1.1445-2(b)(2)(iii)(B), duly executed and acknowledged, certifying that neither Seller nor Seller Sub is a foreign person for purposes of the Foreign Investment in Real Property Tax Act.

(i) Purchaser shall not file a notice of acquisition with the Washington State taxing authority under Section 82-32-140 of the Revised Code of Washington with respect to the transactions contemplated hereby.

SECTION 5.6 *Publicity*.

Except as otherwise required by applicable Law or applicable stock exchange requirements, prior to the Closing, neither Purchaser nor Seller shall, and each of them shall cause their respective Affiliates, representatives and agents not to, issue or cause the publication of any press release or public announcement with respect to the transactions contemplated by this Agreement without the express prior approval of the other party, which approval shall not be unreasonably withheld or delayed; *provided*, that each of Seller and Purchaser may make any public statement in response to questions by the press, analysts, investors or those attending industry conferences or financial analyst calls, or issue press releases, so long as any such public statement or press release is not inconsistent with prior public disclosures, press releases or public statements approved by the other party pursuant to this Section 5.6 and which do not reveal non-public information about the other party. The parties hereto agree to issue a joint press release in the form which has previously been agreed to by both parties, to announce the execution of this Agreement. The parties agree to issue a joint press release, reasonably acceptable to both parties, to announce the Closing and, except as required by applicable Law or applicable stock exchange requirements, not to issue any press release or make any other public statement inconsistent with such press release.

SECTION 5.7 *Certain Provisions Relating to the Transfer.*

(a) In the event that record or beneficial ownership or possession of any asset or liability of Seller or its Affiliates (other than the Conveyed Assets and the Assumed Liabilities) has been transferred to Purchaser on or after the Closing Date, Seller and Purchaser

shall reasonably cooperate with each other and Purchaser shall use its reasonable best efforts to transfer, or cause to be transferred, to Seller such asset or liability; and, pending such transfer to Seller, Purchaser shall hold such asset or liability and provide to Seller all of the benefits and liabilities associated with the ownership and operation of such asset or liability and, accordingly, Purchaser shall cause such asset or liability to be operated or retained as may reasonably be instructed by Seller, all at Seller's expense.

(b) Except in respect of Nonassignable Assets (which are the subject of Section 2.6 hereof), in the event that record or beneficial ownership or possession of any Conveyed Asset or any Assumed Liability has not been transferred to Purchaser on the Closing Date, Seller and Purchaser shall reasonably cooperate with each other and Seller shall use its reasonable best efforts to transfer, or cause to be transferred to Purchaser, such Conveyed Asset or Assumed Liability; and pending such transfer to Purchaser, Seller shall hold such Conveyed Asset or Assumed Liability and, provide to Purchaser all of the benefits and liabilities associated with the ownership and operation of such Conveyed Asset or Assumed Liability and, accordingly, Seller shall cause such Conveyed Asset or Assumed Liability to be operated or retained as may reasonably be instructed by Purchaser, all at Purchaser's expense.

(c) Seller and Seller Sub shall not destroy, surrender possession of or otherwise dispose of any of the books, records, literature, lists or any other written or recorded information of Seller and Seller Sub conveyed pursuant to Section 2.1(a)(vii) until Seller delivers such information pursuant to Section 2.4(d).

SECTION 5.8 *Transferred Employees*.

(a) Prior to the Closing, Purchaser shall offer, or cause to be offered, employment, effective as of the date specified in the last sentence of Section 5.8(i), to each Employee who is identified by Purchaser in a written list delivered to Seller not later than May 31, 2002 (each, a "*Designated Employee*"). Such offer of employment shall be on terms and conditions comparable (but not necessarily identical) to those terms and conditions of employment applicable to such Employees immediately prior to the Closing. Employees who accept such offer of employment with Purchaser as of the Closing are referred to herein as the "*Transferred Employees*." Seller shall before the Closing (i) identify those service providers in relation to the Business who qualify as independent contractors and any temporary agency agreements covering services related to the Business and (ii) at Purchaser's election, assist Purchaser in retaining the services provided by such contractors and under such agreements. For a period of one year immediately following the Closing, neither Purchaser nor any of its Subsidiaries nor any of their respective successors shall employ, or engage as a consultant or independent contractor, any Designated Employee who does not become a Transferred Employee. From the date hereof until the date on which Purchaser has provided Seller with a written notice identifying the Designated Employees pursuant to this Section 5.8(a), Seller shall ensure that no Employee is transferred to any business unit of Seller or any of its Subsidiaries or ERISA Affiliates to the extent such transfer would, immediately following the Closing, interfere with Purchaser's ability to effectively employ the Conveyed Assets. As of the Closing Date, Seller shall terminate the employment of each Designated Employee who has rejected an offer of employment made by Purchaser in accordance with this Section 5.8, and for a period of one year immediately following the Closing, none of Seller or any of its Subsidiaries or any of their

respective successors shall employ, or engage as a consultant or independent contractor, any Designated Employee; *provided*, *however*, that any Designated Employee who does not commence employment with Purchaser effective as of the date specified in the last sentence of Section 5.8(i) may continue to receive compensation from (but not perform services for) Seller for such period of time as is necessary for Seller to avoid liability under each of the laws, rules and regulations referenced in Section 5.8(l) (but in no event may such period extend beyond (x) August 25, 2002, or, if later, the Closing Date, or (y) if Purchaser does not require such Designated Employee to accept or reject Purchaser's offer of employment prior to June 10, 2002, seventy-five (75) days following the date such Designated Employee rejects such offer of employment).

(b) For a period of at least two years following the Closing, Purchaser shall provide employee benefits and compensation (excluding any benefits attributable to equity-based plans or grants) to Transferred Employees that are no less favorable in the aggregate than those provided to such persons immediately prior to the Closing. With respect to each benefit plan of Purchaser ("*Purchaser Benefit Plan*") in which Transferred Employees subsequently participate, for purposes of determining eligibility to participate, vesting and, with respect to any vacation or severance plan or policy only, for the purpose of determining benefit entitlement, service with Seller (and predecessor employers to the extent Seller provides past service credit) shall be treated as service with Purchaser; *provided*, that such service shall not be recognized to the extent that such service was not recognized under the applicable Seller Benefit Plan. Such service also shall apply for purposes of satisfying any waiting periods, evidence of insurability requirements, or the application of any pre-existing condition limitations to the extent, in the case of any insured benefits, the relevant insurance coverage may be obtained by Purchaser on commercially reasonable terms. Each Purchaser Benefit Plan shall waive pre-existing condition limitations to the same extent waived under the applicable Seller Benefit Plan to the extent, in the case of any insured benefits, the relevant insurance coverage may be obtained by Purchaser on commercially reasonable terms. Transferred Employees shall be given credit for amounts paid under a corresponding benefit plan during the same period for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the Seller Benefit Plan for the plan year in which the Closing occurs.

(c) Effective as of the Closing, Purchaser shall assume Seller's liabilities and obligations under the Immunex Corporation Employee Severance Plan, as amended on February 12, 2002, and the Immunex Corporation Amended and Restated Leadership Continuity Plan, as amended on October 25, 2001 (collectively, the "*Severance Plans*") with respect to each Transferred Employee and shall make all required payments under the Severance Plans with respect to Transferred Employees. Purchaser shall make payments (other than payments which become payable immediately after the consummation of the Merger solely as a result of the consummation of the Merger, in respect of which Seller or its Affiliates shall remain solely liable) to the Transferred Employees to which such Transferred Employees would have become entitled under the Immunex Corporation Retention Plan treating service with Purchaser and its Affiliates as service with Seller for this purpose.

(d) Purchaser shall amend its 401(k) savings plan if necessary to accept eligible roll-overs by a Transferred Employee.

(e) Effective as of the Closing, except as required by applicable Law, Purchaser shall provide each Transferred Employee with the number of his or her unused accrued vacation days (or at Purchaser's discretion shall provide payments in lieu of such days but only to the extent Purchaser does so on the same terms as its treatment of similarly situated employees) outstanding as of the Closing under the applicable vacation policy of Seller and shall prevent the forfeiture of any such days, provided Seller, at Closing, pays Purchaser an amount equal to the aggregate cost of compensating Transferred Employees for such days.

(f) Seller shall retain liability for all stock options and other grants of rights to purchase Seller's common stock as well as grants of restricted stock, restricted units and any other equity or equity-based awards under equity or other equity-based plans and programs of Seller and/or one or more of its Subsidiaries ("*Equity Awards*"). As of or prior to the Closing, Seller shall fully vest (or cause to become fully vested) any Equity Award held by Transferred Employees.

(g) Except as provided in Section 5.8(c), Seller shall retain liability for all deferred, bonus and other incentive compensation accrued in respect of Transferred Employees' service and performance with Seller prior to the Closing and Seller shall make any payment due thereunder to the Transferred Employees no later than the time, whether on or after the Closing, when Seller (or its successor) generally pays the Other Employees such compensation and without regard to whether a Transferred Employee is employed by Seller on such date.

(h) Seller shall retain responsibility for all short-term and long-term disability benefits payable in respect of disabilities that commenced on or before the Closing Date for all Transferred Employees. Seller shall be responsible for all claims for workers' compensation benefits, which are incurred on or prior to the Closing Date by Transferred Employees. Purchaser shall be responsible for all claims for such benefits, which are incurred after the Closing Date by such Transferred Employees. For purposes of this Section 5.8(h), a claim for workers compensation benefits shall be deemed to be incurred when the event giving rise to the claim occurs (the "*Workers' Compensation Event*"). If the Workers' Compensation Event occurs over a period both on or prior to and after the Closing Date, the claim shall be the joint responsibility and liability of Seller and Purchaser and shall be equitably apportioned among them based upon the relevant periods of time that the Workers' Compensation Event transpired both on or prior to and after the Closing Date. Seller shall be responsible in accordance with the terms of its applicable welfare plans in effect on or prior to the Closing Date for all welfare, medical and dental claims for expenses incurred on or prior to the Closing Date by Transferred Employees and their dependents. Reimbursement of such Transferred Employees and their dependents for welfare, medical and dental expenses associated with such claims shall be determined in accordance with the terms of such Seller plans in effect on or immediately prior to the Closing Date. Purchaser shall be responsible for all covered welfare, medical and dental claims for expenses incurred after the Closing Date by Transferred Employees and their dependents pursuant to and in accordance with the terms of plans maintained by Purchaser and in which Transferred Employees and their dependents become enrolled following the Closing Date.

(i) Except as prohibited by Law, Seller shall furnish Purchaser with such information concerning Employees, and shall provide Purchaser with access to the Employees (in a manner to be mutually agreed upon by Seller and Purchaser), as is reasonably requested by

Purchaser; *provided*, *however*, that following the time Purchaser delivers to Seller the list of Designated Employees in accordance with Section 5.8(a), Seller shall only be required to provide such information or such access with respect to Designated Employees. Notwithstanding the foregoing, (i) after the date of this Agreement and prior to the time Purchaser delivers to Seller the list of Designated Employees in accordance with Section 5.8(a), Seller shall notify Purchaser of the name of each Employee whose employment with Seller has terminated within five (5) Business Days following such termination and (ii) after the time Purchaser delivers to Seller the list of Designated Employees in accordance with Section 5.8(a) and prior to the Closing, Seller shall notify Purchaser of the name of each Designated Employee whose employment with Seller has terminated within five (5) Business Days following such termination. The employment of the Transferred Employees by Seller and/or one or more of its Subsidiaries shall end at 11:59 p.m. on the Closing Date and the employment of the Transferred Employees by Purchaser shall commence at 12:00 a.m. on the day immediately following the Closing Date.

(j) Purchaser and Seller shall, to the extent practicable, (i) treat Purchaser as a "successor employer" and Seller as a "predecessor," within the meaning of Sections 3121(a)(1) and 3306(b)(1) of the Code, with respect to Transferred Employees to be employed by Purchaser for purposes of Taxes imposed under the United States Federal Unemployment Tax Act or the United States Federal Insurance Contributions Act, and (ii) cooperate with each other to avoid the filing of more than one IRS Form W-2 with respect to each such Transferred Employee for the calendar year in which the Closing occurs.

(k) Notwithstanding any other provision of this Agreement, if a Transferred Employee commences an action, suit or proceeding relating to an employment-related claim based on actions or events occurring over a period both preceding and following the Closing Date, any resulting liability shall be the joint responsibility of Seller and Purchaser and shall be equitably apportioned among them based on the relevant periods of time that such actions or events transpired preceding and following the Closing Date.

(l) Purchaser shall indemnify and hold Seller Indemnified Parties harmless against all liabilities and obligations which may arise under the Worker Adjustment Retraining Notification Act, 29 U.S.C. Section 2101 et seq., or under any similar provision of any federal, state, regional or local law, rule, or regulation (including, but not limited to, any costs, expenses or fees incurred by Seller Indemnified Parties relating to litigation brought under the foregoing) arising as a result of any employment losses (i) of any Transferred Employees occurring after the Closing Date or (ii) of any Designated Employees occurring prior to, on or after the Closing Date exclusively as a result of Purchaser failing to offer employment to any Designated Employees in accordance with the terms of this Section 5.8. Except to the extent prohibited by Law, Seller and Purchaser shall cooperate fully in all matters reasonably necessary to effect the transactions contemplated by this Section 5.8 and the transition of Transferred Employees to employment with Purchaser, including exchanging documents, employee data or other information in respect of the Designated Employees (in electronic format to the extent practicable) relating to payroll administration and employee benefit plan coverages on a timely basis so as to assist Purchaser in incorporating such documents, information and data into Purchaser's payroll administration and benefits information systems as early as practicable prior to the Closing; *provided*, that if any Designated Employee declines Purchaser's offer of employment made pursuant to Section 5.8(a), no further information need be provided thereafter in respect of such Designated

Employee and Purchaser shall return to Seller all information theretofore provided to Purchaser with respect to such Designated Employee.

SECTION 5.9 *Use of Seller's Trademarks and Logos*.

The parties agree that during the Sell-off Period, Purchaser shall be entitled to continue to use the name "Immunex", the National Drug Code numbers used by Seller on it packaging for all presentations of LEUKINE, or any trade names, trademarks, identifying logos or service marks related thereto or employing the word "Immunex" or any part or variation of any of the foregoing or any confusingly similar trade names, trademarks or logos (collectively, the "*Seller's Trademarks and Logos*") on any Inventory, packaging, business cards, schedules, stationery, displays, signs, promotional materials, manuals, forms, and other material used in the Business, without any obligation on the part of Purchaser to pay royalties or similar fees to Seller during the Sell-off Period. Purchaser agrees that: (i) immediately upon termination of the Sell-off Period, Purchaser shall cease and desist from all further use of the Seller's Trademarks and Logos and will adopt new trade names, trademarks, identifying logos and service marks related thereto which are not confusingly similar to the Seller's Trademarks and Logos; and (ii) except as set forth in this Section 5.9, neither Purchaser nor any of its Affiliates shall make any use of the Seller's Trademarks and Logos. Purchaser shall not use the Seller's Trademarks and Logos in any manner that might dilute, tarnish, disparage or reflect adversely on Seller or the Seller's Trademarks and Logos. Subject to the foregoing, from and after the Closing, Purchaser shall be entitled to represent itself as the owner of the Business.

SECTION 5.10 *Regulatory and Product Obligations*.

(a) From and after the Closing, Purchaser shall be responsible for all contacts with the FDA and other regulatory authorities with respect to LEUKINE, and all other responsibilities under the Required Permits which constitute Conveyed Assets; provided, that either party shall notify the other party immediately, and in no event later than (A) two Business Days after receipt of any contact or communication from the FDA or any other Governmental Entity and (B) three (3) Business Days after receipt of any contact or communication with any other third party, that, in either case, in any way requests or suggests the need for a recall or withdrawal of a LEUKINE product lot manufactured by or on behalf of Seller or otherwise calls into question the quality or safety of such a product lot. Purchaser and Seller shall cooperate with each other in connection with any investigation and responses thereto relating.

(b) From and after the Closing, Purchaser shall be responsible for the evaluation, investigation, analysis and reporting to the FDA of any adverse experience report in connection with LEUKINE received by either Purchaser or Seller from and after the Closing from any source (including any patient, health care professional or other customer of the Business), regardless of whether the LEUKINE involved in any such adverse experience report was sold by Seller or Purchaser. Adverse experience reports received by Seller relating to LEUKINE after the Closing shall be reported by Seller to Purchaser within two (2) Business Days after receipt of such adverse experience reports by Seller. Seller and Purchaser shall reasonably cooperate with each other in connection with the investigation and analysis of (i) all adverse experience reports that relate to the period before the Closing and (ii) all adverse experience reports that relate to the period following the Closing until such time as Seller's name

no longer appears on the label of LEUKINE sold by Purchaser, provided that Seller has complied with the provisions of Section 5.9 hereof. Seller and Purchaser shall reasonably cooperate in the preparation of any postmarketing periodic adverse experience reports required by 21 C.F.R.600.80(c)(2) that relate to any period during which there were both adverse experiences reported to Seller prior to the Closing and adverse experiences reported to Seller or Purchaser after the Closing. In connection with any such report, Seller shall prepare a narrative summary relating to any adverse experiences reported to Seller before the Closing and submit the same to Purchaser at least thirty (30) days before the date such postmarketing periodic adverse experience report is due to be submitted to FDA pursuant to 21 C.F.R. 600.80(c)(2) along with all other items required by the cited regulation that relate to such period, and Purchaser shall prepare the narrative summary relating to any adverse experiences reported to Purchaser or Seller after the Closing along with all other items required by the cited regulation that relate to such period, and Purchaser shall submit such postmarketing periodic adverse experience report to the FDA including the narrative summary prepared by Seller in the form submitted to Purchaser in accordance with this Section 5.10(b). Purchaser shall be responsible for the preparation and distribution of any required summary bridging report. A copy of the post-marketing periodic report and summary bridging report will be provided to Seller contemporaneously with the submission of such report(s) by Purchaser to regulatory authorities.

(c) From and after the Closing, Purchaser shall be responsible for responding to any product complaint related to LEUKINE that is received by either Purchaser or Seller from and after the Closing from any source and for investigating and analyzing such product complaint and making required reports to the FDA, regardless of whether the LEUKINE involved was sold by Seller or Purchaser; *provided*, that in the case of open complaints existing as of the Closing, Purchaser and Seller shall agree on a case-by-case basis as to which party shall be responsible for resolution of such complaints. Each party shall notify the other in the event that such a party receives such a product complaint relating to a LEUKINE product lot manufactured by Seller, and Seller shall notify Purchaser of all product complaints received by Seller relating to LEUKINE. Purchaser shall have no obligation to report product complaints relating to LEUKINE to Seller if such LEUKINE was not manufactured by Seller. For any product complaint that is reportable by one party to the other, the product complaint recipient shall notify the other party within two (2) Business Days if the complaint involves allegations of suspected or actual product tampering, contamination or mislabeling, and in the case of any other product complaint, the product complaint recipient shall notify the other party within three (3) Business Days. A product complaint received by Seller which also involves an adverse experience report shall be reported by Seller to Purchaser as set forth in Section 5.10(b). Purchaser and Seller shall cooperate with each other in connection with any investigation and response to any product complaint.

(d) From and after the Closing, Purchaser shall assign batch numbers to LEUKINE manufactured by or on behalf of Purchaser that are distinct from the batch numbers assigned to LEUKINE manufactured by or on behalf of Seller.

(e) Seller and Purchaser agree that: (i) for any calendar quarter in which both Seller and Purchaser sold LEUKINE under Seller's NDC number, Seller shall report to Purchaser the Sales Information relating to sales of LEUKINE by Seller, in sufficient time to permit Purchaser to complete any analysis necessary for governmental reporting of such

information, complete any necessary governmental reporting forms and submit the required report(s) to the Center for Medicaid and Medicare Services; and (ii) for any calendar quarter in which only Purchaser sells LEUKINE under Seller's NDC number and for any period for which Seller is required to file any such report which Seller has not yet filed as of the Closing Date (and for which Seller provides the Sales Information to Purchaser in sufficient time to permit Purchaser to perform any necessary calculations and to complete required reports), Purchaser shall complete any analysis of the Sales Information necessary for governmental reporting of such information, complete any necessary governmental reporting forms and submit the required report(s) to the Center for Medicaid and Medicare Services. If required by the Center for Medicaid and Medicare Services to accomplish the intent of this Section 5.10(e), Seller and Purchaser shall enter into a Data Reporting Agreement containing the agreements set forth in this Section 5.10(e). For purposes of this Section 5.10(e), "*Sales Information*" shall mean best price and data from which average manufacturer's price may be calculated (including gross sales, returns, invoice quantity, return quantity, chargeback dollars, chargeback units, and chargeback sales).

(f) Purchaser shall promptly, and in any event within five (5) Business Days following the date hereof, file with the State of Washington Board of Pharmacy (the "*WBP*") a properly completed (other than with respect to the actual Closing Date) application for a license in connection with the manufacture and distribution of pharmaceutical products in connection with the change of ownership of the Business contemplated by this Agreement. Purchaser shall use its reasonable best efforts to obtain the license in connection with the manufacture of pharmaceutical products Permit, including supplying any information and answering questions, if any, raised by the WBP. Following the filing by Purchaser of the application with the WBP for the license referred to in the previous sentence, Seller shall cooperate with Purchaser and the WBP in connection with Purchaser's application for such license.

SECTION 5.11 *Agreement Not to Compete; Agreement Not to Solicit*.

(a) Seller understands that Purchaser shall be entitled to protect and preserve the going concern value of the Business following the Closing to the extent permitted by Law and that Purchaser would not have entered into this Agreement absent the provisions of this Section 5.11 and, therefore:

(i) Subject to Section 5.11(b), for a period of [*], Seller shall not, and shall cause each of its Subsidiaries not to, directly or indirectly, engage in developing (to the extent such development involves human clinical trials for a product which is or is intended to be, directly or indirectly, a product manufactured, marketed or sold by or on behalf of Seller or any of its Subsidiaries based on granulocyte-macrophage colony-stimulating factor), manufacturing, marketing or selling any product based on granulocyte-macrophage colony-stimulating factor; and

(ii) for a period of [*], Seller shall not, and shall cause each of its Subsidiaries not to, solicit or hire any Transferred Employees or any other employee of Purchaser or its Subsidiaries primarily engaged in the Business, unless such Transferred

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* Confidential Treatment Requested.

Employee or other employee has had his or her employment terminated by Purchaser or its Subsidiaries prior to commencement of employment discussions between Seller (or any of its Subsidiaries) and such Transferred Employee or other employee; provided, that if a Transferred Employee or other employee responds to any general public advertisement placed or general solicitation undertaken by Seller or its Subsidiaries, such advertisement or general solicitation shall not constitute a breach of this Section 5.11(a)(ii).

(b) Notwithstanding Section 5.11(a)(i), Seller may (i) own, directly or indirectly, up to (A) ten percent (10%) of the outstanding equity securities of any Person which owns or operates a business that develops, manufactures, market or sells any product based on granulocyte-macrophage colony stimulating factor, the common equity securities of which are publicly traded or listed on any securities exchange or automated quotation system, or (B) ten percent (10%) of the outstanding equity securities of any Person which owns or operates a business that develops, manufactures, market or sells any product based on granulocyte-macrophage colony stimulating factor, the common equity securities of which are not publicly traded or listed on any securities exchange or automated quotation system, or (ii) acquire any Person, directly or indirectly (whether by acquisition, merger or other business combination), provided that, in the case of clause (ii), if the acquired Person owns, or has rights to, any product based on granulocyte-macrophage colony stimulating factor, Seller shall use its reasonable best efforts to divest such product within nine (9) months following the consummation of the acquisition of such Person or as soon thereafter as possible.

(c) Notwithstanding any other provision of this Agreement, it is understood and agreed that the remedy of indemnity payments pursuant to Article VIII and other remedies at law would be inadequate in the case of any breach of the covenants contained in Section 5.11(a), and, accordingly, Purchaser shall be entitled to equitable relief, including the remedy of specific performance, with respect to any breach or attempted breach of such covenants.

(d) For purposes of this Section 5.11 only, “granulocyte-macrophage colony-stimulating factor” shall mean a polypeptide having an amino acid sequence as set forth in Section 5.11(d) of the Seller Disclosure Letter and any polypeptide sequence having eighty percent (80%) or greater identity therewith.

SECTION 5.12 *Insurance*.

In the event that prior to the Closing Date any Conveyed Asset suffers any damage, destruction or other loss as a result of a casualty event, Seller shall, after the Closing Date, (i) promptly pay to Purchaser all insurance proceeds received by Seller with respect to such damage, destruction or other loss, less any proceeds applied to the physical restoration of such asset, and (ii) assign to Purchaser all rights of Seller against third parties (other than against its insurance carriers) with respect to any causes of action, whether or not litigation has commenced as of the Closing Date, in connection with such damage, destruction or other loss; *provided*, *however*, that the proceeds of such insurance shall be subject to (and recovery thereon shall be reduced by the amount of) any applicable deductibles and co-payment provisions or any payment or reimbursement obligations of Seller in respect thereof; *provided*, *further*, that Seller shall not be required to pay any insurance proceeds under any insurance policy which constitutes “self-insurance” or which is subject to a retroactive premium increase.

SECTION 5.13 *Certain Transactions*.

From the date hereof until the Closing Date, Purchaser shall not, and shall not permit any of its Subsidiaries to, acquire or agree to acquire by merging or by consolidating with, or by purchasing assets of or a substantial portion of equity in, or any other manner, any business or any corporation, partnership, association or other business organization or division thereof engaged in the business of developing, marketing or selling any G-CSF or GM-CSF product (a "*Restricted Business*") unless (i) the terms of such acquisition require a disposition of such Restricted Business prior to the closing of such acquisition and (ii) such acquisition would not, and would not reasonably be expected to, materially delay or prevent the consummation of the transactions contemplated by this Agreement.

SECTION 5.14 *Use of Intellectual Property*.

Purchaser and its Subsidiaries shall not actively encourage any Transferred Employee to breach any confidential disclosure agreement between such Transferred Employee and Seller (or any of its Subsidiaries) with respect to trade secrets that are not related to LEUKINE or the Business.

SECTION 5.15 *No Solicitation*.

From the date of this Agreement to the earlier to occur of the Closing or termination of this Agreement in accordance with Article VII, Seller shall not, and shall cause its Subsidiaries and its and its Subsidiaries' officers, directors and representatives not to, directly or indirectly, (i) solicit, initiate or encourage any Other Bid, (ii) enter into any agreement with respect to any Other Bid or (iii) participate in any discussions or negotiations regarding, or furnish to any person any information with respect to, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Other Bid. In the event that the Seller (or any of its Subsidiaries) receives a proposal relating to any such transaction, Seller shall promptly advise Purchaser of such proposal. As used in this Section 5.15, "Other Bid" shall mean any proposal for a sale, spin-off or other disposition or similar transaction involving the Business or any of the Conveyed Assets, other than (A) the transactions contemplated by this Agreement and (B) the sale of inventory in the ordinary course of business. Notwithstanding the foregoing, for the avoidance of doubt, Seller shall not be responsible for any actions undertaken by Amgen Inc. or Wyeth or their respective officers, directors, employees or representatives.

ARTICLE VI

CONDITIONS

SECTION 6.1 *Conditions to Each Party's Obligations*.

The respective obligations of each party to effect the transactions contemplated by this Agreement shall be subject to the satisfaction or waiver by Purchaser and Seller (to the extent permitted by applicable Law) at or prior to the Closing of the following conditions:

(a) The waiting period (including any extensions thereof) applicable to the consummation of the transactions contemplated by this Agreement required pursuant to the HSR Act, to the extent necessary, shall have expired or been terminated; and

(b) There shall not be in effect any statute, regulation, order, decree or judgment of any Governmental Entity, which makes illegal or enjoins or prevents the consummation of the transactions contemplated by this Agreement.

SECTION 6.2 C*onditions to Obligations of Purchaser*.

The obligation of Purchaser to effect the transactions contemplated by this Agreement shall be further subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, by Purchaser:

(a) The representations and warranties of Seller contained in Article III of this Agreement shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers set forth therein) at and as of the Closing Date as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of such representations and warranties to be true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as set forth on Section 3.6(a) of the Seller Disclosure Letter, since December 31, 2001, there shall not have been any change, event, development, effect or occurrence that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) Seller shall have performed and complied in all material respects with all agreements and covenants required to be performed or complied with by Seller under this Agreement at or prior to the Closing;

(c) Purchaser shall have received from Seller a certificate, dated the Closing Date, duly executed by an executive officer of Seller, to the effect of Section 6.2(a) and Section 6.2(b) above;

(d) There shall not be pending any action, litigation or proceeding by any Governmental Entity seeking to (i) prohibit or restrain the transactions contemplated by this Agreement or (ii) seeking to impose or confirm limitations on the ability of Purchaser or any of its wholly-owned Subsidiaries to effectively exercise full rights of ownership of the Business or the Conveyed Assets after the Closing which, in the case of clause (i) or (ii), would have, or would reasonably be expected to have, a Material Adverse Effect or a material adverse effect on Purchaser and its Subsidiaries (taken as a whole) or materially increase the cost to Purchaser of consummating the transactions contemplated hereby or subject Purchaser or any of its Affiliates to any criminal or material civil liability;

(e) (i) The written consents set forth on Section 6.2(e)(i) of the Seller Disclosure Letter shall have been obtained and (ii) (A) the Permit set forth on Section 6.2(e)(ii) of the Seller Disclosure Letter shall have been obtained or (B) if such Permit is not so obtained, from the date hereof to the Closing, Seller's operation of the Business shall have been in compliance with all applicable licensing requirements of R.C.W. Title 18, the administrative

code relating thereto and all regulations, administrative orders and practices and other requirements of the WBP (other than such non-compliance that does not or would not result in such Permit not having been obtained); and

(f) Seller shall have delivered or caused to be delivered to Purchaser each of the documents specified in Section 2.4(b) hereof.

SECTION 6.3 *Conditions to Obligations of Seller*.

The obligation of Seller to effect the transactions contemplated by this Agreement shall be further subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, by Seller:

(a) The representations and warranties of Purchaser contained in Article IV of this Agreement shall be true and correct in all material respects (without giving effect to any "materiality" or "material adverse effect" qualifiers set forth therein) at and as of the Closing Date as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such earlier date), except where the failure of such representations and warranties to be true and correct, would not individually or in the aggregate, reasonably be expected to prevent or materially delay, the performance or consummation of the transactions contemplated by this Agreement;

(b) Purchaser shall have performed and complied in all material respects with all agreements and covenants required to be performed or complied with by Purchaser under this Agreement at or prior to the Closing;

(c) Seller shall have received from Purchaser a certificate dated the Closing Date, duly executed by an authorized officer of Purchaser, to the effect of Section 6.3(a) and Section 6.3(b) above;

(d) Purchaser shall have delivered or caused to be delivered to Seller each of the documents specified in Section 2.4(c) hereof;

(e) The Merger shall have been consummated; and

(f) Purchaser shall have paid to Seller the Initial Purchase Price in immediately available funds.

ARTICLE VII

TERMINATION AND AMENDMENT

SECTION 7.1 *Termination.*

This Agreement may be terminated at any time prior to the Closing by:

(a) mutual written consent of Seller and Purchaser;

(b) Seller, by written notice to Purchaser given on or prior to August 1, 2002, if the Closing shall not have occurred on or before 45 calendar days after the date hereof and if, in Seller's good faith judgment, any of the conditions contained in Article VI (other than Section 6.2(a), (b), (c) or (f)) hereof would not reasonably be expected to be capable of satisfaction prior to August 1, 2002; *provided, however*, in the event that Seller sends Purchaser a notice of termination pursuant to this Section 7.1(b), such termination shall not be effective (x) until 15 Business Days after the date that Seller delivers such notice to Purchaser, during which period Purchaser and Seller shall cooperate and use their commercially reasonable efforts to cure the circumstances giving rise to Seller's termination right hereunder, and (y) then only if Seller notifies Purchaser in writing after the end of such period that, Seller, in its good faith judgment, continues not to reasonably expect such conditions in Article VI to be capable of satisfaction prior to August 1, 2002; *provided*, *however*, the right to terminate this Agreement under this Section 7.1(b) shall not be available to Seller if Seller has failed to perform in all material respects its obligations under Section 5.3 hereof and such failure has been the cause, or results in, the failure of the Closing to occur on or before August 1, 2002.

(c) Purchaser or Seller, by written notice to the other party, if the Closing shall not have occurred on or before September 30, 2002 (the "*Outside Date*"); *provided*, *however*, that the right to terminate this Agreement under this Section 7.1(c) shall not be available to either such party if (i) such party has failed to perform in all material respects its obligations under Section 5.3 hereof and such failure has been the cause of, or results in, the failure of the Closing to occur on or before the Outside Date or (ii) the Merger has not been consummated at the time such party elects to exercise its rights under this Section 7.1(c) and the Merger Agreement has not been terminated at such time;

(d) either Purchaser or Seller, by written notice to the other party, if the Merger Agreement has been terminated;

(e) either Seller or Purchaser, by written notice to the other party, if the Closing shall not have occurred on or before December 31, 2002;

(f) either Seller or Purchaser, by written notice to the other party, if a competent Governmental Entity shall have issued a ruling, order or injunction or taken any other action which, in any such case, permanently restrains, enjoins or prohibits the consummation of the transactions contemplated hereby and such ruling, order or injunction or other action shall have become final and non-appealable; *provided*, *however*, that in the event that such ruling, order or injunction or other action has been entered, the party seeking to terminate this Agreement pursuant to this Section 7.1(f) shall have used its reasonable best efforts to remove such injunction, order or decree, in all material respects in accordance with Section 5.3 hereof; or

(g) either Seller or Purchaser (provided that the terminating party is not then in material breach of any representation, warranty, covenant, or other agreement contained herein), by written notice to the other party, if there shall have been a material breach of any of the representations, warranties, agreements or covenants set forth in this Agreement on the part of the other party which has rendered the satisfaction of any conditions contained in Article VI hereof impossible, such violation or breach has not been waived by the terminating party, and the breach has not been cured within thirty (30) days following the terminating party's written notice

of such breach; *provided*, *however*, that if such breach cannot reasonably be cured within thirty (30) days and the breaching party is diligently proceeding to cure such breach, this Agreement may not be terminated pursuant to this Section 7.1(g).

SECTION 7.2 *Effect of Termination*.

In the event of the termination of this Agreement pursuant to Section 7.1 hereof, this Agreement shall forthwith become null and void and have no effect, without any liability on the part of any party hereto or its Affiliates, directors, officers or stockholders, other than the provisions of Article IX and Sections 3.15, 4.6, 5.2(b) and 7.2 hereof; *provided*, *however*, that nothing contained in this Section 7.2 shall relieve either party to this Agreement from liability to the other party for any willful and material breach of this Agreement. In the event this Agreement is terminated pursuant to Section 7.1, Purchaser will redeliver all documents, work papers and other materials of Seller relating to the transactions contemplated hereby, whether obtained before or after the execution hereof, in accordance with the terms of the Confidentiality Agreement.

SECTION 7.3 *Amendment*.

This Agreement may be amended or modified at any time by Seller and Purchaser, but only by an instrument in writing signed by or on behalf of each of Seller and Purchaser.

SECTION 7.4 *Extension; Waiver*.

At any time prior to the Closing, either party hereto may (i) extend the time for the performance of any of the obligations or acts of the other party, (ii) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, (iii) waive compliance with any of the agreements of the other party contained herein or (iv) waive any condition to its obligations hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed by or on behalf of such party. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by any party, and no course of dealing between the parties, shall constitute a waiver of any such right, power or remedy.

ARTICLE VIII

SURVIVAL; INDEMNIFICATION

SECTION 8.1 *Survival Period*.

The representations and warranties of the parties contained in Articles III and IV hereof and in the Related Instruments (if any) shall survive the Closing until the second anniversary of the Closing Date; *provided*, *however*, that (i) the representations and warranties of Seller in Section 3.7(b) shall survive the Closing until the fourth anniversary of the Closing Date and (ii) the representations and warranties of Seller in Sections 3.2, 3.7(a) and 3.15 hereof and Purchaser in Sections 4.2, 4.6 and 4.7 hereof shall survive the Closing indefinitely. The period

of time a representation or warranty survives the Closing pursuant to the preceding sentence shall be the "*Survival Period*" with respect to such representation or warranty. The parties intend for the preceding two sentences to shorten the otherwise applicable statute of limitations and agree that, subject to the last sentence of this Section 8.1, no claims (other than claims of, or causes of action arising from, fraud) may be brought based upon, directly or indirectly, any of the representations and warranties contained in this Agreement or in the Related Instruments after the Survival Period with respect to such representation and warranty. The covenants and agreements of the parties hereto contained herein shall survive in accordance with their respective terms. In the event notice of any claim for indemnification under Section 8.2(a)(i) or 8.2(b)(i) hereof shall have been given within the applicable Survival Period and such claim has not been finally resolved by the expiration of such Survival Period, the representations and warranties that are the subject of such claim shall survive the end of the Survival Period of such representations or warranties until such claim is finally resolved, but such representations and warranties shall only survive with respect to such asserted claim.

SECTION 8.2 *Indemnification*.

Subject to the terms, conditions and limitations set forth in this Article VIII, from and after the Closing:

(a) Seller shall defend, indemnify and hold harmless Purchaser and its Affiliates and each of their respective directors, officers, equity holders, partners, employees, agents and representatives and their respective heirs, successors and assigns (collectively, the "*Purchaser Indemnified Parties*") from and against any loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses) (collectively, "*Losses*") arising out of, in connection with, or otherwise with respect to: (i) any breach of, or inaccuracy in, any representation or warranty of Seller set forth in Article III hereof or any representation or warranty of Seller or Seller Sub set forth in any of the Related Instruments or in the Closing certificate of Seller specified in Section 6.2(c) hereof, (ii) the failure to perform any covenant or agreement of Seller set forth in this Agreement or any covenant or agreement of Seller or Seller Sub set forth in any of the Related Instruments (other than the Sublease), (iii) any breach by Seller or any of its Subsidiaries (or their successors and assigns) of any liability or obligation under any Dual Use Contract which liability or obligation constitutes an Excluded Liability and which breach is deemed by the counterparty to such Dual Use Contract to constitute a breach of such Dual Use Contract (*provided* that Purchaser (or its successors and assigns) is not then in breach of its obligations under such Dual Use Contract), (iv) the Excluded Assets, (v) the Excluded Liabilities, (vi) all product liability or similar claims to the extent arising out of the sale of LEUKINE by or on behalf of Seller or Seller Sub prior to the Closing, (vi) all product liability or similar claims to the extent arising out of the sale of LEUKINE by or on behalf of Seller or Seller Sub prior to the Closing, (vii) any acts or omissions of Seller or any of its Subsidiaries in connection with the manufacturing, marketing or selling of LEUKINE or any defect in LEUKINE that is manufactured by or on behalf of Seller or Seller Sub, in each case, prior to the Closing or in any Inventory [*].

* Confidential Treatment Requested.

(b) Purchaser shall defend, indemnify and hold harmless Seller and its Affiliates and each of their respective directors, officers, equity holders, partners, employees, agents and representatives and their respective heirs, successors and assigns (collectively, the "*Seller Indemnified Parties*") from and against any Losses arising out of, in connection with or otherwise with respect to: (i) any breach of, or inaccuracy in, any representation or warranty of Purchaser set forth in Article IV hereof or any representation or warranty of Purchaser or any Designated Purchaser Subsidiary in any of the Related Instruments or in the Closing certificate of Purchaser specified in Section 6.3(c) hereof, (ii) the failure to perform any covenant or agreement of Purchaser set forth in this Agreement or any covenant or agreement of Purchaser or any Designated Purchaser Subsidiary set forth in any of the Related Instruments (other than the Sublease), (iii) the Assumed Liabilities, to the extent Seller is not obligated by Section 8.2(a) (without giving effect to Section 8.4) to indemnify Purchaser Indemnified Parties in connection with any such Loss, (iv) any breach by Purchaser (or its successors and assigns) of any liability or obligation under any Dual Use Contract which liability or obligation constitutes an Assumed Liability and which breach is deemed by the counterparty to such Dual Use Contract to constitute a breach of such Dual Use Contract (provided that Seller and its Subsidiaries (or their successors and assigns) are not then in breach of their obligations under such Dual Use Contract), (v) the ownership, use, operation or maintenance of the Conveyed Assets by or on behalf of Purchaser from and after the Closing, the sale of the Conveyed Assets by or on behalf of Purchaser from and after the Closing and the operation or conduct of the Business by or on behalf of Purchaser from and after the Closing, to the extent Seller is not obligated by Section 8.2(a) (without giving effect to Section 8.4) to indemnify Purchaser Indemnified Parties in connection with any such Loss, and (vi) all product liability or similar claims to the extent arising out of the manufacture, marketing or sale of LEUKINE by or on behalf of Purchaser from and after the Closing, but only to the extent such product liability or similar claim does not arise out of any acts or omissions of Seller or any of its Subsidiaries in connection with manufacturing or marketing LEUKINE or any defect in LEUKINE that is manufactured by or on behalf of Seller or Seller Sub, in each case, prior to the Closing or in any Inventory.

(c) The obligations of Seller under Section 8.2(a) and the obligations of Purchaser under Section 8.2(b) shall not be affected by any knowledge by any Indemnified Party at or prior to the Closing of any breach of or inaccuracy in any representation or warranty or by any waiver of Section 6.2(a) or 6.3(a).

SECTION 8.3 *Indemnification Procedures*.

(a) In order for a party (the "*Indemnified Party*") to be entitled to any indemnification provided for under this Article VIII in respect of, arising out of or involving a claim made by any Person against the Indemnified Party (a "*Third-Party Claim*"), such Indemnified Party must notify the indemnifying party hereunder (the "*Indemnifying Party*") in writing of the Third-Party Claim promptly following receipt by such Indemnified Party of actual notice of the Third-Party Claim; *provided*, *however*, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly following the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified

Party relating to the Third-Party Claim other than those notices and documents separately addressed to the Indemnifying Party.

(b) If a Third-Party Claim is made against an Indemnified Party, the Indemnifying Party shall be entitled to participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the Indemnifying Party; *provided*, *however*, that such counsel is not reasonably objected to by the Indemnified Party. Should the Indemnifying Party so elect to assume the defense of a Third-Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof.

If the Indemnifying Party chooses to defend or prosecute a Third-Party Claim, all the Indemnified Parties shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the Indemnifying Party's reasonable request) the provision to the Indemnifying Party of records and information that are reasonably relevant to such Third-Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If the Indemnifying Party assumes the defense of a Third-Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld). If the Indemnifying Party assumes the defense of a Third-Party Claim, the Indemnified Party shall agree to any settlement, compromise or discharge of a Third-Party Claim that the Indemnifying Party may recommend and that by its terms obligates the Indemnifying Party to pay the full amount of the liability in connection with such Third-Party Claim, that releases the Indemnified Party completely in connection with such Third-Party Claim and that would not otherwise adversely affect the Indemnified Party in any material respect.

Notwithstanding the two foregoing paragraphs, the Indemnifying Party shall not be entitled to assume the defense of any Third-Party Claim (and shall be liable for the reasonable fees and expenses of counsel incurred by the Indemnified Party in defending such Third-Party Claim) if the Third-Party Claim seeks an order, injunction or other equitable relief or relief for other than money damages against the Indemnified Party that the Indemnified Party reasonably determines cannot be separated from any related claim for money damages. If such equitable relief or other relief portion of the Third-Party Claim can be so separated from that for money damages, the Indemnifying Party shall be entitled to assume the defense of the portion relating to money damages.

(c) In the event any Indemnified Party should have a claim against any Indemnifying Party under Section 8.2(a) or 8.2(b) that does not involve a Third-Party Claim being asserted against or sought to be collected from such Indemnified Party, the Indemnified Party shall deliver notice of such claim with reasonable promptness to the Indemnifying Party.

The failure by any Indemnified Party so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party under Section 8.2(a) or 8.2(b), except to the extent that the Indemnifying Party has been actually prejudiced by such failure.

(d) Notwithstanding anything to the contrary contained in this Agreement, in the event that any fact, event or circumstance which results in an adjustment to the Purchase Price (including in calculating the Purchase Price Adjustment) would also constitute a breach of or inaccuracy in any of the representations, warranties, covenants or agreements of the Indemnifying Party under this Agreement, the Indemnifying Party shall have no obligation to indemnify any Indemnified Party with respect to such breach or inaccuracy to the extent reflected in the Purchase Price adjustment.

SECTION 8.4 *Limitation of Liability*.

(a) Notwithstanding anything in this Agreement to the contrary, the liability of the Indemnifying Party to indemnify any Indemnified Party against any Losses pursuant to Sections 8.2(a)(i) or 8.2(b)(i) shall be limited to claims for indemnification with respect to which an Indemnified Party has given to the Indemnifying Party notice of such claim within the Survival Period specified in Section 8.1. Notwithstanding anything to the contrary contained in this Agreement or in any Related Instruments, the parties agree that the indemnity provided in [*] hereof shall be the sole and exclusive indemnity provided in this Agreement and the Related Instruments with respect to matters which are the subject of [*].

(b) In no event shall Seller be liable for indemnification pursuant to Section 8.2(a)(i) unless and until the aggregate of all Losses which are incurred or suffered by the Purchaser Indemnified Parties exceeds [*], in which case the Purchaser Indemnified Parties shall be entitled to indemnification for all such Losses in excess of [*]; *provided*, *however*, that Seller shall not be required to make payments for indemnification pursuant to Section 8.2(a)(i) and [*] in an aggregate amount in excess of the Initial Purchase Price; provided, further, that, in the event that a payment is made pursuant to Section 2.3(a)(ii) or Section 2.3(a)(iii) or both, then Seller shall not be required (at any particular time) to make payments for indemnification pursuant to Section 8.2(a)(i) and [*] in an aggregate amount in excess of the sum of the Initial Purchase Price and any payments made to Seller pursuant to Section 2.3(a)(ii) and Section 2.3(a)(iii) at or prior to such time. In the event that indemnification payments are limited by the second proviso to the preceding sentence and subsequently a payment is required to be made under Section 2.3(a)(ii) or 2.3(a)(iii) and Seller is (but for such proviso) liable to the Purchaser Indemnified Parties for indemnification of Losses in excess of the then-applicable cap, the amount of such payment under Section 2.3(a)(ii) or 2.3(a)(iii) shall be reduced by the amount of such excess.

(c) [*]

(d) In calculating amounts payable to an Indemnified Party, the amount of the indemnified Losses (i) shall not be duplicative of any other Loss for which an indemnification

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* Confidential Treatment Requested.

claim has been made, (ii) shall be computed net of any amounts actually recovered by such Indemnified Party under any insurance policy with respect to such Losses, (iii) shall be increased to take account of any net Tax cost incurred by such Indemnified Party arising from the receipt of Indemnity Payments hereunder (grossed up for such increase) and (iv) shall be reduced to take account of any net Tax benefit realized by such Indemnified Party arising from the incurrence or payment of any such Loss. In computing the amount of any such Tax cost or Tax benefit, the Indemnified Party shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any item arising from the receipt of any indemnity payment hereunder or the incurrence or payment of any indemnified Loss.

(e) [*]

SECTION 8.5 *Other Matters*.

(a) Except as otherwise specifically provided in this Agreement or in any Related Instrument, Purchaser and Seller each agree (and, by their acceptance of the benefits under this Agreement, each Purchaser Indemnified Party and Seller Indemnified Party agrees) that its sole and exclusive remedy after the Closing with respect to any and all claims relating to any or all of this Agreement, the Related Instruments and the Intellectual Property Transfer Agreements, the transactions contemplated hereby and thereby, the Business, the Conveyed Assets and the Assumed Liabilities (other than claims of, or causes of action arising from, fraud) shall be pursuant to the indemnification provisions set forth in this Article VIII. Without limiting the foregoing, Purchaser and Seller each hereby waive (and, by their acceptance of the benefits under this Agreement, each Purchaser Indemnified Party and Seller Indemnified Party hereby waives), from and after the Closing, any and all rights, claims and causes of action (other than claims of, or causes of action arising from, fraud), whether arising under statute, common law or otherwise, such party may have against the other party arising under or based upon this Agreement, any Related Instrument or Intellectual Property Transfer Agreement or any document or certificate delivered in connection herewith (except pursuant to the indemnification provisions set forth in this Article VIII and the indemnification and other remedy provisions set forth in any Related Instrument). Without limiting the generality of the foregoing, Purchaser (and, by accepting the benefits under this Agreement, each Purchaser Indemnified Party) agrees that with respect to any Losses or other losses and damages under any Environmental Law that may be incurred by any Purchaser Indemnified Party, the indemnification provisions of this Article VIII shall be the sole and exclusive remedy of the Purchaser Indemnified Parties, and Purchaser (and, by accepting the benefits under this Agreement, each Purchaser Indemnified Party) hereby waives and relinquishes, on behalf of itself and the other Purchaser Indemnified Parties and their respective Affiliates, and each of their respective directors, officers, employees, equity holders, partners, successors, assigns, Affiliates, agents, advisors or representatives and heirs, any and all rights, claims, or remedies such Person may have under any Environmental Laws, as presently in force or hereafter enacted, promulgated, or amended (including under the Comprehensive Environmental Response Compensation and Liability Act, or any similar state or local law) or at common law.

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* Confidential Treatment Requested.

(b) [*]

ARTICLE IX

MISCELLANEOUS

SECTION 9.1 *Notices*.

Any notices or other communications required or permitted under, or otherwise in connection with, this Agreement or the Related Instruments shall be given in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) upon confirmation of receipt when transmitted by facsimile transmission (but only if followed by transmittal by internationally recognized overnight courier (providing proof of delivery) or hand, (iii) on receipt after being sent, postage prepaid, by registered or certified mail, or (iv) when delivered if transmitted by internationally recognized overnight courier (providing proof of delivery), in each case as follows (or to such other address which has been delivered in accordance with this Section 9.1):

(a) if to Seller, to:

Immunex Corporation
51 University Street
Seattle, Washington 98101
Telephone: (206) 587-0430
Facsimile: (206) 233-0644
Attention: General Counsel

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Telephone: (212) 735-3542
Facsimile: (212) 735-2000
Attention: Stephen F. Arcano, Esq.

(b) if to Purchaser, to:

Schering Aktiengesellschaft
Müllerstrasse 178
13353 Berlin, Germany
Facsimile: 49-30-468-14086
Attention: General Counsel

with copies to:

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* Confidential Treatment Requested.

Schering Berlin Inc.
340 Changebridge Road
Montville, New Jersey 07045
Facsimile: (973) 487-2712
Attention: General Counsel

Cravath, Swaine and Moore
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700
Attention: Peter S. Wilson, Esq.

SECTION 9.2 *Descriptive Headings*.

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

SECTION 9.3 *Counterparts*.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other party.

SECTION 9.4 *Entire Agreement*.

This Agreement, the Exhibits and Schedules hereto, the Seller Disclosure Letter, the Related Instruments and the Confidentiality Agreement constitute the entire agreement of the parties hereto, and supersede all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

SECTION 9.5 *Fees and Expenses*.

Except as set forth in this Agreement or in any Related Instrument, regardless of whether or not the transactions contemplated by this Agreement are consummated, each party shall bear its own fees and expenses incurred in connection with this Agreement and the Related Instruments and the transactions contemplated hereby and thereby.

SECTION 9.6 *Governing Law*.

This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without regard to any applicable principles of conflicts of law. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the jurisdiction of the courts of the State of New York and of the United States of America located in the Borough of Manhattan in New York City, and any appellate court from any such court, for any litigation arising out of or relating to this Agreement or any Related Instrument and the transactions contemplated hereby or thereby (and agrees not to commence any litigation relating

thereto except in such courts). Each of the parties hereto hereby irrevocably and unconditionally waives any objection to the laying of venue of any litigation arising out of or relating to this Agreement or any Related Instrument or the transactions contemplated hereby or thereby in the courts of the State of New York or of the United States of America located in the Borough of Manhattan in New York City and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such litigation brought in any such court has been brought in an inconvenient forum. The parties agree that a final judgment in any such litigation shall be conclusive and may be enforced in other jurisdictions by suits on the judgment or in any other manner provided by Law.

SECTION 9.7 *WAIVER OF JURY TRIAL*.

EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE RELATED INSTRUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 9.8 *Assignment*.

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be transferred, assigned or delegated by either of the parties hereto, in whole or in part, without the prior written consent of the other party, and any attempt to make any such transfer, assignment or delegation without such consent shall be null and void; *provided*, *however*, that (i) without the consent of Purchaser, Seller may (in whole or in part) transfer, assign and delegate its rights, interests and obligations to one or more of its Affiliates (including, for purposes of this clause (i), the term "Affiliates" shall include Amgen Inc. and its Affiliates), (ii) without the consent of Seller, Purchaser may (in whole or in part) transfer, assign and delegate its rights, interests and obligations to any Affiliate of Purchaser, and (iii) without the consent of Seller, Purchaser may transfer and assign its rights to indemnity, in whole or in part, to any purchaser of all or substantially all of the Business; provided, further, that no transfer, assignment or delegation shall limit, affect or discharge the assignor's obligations hereunder.

SECTION 9.9 *Parties in Interest*.

This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and, except as provided in Article VIII, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, interests, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

SECTION 9.10 *Interpretation*.

In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

SECTION 9.11 *Severability*.

In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the parties shall negotiate in good faith with a view to the substitution therefor of a suitable and equitable solution in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid provision; *provided*, *however*, that the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all of the rights and privileges of the parties hereto shall be enforceable to the fullest extent permitted by Law.

SECTION 9.12 *Payments*.

Unless otherwise provided herein, all payments required to be made pursuant to this Agreement shall be made in U.S. dollars in the form of cash or by wire transfer of immediately available funds to an account designated by the party receiving such payment.

SECTION 9.13 *Disclosure*.

Any matter disclosed in any section of the Seller Disclosure Letter shall be considered disclosed with respect to each other section of the Seller Disclosure Letter and with respect to each of the representations and warranties contained in Article III hereof, but only to the extent that the relevance of such matter to a particular section of the Seller Disclosure Letter or a particular representation or warranty is reasonably apparent; *provided*, *however*, that no matter shall be considered disclosed with respect to Section 3.6(a) of the Seller Disclosure Letter or the representations and warranties in Section 3.6(a) unless specifically disclosed or cross-referenced in Section 3.6(a) of the Seller Disclosure Letter. Disclosure of a matter in any section of the Seller Disclosure Letter shall not be deemed to constitute a determination that such matter is material (whether singularly or in the aggregate) solely by reason of it being so disclosed therein.

SECTION 9.14 *English Language Only*.

This Agreement and the Related Instruments have been executed in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties hereto. All communications to be made or given pursuant to this Agreement and the Related Instruments shall be in the English language.

SECTION 9.15 *Process Agent; Service of Process*.

Purchaser agrees that service of all writs, process and summonses in connection with any action, suit or proceeding brought against it relating to this Agreement or any of the Related Instruments may be made upon CT Corporation presently located at 111 Eighth Avenue, New York, New York 10011 as its agent for service of process (the "*Process Agent*") and Purchaser hereby irrevocably appoints the Process Agent as its agent for service of process in its name, place and stead to accept such service and agrees that the failure of the Process Agent to give any notice of any such service of process to Purchaser shall not impair or affect the validity

of such service or of any judgment based thereon. Purchaser agrees to maintain at all times an agent aforesaid in the State of New York, and to give Seller advance written notice of any change of such Process Agent. Nothing herein shall in any way be deemed to limit the ability of Seller to serve any such writs, process or summonses in other manner permitted by Law or to obtain jurisdiction over Purchaser in such other jurisdictions, and in such manner, as may be permitted by Law.

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first written above.

IMMUNEX CORPORATION

By: /s/ EDWARD V. FRITZKY

Edward V. Fritzky
Chief Executive Officer

SCHERING AKTIENGESELLSCHAFT

By: /s/ HUBERTUS ERLEN

Hubertus Erlen
Chairman of the Executive Board of Directors

By: /s/ KLAUS POHLE

Klaus Pohle
Vice-Chairman of the Executive Board of Directors

Exhibit 10.79

AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT

This AMENDMENT No. 1 (this "*Amendment*") is made as of the 25th day of June, 2002, by and between Immunex Corporation, a Washington corporation ("*Seller*"), and Schering Aktiengesellschaft, a stock corporation organized under the laws of The Federal Republic of Germany ("*Purchaser*").

WITNESSETH

WHEREAS, in accordance with Section 7.3 of the Asset Purchase Agreement, dated as of May 2, 2002, by and between Seller and Purchaser (the "*Agreement*"), the parties hereto desire to amend the Agreement in certain respects as set forth herein.

NOW, THEREFORE, in consideration of the premises, covenants, representations and warranties contained herein, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. *Definitions*. Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Agreement, as amended hereby.

SECTION 2. *Amendments to the Agreement*. The Agreement is hereby amended as follows:

(a) A new definition is hereby inserted into Section 1.1 of the Agreement, immediately following the definition of "Confidentiality Agreement" and immediately prior to the definition of "Contracts", and shall be as follows:

" "Consent Decree" shall mean the Decision and Order placed by the United States Federal Trade Commission on the public record for comment in connection with the Agreement Containing Consent Orders by and among Amgen, Inc. and Seller, and their attorneys, and counsel for the United States Federal Trade Commission, which Decision and Order relates to, among other things, the divestiture of the Business by Seller."

(b) A new definition is hereby inserted into Section 1.1 of the Agreement, immediately following the definition of "Objection Period" and immediately prior to the definition of "Other Bid", and shall be as follows:

" "Order Date" shall mean the date the Consent Decree is issued by the United States Federal Trade Commission."

(c) A new Section 7.5 is hereby inserted into the Agreement immediately following Section 7.4 thereof and shall be as follows:

"SECTION 7.5. *Rescission*. If the Closing shall have occurred prior to the Order Date and Seller thereafter receives notice from the United States Federal Trade Commission that Purchaser is not an acceptable purchaser of the Conveyed Assets or that the consummation of the transactions contemplated hereby does not constitute an acceptable divestiture of the Business under the Consent Decree, then the parties shall immediately rescind the transactions consummated at the Closing, and this Agreement shall be automatically terminated upon such rescission (with such termination being treated for purposes of Section 7.2 hereof as if it were a termination pursuant to Section 7.1 hereof). In connection with such rescission, Seller shall refund the Purchase Price to Purchaser, Purchaser shall return all the Conveyed Assets in its or its Affiliates' possession or control to Seller or Seller Sub, as the case may be, and the parties shall take such other actions as may be necessary in order to return each party and each of their respective Subsidiaries to the respective position it occupied immediately prior to the Closing."

SECTION 3. *Effect*. Except as expressly set forth herein, the Agreement shall remain in full force and effect in all respects. This Amendment shall be deemed to be part of the Agreement for all purposes thereunder, including the provisions of Article IX of the Agreement.

SECTION 4. *Descriptive Headings*. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Amendment.

SECTION 5. *Counterparts*. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other party.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

IMMUNEX CORPORATION

By: /S/ EDWARD V. FRITZKY

Edward V. Fritzky
Chief Executive Officer

SCHERING AKTIENGESELLSCHAFT

By: /S/ KLAUS POHLE

Klaus Pohle
Vice-Chairman of the
Executive Board of Directors

By: /S/ LUTZ LINGNAU

Lutz Lingnau
Member of the
Executive Board of Directors

Exhibit 10.80

AMENDMENT NO. 2 TO ASSET PURCHASE AGREEMENT

This AMENDMENT NO. 2 (this "*Amendment*") is made as of the 17th day of July, 2002, by and between Immunex Corporation, a Washington corporation ("*Seller*"), and Schering Aktiengesellschaft, a stock corporation organized under the laws of The Federal Republic of Germany ("*Purchaser*").

WITNESSETH

WHEREAS, in accordance with Section 7.3 of the Asset Purchase Agreement, dated as of May 2, 2002, by and between Seller and Purchaser (as amended by Amendment No. 1 to the Asset Purchase Agreement, dated as of June 25, 2002, the "*Agreement*"), the parties hereto desire to amend the Agreement in certain respects as set forth herein.

NOW, THEREFORE, in consideration of the premises, covenants, representations and warranties contained herein, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. *Definitions*. Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Agreement, as amended hereby.

SECTION 2. *Amendments to the Agreement*. The Agreement is hereby amended as follows:

(a) Section 1.1(a)(viii) of the Seller Disclosure Letter is hereby amended by adding a new item 12 thereunder as follows: "Agreement, dated as of March 1, 1994, between Behringwerke AG and Immunex Corporation".

(b) Section 1.1(c) of the Seller Disclosure Letter is hereby amended by adding a new item 64 thereunder as follows: "Agreement, dated as of March 1, 1994, between Behringwerke AG and Immunex Corporation".

(c) Section 2.1(a)(iii) of the Seller Disclosure Letter is hereby amended by adding the following item thereto: "Revco -70C chest freezer, model #ULT740ANR, serial #XY1756A, Abbott K #K4269".

(d) Section 3.8(a)(iv) of the Seller Disclosure Letter is hereby amended by adding a new item 8 thereunder as follows: "Agreement, dated as of March 1, 1994, between Behringwerke AG and Immunex Corporation".

(e) Section 2.1(a)(iv) of the Seller Disclosure Letter is hereby amended by inserting the following new assigned trademark under the table "Assigned Trademarks":

United States	Positive Directions	N/A	N/A

(f) Exhibit C to the Agreement is hereby amended by inserting the following new assigned trademark under the table "Assigned Trademarks" in Attachment I to Exhibit C:

United States	Positive Directions	N/A	N/A

(g) Exhibit F to the Agreement is hereby amended by deleting Annexes A and B thereto and substituting therefor Annex A and Annex B attached hereto as Appendix A.

SECTION 3. *Effect*. Except as expressly set forth herein, the Agreement shall remain in full force and effect in all respects. This Amendment shall be deemed to be part of the Agreement for all purposes, including Article IX of the Agreement.

SECTION 4. *Descriptive Headings*. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Amendment.

SECTION 5. *Counterparts*. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other party.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first above written.

IMMUNEX CORPORATION

By: /s/ EDWARD V. FRITZKY

Edward V. Fritzky
Chief Executive Officer

SCHERING AKTIENGESELLSCHAFT

By: /s/ HORST KRUEGER

Horst Krueger
General Counsel

By: /s/ NICHOLAS VON BEHR

Nicholas von Behr
Legal Counsel

ANNEX A

Transition Service	Max Period	Max Hours/Month	Contact Person (Purchaser/Seller)
Human Resources/Payroll			
— Transition support of payroll, benefits and compensation information	3 months	60	— J. Wayne (Berlex)/ Nancy Bruce (Immunex)
Process Development & Mfg:			
— Transition support of process development and manufacturing activities	3 months	40	— Dave Carlson (Berlex)/Brent Willems and Jim Thomas (Immunex)
Quality Assurance/Quality Control:			
— Transition support for raw materials and acquisition and handling	3 months	20	— M. Graham, G. Oliarnyk (Berlex)/Ken Riker (Immunex)
— Transition support for in-process testing and final batch release	3 months	20	— M. Graham, G. Oliarnyk (Berlex)/Maija Sorenson and Annette Vahratian (Immunex)
Customer Contracts:			
— Support transition of customer contracting through contract discussion with management personnel	3 months	80	— R. Graybill (Berlex) and R. Crandall (Berlex)/Michael Ambieli and Joyce Golden (Immunex)

Transition Service	Max Period	Max Hours/Month	Contact Person (Purchaser/Seller)
Marketing:			
— Support for all existing and ongoing market research studies, forecast databases, and competitive intelligence databases	1 month	60	— Nancy Burns (Berlex)/ Tyler Ellison (Immunex)
— Support for all sales training programs	1 month	80	— Rob Crandall (Berlex)/ Michael Casarella (Immunex)
Sales:			
— Support transition of chargeback processing to Purchaser	3 months	15	— R. Graybill (Berlex), R. Crandall (Berlex), A. Santini (Berlex) /Kendall Stever (Immunex)

Transition Service	Max Period	Max Hours/Month	Contact Person (Purchaser/Seller)
Clinical:			
— Support transfer of clinical study management to Purchaser for Crohn's clinical study and progress study in colorectal cancer	3 months	125	— Dr. E. Bradley and M. Gilbert (Berlex)/Anne Trench, A. Rubin, M. Bisom, and C. Foerder (Immunex)
— Consultation and support of ProTrack database			
— Oversight of transfer/installation of controlled records only if requested			
— Consultation/advisory service for records systems			
— PPD support to process and forward misdirected clinical specimens to central lab			
— PPD consulting support for GLP assays			

Transition Service	Max Period	Max Hours/Month	Contact Person (Purchaser/Seller)
Safety Reporting:			
— Support transfer of adverse experience reporting and analysis and maintenance of case data and data files	3 months	100	— Dr. H. Krenz (Berlex)/Wayne Jack Wallis (Immunex)
— ARISg data entry as needed to input incoming AE's			
— Reviewer support for AE coding, determination of drug relationship, follow-up, and case-transfer to Berlex safety surveillance			
Regulatory:			
— Support transfer of regulatory and government filing maintenance	3 months	40	— T. Bourdakis (Berlex) /Lisa Brown (Immunex)
Commercial Distribution			
— Finished goods warehousing and distribution	1 month	N/A	— I. Arshen (Berlex) and J. Vineis (Berlex) / Rich Gaeto (Immunex)
Finance:			
— Consultation services for general accounting, cost accounting, account analysis, month end closing and SAP (FI/CO, etc.)	3 months	100	— J. Zitelli, J. Gould, L. Wayne (Berlex)/ Kendall Stever, Janet Kautz (Immunex)

Transition Service	Max Period	Max Hours/Month	Contact Person (Purchaser/Seller)
Information Technology			
— Provision of information about the existing IT environment, day-to-day operation of the IT system relating to LEUKINE and technical support for database transfer	3 months	30	— Dr. B. Spiegel (Berlex) and J. Gould (Berlex)/Carl March (Immunex)
Software Applications			
— Access to and consultation services relating to the operation and transfer of content of the Systems (as defined in *Annex C*) as they relate to LEUKINE and the Business (as more fully described in *Annex C*)	9 months	That number of hours required based on the commercially reasonable efforts of Seller to achieve the objectives as set forth in *Annex C*	— G. Oliarnyk, C. Brochard and Dr. B. Spiegel (Berlex) / Carl March(Immunex)

MONTHLY FEE FOR SELLER SERVICES (Month 1)	=	**$110,625**
MONTHLY FEE FOR SELLER SERVICES (Months 2-3)	=	**$78,125**

Seller Transition Coordinator

Name: Neil McDonnell
Telephone: 206-587-0430

ANNEX B

Transition Service	Max Period	Max Hours	Contact Person
Software Applications			
Access to and consultation services related to the operation and transfer of content of the Systems (as more fully described in Annex C)	9 months	That number of hours required based on the commercially reasonable efforts of Purchaser to achieve the objectives as set forth in *Annex C*	— G. Oliarnyk, C. Brochard and Dr. B. Spiegel (Berlex) / Carl March (Immunex)

MONTHLY FEE FOR PURCHASER SERVICES = $0

Purchaser Transition Coordinator

Name: Henrik Jochens
Telephone: 510-669-4629

Exhibit 10.81

PROMISSORY NOTE

$1,000,000.00

1. *Promise to Pay.*

For value received, I, Beth C. Seidenberg ("Staff Member"), a married woman, and I, Paul S. Vogel, husband of Staff Member, promise to pay to the order of Amgen Inc., a Delaware corporation ("Payee"), at its office at One Amgen Center Drive, Thousand Oaks, CA 91320-1789, the sum of One Million Dollars and No Cents ($1,000,000.00) (the "Principal"), payable in full on the earlier of five (5) years from date of execution of this Note or thirty (30) days from the date on which Staff Member ceases to be an employee of Payee, whichever first occurs, together with interest on the Principal from the date of this Note until such date as the Note is paid in full. Interest on this Note shall be computed as set forth below. The interest rate for the period from the date of this Note through December 31, 2002 (the "initial rate") is 4.00% per annum on the unpaid Principal. After December 31, 2002 the interest rate on this Note shall change as set forth below.

2. *Adjustable Interest Rate.*

The interest rate shall be adjusted annually on January 1 of each year (the "Change Date") so as to equal the average interest rate designated as the "Introduction Rates" on adjustable rate loans as publicly offered by the banks and savings and loans in California as published by the Los Angeles Times in its Sunday edition. The rate shall be set using the rates published in the Los Angeles Times on the Sunday immediately preceding the Change Date. In the event that the "Introduction Rates" list is not published in the Los Angeles Times for any reason, then, in such event, the Payee shall establish the interest rate based on a survey by it of the introductory interest rates on adjustable loans offered by no fewer than five banking institutions located in Southern California that the Payee, in its sole discretion, deems representative of banking institutions in the Ventura and Los Angeles County areas. Payee shall give Staff Member notice if the interest rate shall be determined using this alternative method. Notwithstanding the foregoing, the interest rate shall never be increased or decreased on any single Change Date by more than one percentage point from the interest rate for the preceding 12 months. At no time during the term of this Note shall the annual interest rate exceed 7.00% per annum.

Payee shall deliver or mail to Staff Member a notice of any changes in the adjustable interest rate on this Note and the amount of the Staff Member's semi-monthly payroll deductions before the effective date of any change. The notice shall include information required by law to be given to Staff Member and also the title and telephone number of a person who shall answer any questions Staff Member may have regarding the notice.

3. *Salary Deduction.*

The interest on this Note shall be payable by semi-monthly deductions from Staff Member's salary. The amount of such deductions shall initially be One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($1,666.67) per installment; provided, however, that the manner of payment of this Note shall not be limited to deductions from Staff Member's salary. The amount of such deductions shall be adjusted annually concurrently with any adjustment in the interest rate on this Note to ensure that interest to be incurred during the ensuing calendar year shall be paid in twenty-four (24) equal payments. The first such installment shall be on 04/15/02; the second installment shall be on 04/30/02; and each successive installment shall be on the fifteenth and last days of each

successive month until the Principal is repaid. Payee shall give Staff Member at least seven (7) days advance notice of any adjustment in the amount of said payroll deductions. Staff Member acknowledges and agrees that by executing this Note, Staff Member agrees to the payroll deductions described in this Note.

4. *Option to Convert.*

At the end of the term of this Note, Staff Member shall have the option to seek to convert this loan to a loan amortized over an additional five-year period by executing a new Promissory Note at terms to be mutually agreed upon by Staff Member and Payee. In the event that Staff Member and Payee are unable to reach agreement on such terms, this Note shall become immediately due and payable.

5. *Prepayment.*

Staff Member may prepay without penalty this Note in whole or in part at any time. Any and all payments or prepayments under this Note may be made by Staff Member to Payee at the following address (or such other address as it designates in writing to Staff Member):

AMGEN INC.
One Amgen Center Drive
Thousand Oaks, California 91320-1789

Attention: Accounting Manager

6. *Attorneys' Fees.*

Staff Member agrees to pay all costs and expenses, including, without limitation, collection agency fees and expenses, reasonable attorneys' fees, costs of suit and costs of appeal, which Payee may incur in the exercise, preservation or enforcement of its right, powers and remedies hereunder, or under any documents or instruments securing this Note, or under law.

7. *Modification of Terms.*

Payee may, with or without notice to Staff Member, cause additional parties to be added to this Note, or release any party to this Note, or revise, extend, or renew the Note, or extend the time for making any installment provided for by this Note, or accept any installment in advance, all without affecting the liability of Staff Member. Staff Member may not assign or transfer in any manner whatsoever this Note or any of Staff Member's obligations under this Note.

8. *Security Interest.*

The purpose of this loan is to purchase a personal residence. Staff Member shall secure this loan by executing and causing to be filed, immediately upon close of escrow, a trust deed on this residence, commonly known as 831 Country Valley Road, Thousand Oaks, CA 91362 whose property description is as follows: Lot 57 of Tract No. 4256, in the City of Thousand Oaks, County of Ventura, State of California, as shown on map recorded in Book 111, Page(s) 42 through 63 inclusive, of Maps, in the office of the County Recorder of said County. Except therefrom all oil, gas, minerals and other hydrocarbon substances, lying below a depth of 500 feet, without the right of surface entry, as reserved in instruments of record.

9. *Acceleration.*

A) In the event Staff Member fails to pay when due any sums under this Note, then:

(1) the entire unpaid balance of this Note shall, at the option of the Payee hereof, immediately become due and payable in full and unpaid Principal thereafter shall bear interest at the lesser of the maximum rate permitted by law or at the rate of 7.00% per annum; and

(2) Staff Member authorizes Payee to deduct any sums due to Payee under this Note from any monies, including any wages due, otherwise owing to Staff Member.

B) If Staff Member sells the residence which is purchased with the funds herein provided, this Note shall immediately become due and payable upon the sale of such residence.

10. *Waiver of Rights by Staff Member.*

Staff Member waives (1) presentment, demand, protest, notice of dishonor and/or protest and notice of non-payment; (2) the right, if any, to the benefit of, or to direct the application of, any security hypothecated to Payee until all indebtedness of Staff Member to Payee, however arising, has been paid; and (3) the right to require the Payee to proceed against any party to this Note, or to pursue any other remedy in Payee's power. Payee may proceed against Staff Member directly and independently of any other party to this Note, and the cessation of the liability of any other party for any reason other than full payment, or any revision, renewal, extension, forbearance, change of rate of interest, or acceptance, release or substitution of security, or any impairment or suspension of Payee's remedies or rights against any other party, shall not in any way affect the liability of Staff Member.

11. *Obligations of Persons Under this Note.*

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Payee may enforce its rights under this Note against each person individually or against all of the signatories to this Note. This means that any one of the signatories to this Note may be required to pay all of the amounts owed under this Note.

12. *Governing Law.*

This Note and the obligations under this Note of Staff Member or any other signatory to this Note shall be governed by and interpreted and determined in accordance with the laws of the State of California as applied to contracts between California residents entered into and to be performed entirely within said State.

IN WITNESS WHEREOF, the undersigned has/have executed and delivered this Note as of the 20th day of March, 2002.

By: /s/ BETH C. SEIDENBERG by Paul S. Vogel as her Attorney in Fact

Beth C. Seidenberg

By: /s/ PAUL S. VOGEL

Paul S. Vogel

Exhibit 10.82

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), made and entered into as of the Effective Date (as hereinafter defined), between Amgen Inc., a Delaware corporation (the "Company"), and Edward V. Fritzky (the "Executive");

WHEREAS, the Executive is employed by Immunex Corporation ("Immunex Corporation") as Chief Executive Officer and the Executive possesses intimate knowledge of the business and affairs of Immunex Corporation and has acquired certain confidential information and data with respect to Immunex Corporation;

WHEREAS, pursuant to the Agreement and Plan of Merger, dated as of December 16, 2001 by among the Company, Immunex Corporation and a subsidiary of the Company ("Merger Sub") (the "Merger Agreement"), Merger Sub will merge with and into Immunex Corporation (the "Merger");

WHEREAS, the Company has determined that it is of the utmost importance to assure itself of retaining the Executive's services during the critical period following the Merger to assist in the integration of the operations of the Company and Immunex Corporation;

WHEREAS, the Company desires to secure the continued employment of the Executive in accordance herewith, effective upon the date of the consummation of the Merger pursuant to the Merger Agreement (the "Effective Date");

WHEREAS, the Executive is a participant in the Immunex Corporation Leadership Continuity Plan, dated as of October 25, 2001 (the "LCP");

WHEREAS, the Executive would be entitled to receive certain severance payments and benefits pursuant to the LCP upon termination of employment with Immunex Corporation following the Effective Date;

WHEREAS, the Executive intends to forego the right to receive such payments and benefits by entering into this Agreement;

WHEREAS, the parties now desire to enter into an agreement setting forth the terms and conditions of the employment relationship of the Executive and the Company;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, it is hereby agreed as follows:

1. *Definitions.*

(a) "Board" shall mean the Board of Directors of the Company.

(b) "Cause" shall mean (i) the willful and continued failure by the Executive to substantially perform the Executive's duties with the Company (other than any such failure resulting from the Executive's incapacity due to physical or mental illness or any such actual or anticipated failure after the issuance of a Notice of Termination for Good Reason by the Executive pursuant to Section 14 hereof) that has not been cured within thirty (30) days after a written demand for substantial performance is delivered to the Executive by the Board, which demand specifically identifies the manner in which the Board believes that the Executive has not substantially performed the Executive's duties, (ii) the willful engaging by the Executive in conduct which is demonstrably and materially injurious to the Company or its subsidiaries, monetarily or otherwise, or (iii) a material breach by the Executive of the terms of this Agreement. For purposes of clauses (i) and (ii) of this definition, (x) no act, or failure to act, on the Executive's part shall be deemed "willful" unless done, or omitted to be done, by the Executive not in good faith and without reasonable belief that the Executive's act, or failure to act, was in the best interest of the Company and (y) in the event of a dispute concerning the application of this provision, no claim by the Company that Cause exists shall be given effect unless the Company establishes to the Board by clear and convincing evidence that Cause exists.

(c) "Code" shall mean the Internal Revenue Code of 1986, including any amendments thereto or successor tax codes thereof.

(d) "Good Reason" shall mean any material breach of this Agreement by the Company that has not been cured within thirty (30) days after a written demand for cure is delivered to the Company by the Executive, including without limitation:

(i) the removal of the Executive from his position as a member of the Board except in the event that such removal relates to the termination by the Company of the Executive's employment for Cause or by reason of disability pursuant to Section 13 hereof; or

(ii) failure by the Company to obtain the assumption of this Agreement as contemplated by Section 19(a) hereof.

(e) "Termination Date" shall mean (i) if the Executive's employment is terminated by the Executive's death, the date of death; (ii) if the Executive's employment is terminated for purposes of this Agreement by reason of disability pursuant to Section 13 hereof, the earlier of thirty (30) days after the Notice of Termination is given or one (1) day prior to the end of the Employment Period; (iii) if the Executive's employment is terminated by the Executive voluntarily (other than for Good Reason), the date the Notice of Termination is given; (iv) if the Executive's employment is terminated by the Company, whether or not for Cause, (other than by reason of disability pursuant to Section 13 hereof) or by

the Executive for Good Reason, the earlier of thirty (30) days after the Notice of Termination is given or one (1) day prior to the end of the Employment Period; and (v) if the Executive's employment is not terminated prior to the end of the Employment Period, the date following the last day of the Employment Period.

2. *Employment; Employment Period.*

(a) On the Effective Date, the Company shall employ the Executive, and the Executive will be employed by the Company, in accordance with the terms of this Agreement for the period set forth below (the "Employment Period"). During the Employment Period, Executive shall be an employee of the Company for all purposes and will not be an independent contractor.

(b) The Employment Period shall commence as of the Effective Date and shall continue until the second anniversary of the Effective Date (that second anniversary shall be the last day of the Employment Period); provided, however, that if the Merger Agreement is terminated in accordance with its terms, then, at the time of such termination, this Agreement shall terminate and be of no force or effect. This Agreement shall be of no force and effect unless and until the Effective Date occurs.

(c) The Executive hereby waives any right to any severance benefit otherwise payable to the Executive pursuant to the LCP. In consideration for such waiver, on the Effective Date the Company shall pay to the Executive a cash lump sum payment equal to three times the sum of (i) the Executive's base salary as in effect immediately prior to the Effective Date, (ii) the Executive's target annual incentive compensation in effect immediately prior to the Effective Date, and (iii) the value of the contributions or the allocations made, as applicable, on behalf of the Executive to the Immunex Corporation 401(k) Savings Plan and the Immunex Corporation Nonqualified Deferred Compensation Plan in respect of the fiscal year ending immediately prior to the fiscal year in which the Effective Date occurs.

3. *Duties.*

(a) During the Employment Period, the Executive shall serve as a strategic advisor to the Company. At or prior to the Effective Time (as defined in the Merger Agreement), the Board shall take all action necessary so that, immediately following the Effective Time, the Executive shall be appointed to the Board. If at the Effective Time the Company has multiple classes of directors, the Company shall take all action reasonably necessary, subject to applicable law, to appoint Executive to the class of directors with the longest remaining term as of the Effective Time, provided that the Company shall not be required to request that an incumbent director of the Company switch classes. The Executive shall not be required to perform services hereunder for more than 20 hours per month. Subject to Section 1(b), it shall not be a violation of this Agreement for the Executive to pursue other interests, whether of a personal or professional nature, so long as in so doing he does not engage in a business which is competitive with the Company's business.

(b) The Executive shall report directly to the Chief Executive Officer of the Company and shall perform such strategic advisory services as are assigned to him by the Chief Executive Officer of the Company, provided that such services are consistent with the Executive's background and experience.

4. *Office Space and Support Services.*

If during the Employment Period the Executive elects to perform services at rented offices, the Executive shall be reimbursed for rental payments for office space, subject to the limitation in the last sentence of this section. During the Employment Period, the Company shall reimburse the Executive for secretarial, communications and technology support services, subject to the limitation in the last sentence of this section. All expenses reimbursed to the Executive under this Section 4 shall not exceed $250,000 per year.

5. *Compensation.* During the Employment Period, the Executive shall be compensated as follows:

(a) The Executive shall receive, in accordance with the Company's standard payroll policies, an annual base salary of not less than $500,000.

(b) The Executive shall be entitled to participate in all of the employee benefit plans and arrangements (including any life, death, disability, accident or health insurance plan, employee stock purchase plan, and qualified or non-qualified retirement or savings plan) made available by the Company to senior executives of the Company, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and arrangements; provided, however, that to the extent Executive's participation in such Company benefit plans and arrangements is precluded by the applicable terms and conditions of such plans or arrangements, the Company shall arrange to provide, at the Company's sole expense, the Executive and anyone entitled to claim under or through the Executive

with equivalent benefits (on an after tax basis) under an alternative arrangement. Notwithstanding the foregoing, in no event shall the Executive participate in Company's Performance Based Management Incentive Plan.

(c) The Executive shall be entitled to receive perquisites, including, without limitation, financial counseling and tax planning services by AYCO or a company providing comparable equivalent services, that are the same as or substantially equivalent to, those provided to the Executive by Immunex Corporation immediately prior to the Effective Date.

6. *Retention Bonus.* Effective as of the Effective Date, the Company shall contribute a retention bonus of $1,000,000 to a deferred compensation account (the full balance of such account as of any specified date, the "Retention Bonus Account") established for the benefit of the Executive under the Company's deferred compensation plan (the "Deferred Compensation Plan"). Except to the extent otherwise provided in this Agreement, the Retention Bonus Account, and the Executive's rights with respect thereto, shall be subject to the terms and conditions of the Deferred Compensation Plan. The Retention Bonus Account shall vest as follows: (a) with respect to $500,000 originally deposited (plus the related earnings and minus the related losses), on the on the first anniversary of the Effective Date (provided the Executive is then employed by the Company), and (b) with respect to an additional $250,000 originally deposited (plus the related earnings and minus the related losses) on each of (i) the date 18 months immediately following the Effective Date and (ii) the second anniversary of the Effective Date (in each case provided the Executive is the employed by the Company). Except as provided in Sections 10, 11, 12 and 13, the Retention Bonus Account shall be paid to the Executive upon the second anniversary of the Effective Date, provided that the Executive is employed with the Company on such date.

7. *Equity Grants.*

(a) The Company shall grant to the Executive, effective as of the Effective Date, a non-qualified stock option (the "Option") to purchase 450,000 shares of the common stock of the Company par value $.0001 per share ("Common Stock"). The grant shall provide for (i) an exercise price per share equal to the fair market value of the Common Stock on the date of grant, (ii) except as provided in Sections 10, 11, 12 and 13, the vesting of the Option at the rate of one-third (1/3) of the shares of Common Stock subject to such Option on the date of grant and one-third (1/3) on each of the first and second anniversaries of the Effective Date, (iii) an option term equal to five (5) years and (iv) in the event that the Executive's employment with the Company is terminated on or after the end of the Employment Period, a post-termination exercise period of the remainder of such option term. Except as set forth in this Agreement, the Option shall be subject to the other terms and conditions similar to those set forth in the Company's Amended and Restated

1997 Equity Incentive Plan (the "Option Plan") (or applied to grants to senior executives of the Company) and the applicable stock option agreement which shall reflect the terms set forth herein and which shall be attached as Exhibit A hereto prior to the Effective Date, in form agreed upon by the parties.

(b) The Company shall grant to the Executive, effective as of the Effective Date, 100,000 shares of Common Stock, of which 66,000 shares will be restricted (such restricted portion, "Restricted Stock"). The grant shall provide for, except as provided in Sections 10, 11, 12 and 13, the vesting of the Restricted Stock at the rate of one-half (1/2) of the shares of Restricted Stock on each of the first and second anniversaries of the Effective Date. Except as set forth above, the Restricted Stock shall be subject to all other terms and conditions of the Option Plan and the applicable Restricted Stock agreement which shall reflect the terms set forth herein and which shall be attached as Exhibit B hereto prior to the Effective Date, in the form agreed upon by the parties.

8. *Expenses.* During the Employment Period, the Company shall promptly reimburse the Executive in accordance with the Company's policies for all reasonable expenses (including first class travel) incurred by him in performing services pursuant to the terms of this Agreement.

9. *Termination Benefits.* Upon the earlier to occur of (x) the termination of the Executive's employment for any reason or (y) the end of the Employment Period, the Executive shall be entitled to the following termination benefits (the "Termination Benefits"):

(a) No later than five days following the Termination Date, the Company shall pay to the Executive an amount equal to (i) all base salary for the time period ending with the Termination Date and (ii) any and all monies advanced in connection with the Executive's employment for reasonable and necessary expenses incurred by the Executive on behalf of the Company for the time period ending with the Termination Date.

(b) Except in the event of a termination by the Company for Cause or by the Executive without Good Reason, from the Termination Date until the third anniversary of the Termination Date, the Company shall arrange to provide the Executive and his dependents (i) life, death, disability, accident and health insurance benefits substantially similar to those provided to the Executive and his dependents immediately prior to the Termination Date, at no greater after tax cost to the Executive than the after tax cost to the Executive immediately prior to such date, and (ii) other perquisites, including, without limitation, financial counseling and tax planning services by AYCO or a company providing comparable equivalent services, to the same extent provided to the Executive prior to the Termination Date. Benefits otherwise receivable by the Executive pursuant to Section 9(b)(i) shall be reduced to the extent benefits of the same type are received by or made available to the

Executive during the period the Executive is eligible to receive benefits pursuant to such section (and any such benefits received by or made available to the Executive shall be reported to the Company by the Executive); provided, however, that the Company shall reimburse the Executive for the excess, if any, of the cost of such benefits to the Executive over such cost immediately prior to the Termination Date.

(c) Except in the event of the Executive's death, the Company shall provide the Executive with outplacement services suitable to the Executive's position for a period of one year commencing on the date the Executive first uses such outplacement services.

(d) The Company shall pay or provide all other amounts and benefits to which the Executive (or in the event of the Executive's death, the Executive's surviving spouse or other beneficiary) may be entitled as compensatory fringe benefits or under the terms of any benefit plan of the Company, pursuant to the terms of the benefit plan or practice establishing such benefits.

10. *Termination For Cause or Without Good Reason.* If the Executive's employment is terminated during the Employment Period by the Company for Cause or by the Executive without Good Reason, then the Executive shall be entitled to receive Termination Benefits pursuant to Section 9 and shall not receive any compensation pursuant to Section 5 with respect to periods following the Termination Date. Any portion of the Restricted Stock and the Option which is unvested as of the Termination Date shall be forfeited and any portion of the Option which is vested as of the Termination Date shall remain exercisable for the remainder of the original term. In addition, no later than five (5) days following the Termination Date, the Company shall pay to the Executive a cash amount equal to the vested portion of the Retention Bonus Account as of the Termination Date. The remainder of the Retention Bonus Account shall be forfeited.

11. *Termination for Good Reason or Without Cause.* If the Executive's employment is terminated during the Employment Period (a) by the Executive for Good Reason or (b) by the Company other than by reason of death, disability pursuant to Section 13 hereof, or Cause (any such terminations to be subject to the procedures set forth in Section 14 hereof), then the Executive shall be entitled to receive Termination Benefits pursuant to Section 9 and the following additional payments and benefits:

(i) No later than five (5) days following the Termination Date, the Company shall pay to the Executive the Retention Bonus Account as of the Termination Date;

(ii) No later than five (5) days following the Termination Date, the Company shall pay to the Executive the total amount of base salary payable to the Executive for the remainder of the Employment Period; and

(iii) Immediately prior to the Termination Date, (x) each share of Restricted Stock not then vested shall become fully vested and (y) each option to acquire Common Stock then held by the Executive (including the Option) shall become fully vested and exercisable as to all shares of Common Stock subject thereto and shall remain exercisable for the remainder of such option's original term.

12. *Death.* In the event of the Executive's death during the Employment Period, the Executive's estate, heirs and beneficiaries shall be entitled to receive Termination Benefits pursuant to Section 9, and shall not receive any compensation pursuant to Section 5 with respect to periods following the Termination Date. Immediately prior to the Termination Date, (x) each share of Restricted Stock not then vested shall become fully vested and (y) each option to acquire Common Stock then held by the Executive (including, the Option) shall become fully vested and exercisable and shall remain exercisable for the remainder of such option's original term. In addition, no later than five (5) days following the Termination Date, the Company shall pay to the Executive the Retention Bonus Account as of the Termination Date.

13. *Termination for Disability.* If, during the Employment Period, the Executive incurs a disability, as defined in the Option Plan, and, within thirty days after the Company notifies the Executive in writing that it intends to terminate the Executive's employment (which notice shall not constitute the Notice of Termination contemplated below), the Executive shall not have returned to the performance of the Executive's duties hereunder, the Company may terminate the Executive's employment for purposes of this Agreement pursuant to a Notice of Termination given in accordance with Section 14 hereof. If the Executive's employment is terminated on account of the Executive's disability in accordance with this Section, the Executive shall be entitled to receive Termination Benefits pursuant to Section 9 and the Executive shall not receive any compensation pursuant to Section 5 with respect to periods following the Termination Date. Immediately prior to the Termination Date, (x) each share of Restricted Stock not then vested shall become fully vested and (y) each option to acquire Common Stock then held by the Executive (including, the Option) shall become fully vested and exercisable and shall remain exercisable for the remainder of such option's original term. In addition, no later than five (5) days following the Termination Date, the Company shall pay to the Executive the Retention Bonus Account as of the Termination Date.

14. *Termination Notice and Procedure*. Any termination by the Company or the Executive during the Employment Period shall be communicated by written notice of termination ("Notice of Termination") to the Executive, if such Notice is given by the Company, and to the Company, if such Notice is given by the

Executive, all in accordance with the following procedures and those set forth in Section 26 hereof. Any Notice of Termination by the Company for Cause shall be accompanied by a resolution duly adopted by at least two thirds (2/3) of the directors of the Company (or any successor corporation) at a meeting held for the purpose of considering such termination (after reasonable notice to the Executive and an opportunity for the Executive, together with the Executive's counsel, to be heard before the Board).

15. *Excise Tax Gross-up*.

(a) If any of the payments or benefits received or to be received by the Executive, whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement with the Company, Immunex Corporation, or any of their affiliates (all such payments and benefits, excluding the Gross-Up Payment, being hereinafter referred to as the "Total Payments") will be subject to the excise tax imposed under Section 4999 of the Code (the "Excise Tax"), the Company shall pay to the Executive an additional amount (the "Gross-Up Payment") such that the net amount retained by the Executive, after deduction of any Excise Tax on the Total Payments and any federal, state and local income and employment taxes and Excise Tax upon the Gross-Up Payment, and after taking into account the phase out of itemized deductions and personal exemptions attributable to the Gross-Up Payment, shall be equal to the Total Payments. The Gross-Up Payment shall be paid to the Executive no later than the fifth day following the Termination Date (or if there is no Termination Date, then the date on which the Gross-Up Payment is calculated in accordance with this Section 15).

(b) For purposes of determining whether any of the Total Payments will be subject to the Excise Tax and the amount of such Excise Tax, (i) all of the Total Payments shall be treated as "parachute payments" (within the meaning of section 280G(b)(2) of the Code) unless, in the opinion of tax counsel ("Tax Counsel") reasonably acceptable to the Executive and selected by the accounting firm which is the Company's independent auditor (the "Auditor"), such payments or benefits (in whole or in part) do not constitute parachute payments, including by reason of section 280G(b)(4)(A) of the Code, (ii) all "excess parachute payments" within the meaning of section 280G(b)(l) of the Code shall be treated as subject to the Excise Tax unless, in the opinion of Tax Counsel, such excess parachute payments (in whole or in part) represent reasonable compensation for services actually rendered (within the meaning of section 280G(b)(4)(B) of the Code) in excess of the base amount, within the meaning of Section 2806(b)(3) of the Code (the "Base Amount"), allocable to such reasonable compensation, or are otherwise not subject to the Excise Tax, and (iii) the value of any noncash benefits or any deferred payment or benefit shall be determined by the Auditor in accordance with the principles of sections 280G(d)(3) and (4) of the Code. For purposes of determining the amount of the Gross-Up Payment, the Executive shall be deemed to

pay federal income tax at the highest marginal rate of federal income taxation in the calendar year in which the Gross-Up Payment is to be made and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Executive's residence on the Termination Date, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

(c) In the event that the Excise Tax is finally determined to be less than the amount taken into account hereunder in calculating the Gross-Up Payment, the Executive shall repay to the Company, within five (5) business days following the time that the amount of such reduction in the Excise Tax is finally determined, the portion of the Gross-Up Payment attributable to such reduction (plus that portion of the Gross-Up Payment attributable to the Excise Tax and federal, state and local income and employment taxes imposed on the Gross-Up Payment being repaid by the Executive), to the extent that such repayment results in a reduction in the Excise Tax and a dollar-for-dollar reduction in the Executive's taxable income and wages for purposes of federal, state and local income and employment taxes, plus interest on the amount of such repayment at 120% of the rate provided in section 1274(b)(2)(B) of the Code. In the event that the Excise Tax is determined to exceed the amount taken into account hereunder in calculating the Gross-Up Payment (including by reason of any payment the existence or amount of which cannot be determined at the time of the Gross-Up Payment), the Company shall make an additional Gross-Up Payment in respect of such excess (plus any interest, penalties or additions payable by the Executive with respect to such excess) within five (5) business days following the time that the amount of such excess is finally determined. The Executive and the Company shall each reasonably cooperate with the other in connection with any administrative or judicial proceedings concerning the existence or amount of liability for Excise Tax with respect to the Total Payments.

16. *Confidentiality; Release; Other Agreements.*

(a) During and following the Executive's employment by the Company, the Executive shall hold in confidence and not directly or indirectly disclose or use or copy or make lists of any confidential information or proprietary data of the Company, except to the extent authorized by the Board or required by any court or administrative agency, other than to an employee of the Company or a person to whom disclosure is reasonably necessary or appropriate in connection with the performance by the Executive of duties as an executive of the Company. Confidential information shall not include any information known generally to the public or any information of a type not otherwise considered confidential by persons engaged in the same business or a business similar to that of the Company. All records, files, documents and materials, or copies thereof, relating to the business of the Company which the Executive shall prepare, or use, or come into contact with,

shall be and remain the sole property of the Company and shall be promptly returned to the Company upon termination of employment with the Company.

(b) Notwithstanding anything contained herein, the Executive shall not be entitled to receive any payments or benefits under Section 9(b) or Section 11 hereof unless he first executes a written release substantially in the form attached hereto as Exhibit C and such release has become effective.

(c) The Executive shall execute, prior to the Effective Date, the Proprietary Information and Inventions Agreement and the Mutual Agreement to Arbitrate Claims, in each case in the form generally used for senior Company executives (collectively, the "Ancillary Agreements"), provided that notwithstanding anything in such Ancillary Agreements to the contrary, in case of conflicting provisions, the provisions of this Agreement shall control.

17. *Legal Fees and Expenses; Indemnification.*

(a) The Company also shall pay to the Executive all legal fees and expenses incurred by the Executive (a) in disputing any issue hereunder relating to the termination of the Executive's employment or in seeking to obtain or enforce any benefit or right provided by this Agreement (in each case, unless the Executive is acting in bad faith) or (b) in connection with any tax audit or proceeding to the extent attributable to the application of section 4999 of the Code to any payment or benefit provided hereunder. Such payments shall be made within five (5) business days after delivery of the Executive's written requests for payment accompanied with such evidence of fees and expenses incurred as the Company reasonably may require.

(b) To the fullest extent permitted by law, the Company shall indemnify the Executive (including the advancement of expenses) for any judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, incurred by the Executive in connection with the defense of any lawsuit or other claim to which he is made a party by reason of being an officer, director or employee of the Company or any of its subsidiaries. During the Employment Period and for at least three (3) years thereafter, the Company shall use reasonable efforts to maintain customary director, officer and professional liability insurance covering the Executive for acts and omissions prior to and during the Employment Period. The existence or lack of any such insurance shall not limit the Company's indemnification obligation.

18. *No Set-Off or Counterclaim.* Except as expressly provided herein, the amounts and benefits payable hereunder shall not be subject to set-off, counterclaim, recoupment, defense or other claim which the Company may have against him or anyone else. Except as provided in Section 17 of this Agreement, all amounts payable by the Company hereunder shall be paid without notice or demand. Each and every payment made hereunder by the Company shall be final, and the Company

will not seek to recover all or any part of such payment from the Executive, or from whomsoever may be entitled thereto, for any reason whatsoever.

19. *Successors.*

(a) If the Company sells, assigns or transfers all or substantially all of its business and assets to any person or if the Company merges into or consolidates or otherwise combines (where the Company does not survive such combination) with any person (any such event, a "Sale of Business"), then the Company shall cause such person, by written agreement in form and substance reasonably satisfactory to the Executive, to expressly assume and agree to perform from and after the date of such Sale of Business all of the terms, conditions and provisions imposed by this Agreement upon the Company, and from and after such Sale of Business all references to the "Company" in this Agreement shall refer to such person. Failure of the Company to obtain such agreement prior to the effective date of such Sale of Business shall be a breach of this Agreement constituting "Good Reason" hereunder. The Executive shall, in his discretion, be entitled to proceed against any or all of such persons, any person which theretofore was such a successor to the Company (as defined in the first paragraph of this Agreement) and the Company (as so defined) in any action to enforce any rights of the Executive hereunder. This Agreement shall not be assignable by the Company except to any party to a Sale of Business that expressly assumes this Agreement as provided herein. This Agreement shall not be terminated by the voluntary or involuntary dissolution of the Company.

(b) This Agreement and all rights of the Executive shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, heirs and beneficiaries. All amounts payable to the Executive under the Agreement if the Executive had lived shall be paid, in the event of the Executive's death, to the Executive's estate, heirs and representatives; provided, however, that the foregoing shall not be construed to modify any terms of any benefit plan of the Company that expressly govern benefits under such plan in the event of the Executive's death.

20. *Severability.* The provisions of this Agreement shall be regarded as divisible, and if any of said provisions or any part hereof are declared invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of the remainder of such provisions or parts hereof and the applicability thereof shall not be affected thereby.

21. *Entire Agreement.* This Agreement, together with the Ancillary Agreements, constitute the whole agreement of the Company and the Executive regarding the subject matter hereof. No agreements or representation, oral or otherwise, express or implied, with respect to the subject matter of this Agreement

have been made by either party which are not expressly set forth in this Agreement or the Ancillary Agreements.

22. *Amendment*. This Agreement may not be amended or modified at any time except by written instrument executed by the Company and the Executive.

23. *Withholding*. The Company shall be entitled to withhold from amounts to by paid to the Executive hereunder any federal, state or local withholding or other taxes or charges which it is from time to time required to withhold.

24. *Certain Rules of Construction.* No party shall be considered as being responsible for the drafting of this Agreement for the purpose of applying any rule construing ambiguities against the drafter or otherwise. No draft of this Agreement shall be taken into account in construing this Agreement. Any provision of this Agreement which requires an agreement in writing shall be deemed to require that the writing in question be signed by the Executive and an authorized representative of the Company.

25. *Governing Law*. This Agreement and the rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Washington.

26. *Notice*. Notices given pursuant to this Agreement shall be in writing and shall be deemed given when actually received by the Executive or actually received by the Company's Secretary. If mailed, such notices shall be mailed by United States registered or certified mail, return receipt requested, addressee only, postage prepaid, if to the Company, to the Secretary of the Company at its headquarters offices (currently located at Amgen, Inc., One Amgen Center Drive, Thousand Oaks, CA 91320-1797) or if the Executive, at the address set forth below the Executive's signature to this Agreement, or to such other address as the party to be notified shall have theretofore given to the other party in writing.

27. *No Waiver*. No waiver by either party at any time of any breach by the other party of, or compliance with, any condition or provision of this Agreement to be performed by the other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same time or any prior or subsequent time.

28. *Headings.* The headings herein contained are for reference only and shall not affect the meaning or interpretation of any provision of this Agreement.

29. *Counterparts*. This Agreement may be executed in counterparts all of which shall be considered the same hereunder.

30. *Survival*. The obligations of the parties set forth in Sections 1, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 22 and 23 shall survive the termination of the Employment Period and of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

/S/ STEVEN M. ODRE

AMGEN INC.
By: Steven M. Odre

Title: Senior Vice President and General Counsel

/S/ EDWARD V. FRITZKY

EDWARD V. FRITZKY

EXHIBIT C

WAIVER AND RELEASE OF CLAIMS AGREEMENT

YOU HAVE BEEN ADVISED TO CONSULT AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT.

YOU MAY NOT SIGN THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE BEFORE YOU TERMINATE EMPLOYMENT.

YOU HAVE [FORTY-FIVE] [TWENTY-ONE] DAYS AFTER RECEIVING THIS AGREEMENT TO CONSIDER WHETHER TO SIGN IT, ALTHOUGH YOU MAY WAIVE THIS TIME PERIOD BY SIGNING IT SOONER.

AFTER SIGNING THIS AGREEMENT, YOU HAVE ANOTHER SEVEN DAYS IN WHICH TO REVOKE IT, AND IT DOES NOT TAKE EFFECT UNTIL THOSE SEVEN DAYS HAVE ENDED.

1. In consideration of, and subject to, the payments to be made to me pursuant to the Employment Agreement between me and Amgen Inc. (the "Employment Agreement"), the adequacy of which is hereby acknowledged, and which I acknowledge that I would not otherwise be entitled to receive, on behalf of myself and my heirs, representatives, executors, administrators, successors, agents, and assigns, I hereby agree to and hereby do fully, completely, unconditionally, and without limitation release, acquit, and forever discharge Amgen Inc., all related or affiliated companies, and all of its or such related or affiliated companies predecessors, successors, assigns, and parents (collectively the "Company") and with respect to each such entity, its present and former shareholders, parents, owners, officers, directors, agents, partners, joint venturers, employees, servants, independent contractors, customers, consultants, insurers, representatives, lawyers, employee benefit programs (and the trustees, administrators, fiduciaries and insurers of such programs), and all persons acting by, through, under, or in concert with them, or any of them ("Releasees"), both individually and collectively, of and from any and all manner of action or actions, cause or causes of action, suits, rights, claims, debts, liens, demands, contracts, promises, agreements, liabilities, claims, damages, losses, costs, expenses, compensation, attorneys' fees, indemnities, and obligations of every kind and nature, in law, equity, or otherwise, known or unknown, suspected or unsuspected, disclosed and undisclosed, fixed or contingent (hereinafter called "Claims"), which I have, may have, or now claim to have, from the Releasees by reason of any matter, cause, or thing whatsoever, from the beginning of time to the date hereof, including, without limiting the generality of the foregoing, any Claims arising out of, based upon, or relating to my recruitment, hire, employment, relocation, benefits, remuneration, or termination by the Releasees, or any of them. As part of this Agreement, I expressly release and waive any and all Claims arising out of any contract, tort or other common-law theories, and any Claims under any local, state or federal civil rights, labor, and employment laws, including but not limited to the Employee Retirement Income Security Act (ERISA), Title VII of the Civil Rights Act of 1964, the Post Civil War Civil Rights Acts (42 U.S.C. §§ 1981-1988), the Civil Rights Act of 1991, the Equal Pay Act, the Age Discrimination in Employment Act ("ADEA"), the Americans with Disabilities Act, the Older

Workers' Benefit Protection Act ("OWBPA"), the Worker Adjustment and Retraining Notification Act, the Rehabilitation Act of 1973, the Vietnam Veterans Readjustment Assistance Act, the Uniformed Services Employment and Reemployment Rights Act, the Fair Labor Standards Act, Executive Order 11246, the Family and Medical Leave Act, the civil rights, employment and wage and hour laws of the State of Washington including, but not limited to, RCW 49.48, 49.52, and 49.60 (all statutes as amended), or any other federal, state or local law, ordinance, rule, or regulation of any kind, including but not limited to those governing employment, discrimination in employment, termination of employment, or the payment of wages and benefits.

2. Notwithstanding the foregoing or any other provision hereof, nothing in this Waiver and Release of Claims Agreement (this "Agreement") shall adversely affect (i) any Claims I may have under the ADEA which may arise after I sign this Agreement; (ii) my rights under the Employment Agreement; (iii) my rights to any vested benefits other than severance benefits to which I may be entitled under plans, programs and arrangements of the Company or any subsidiary or parent of the Company; (iv) my rights to indemnification, if any, under any indemnification agreement, applicable law and the certificates of incorporation and bylaws or comparable organizational documents of Immunex and any subsidiary or parent of Immunex; and (v) my rights, if any, under any director's and officer's liability insurance policy or professional malpractice insurance policy covering me.

3. I understand that my employment with the Company has terminated forever and I promise never to seek employment with the Company.

4. I acknowledge that I have signed this Agreement voluntarily, knowingly, of my own free will and without reservation or duress, and that no promises or representations, written or oral, have been made to me by any person to induce me to do so other than the promise of payment set forth in paragraph 1 (one) above and the Company's acknowledgment of my rights reserved under the paragraph 2 (two) above.

5. I acknowledge that I have been given not less than [forty-five (45)] [twenty-one (21)] days to review and consider this Agreement. I waive any right I might have to additional time beyond this consideration period within which to consider this Agreement. I may revoke this Agreement seven days or less after its execution by providing written notice to the Vice President of Human Resources of the Company or its parent or successor.

6. I acknowledge that I have had the opportunity to consult with an attorney or other advisor of my choice, at my own expense, and have been advised by the Company or its parent or successor to do so if I choose.

7. For a period of one year after the date of termination of my employment, I agree not to criticize, denigrate or otherwise disparage the Company, any other Releasee, or any of the Company's products, processes, experiments, policies, practices, standards of business conduct, or areas or techniques of research; provided, however, that nothing in this Agreement shall prohibit me from complying with any lawful subpoena or court order.

8. The provisions of this Agreement are severable. If any part of it is found to be unenforceable, all other provisions shall remain fully valid and enforceable.

9. This Agreement shall inure to the benefit of all Releasees and their respective heirs, administrators, representatives, executors, successors, and assigns.

10. I represent and warrant that I have not assigned or transferred, or purported to assign or transfer, all or any part of any Claim released by this Agreement. I represent and warrant that I have not filed or caused to be filed any lawsuit, complaint, or charge with respect to any Claim released in this Agreement, and I promise never to file or prosecute a lawsuit or other complaint or charge asserting any Claims that are released in this Agreement. I promise never to seek any damages, remedies, or other relief for myself personally (any right to which I hereby waive and promise never to accept) by filing or prosecuting a charge with any administrative agency with respect to any Claim purportedly released by this Agreement. I promise never directly or indirectly to bring or participate in an action against any Releasee under California Business & Professions Code Section 17200 or under any other unfair competition law of any jurisdiction. This paragraph 8 shall not apply to ADEA claims if applying it would violate the ADEA or OWBPA.

11. I represent and warrant that I am not aware of any facts that would (a) establish, (b) tend to establish, or (c) in any way support an allegation of a violation by the Company of the federal False Claims Act (or any similar state or federal *qui tam* statute). In addition, in order to ensure that I have complied fully with my obligations under this paragraph 9, I hereby covenant and agree that to the full extent permitted by law, I hereby waive and release any and all rights or claims I may have to any proceeds or awards that I may be entitled to under any *qui tam* proceeding brought against the Company. I further agrees that I shall deliver any such money, proceeds, or awards to the U.S. government.

12. This Agreement shall be governed and interpreted under federal law and the laws of the State of Washington as applied to contracts entered into and to be performed entirely within such state by residents thereof.

13. Finally, I acknowledge that I have carefully read this Agreement and fully understand all of its terms. Except as set forth herein, this is the entire agreement between the parties; it may not be modified or canceled in any manner except by a writing signed by both Immunex or its parent or successor and me. This Agreement is legally binding and enforceable.

I KNOWINGLY AND VOLUNTARILY SIGN THIS WAIVER AND RELEASE OF CLAIMS AGREEMENT.

Signed: /S/ EDWARD V. FRITZKY

Date: 7/15/02

Edward V. Fritzky

Amgen Inc.

By: /S/ STEVEN M. ODRE

Title: Senior Vice President and General Counsel

Date: 7/15/02

Exhibit 10.83

RESTRICTED STOCK PURCHASE AGREEMENT

Edward V. Fritzky, Amgen Inc. Grantee:

On this 15th day of July, 2002 (the "Grant Date"), Amgen Inc., a Delaware corporation (the "Company"), pursuant to its Amended and Restated 1991 Equity Incentive Plan (the "Plan") has granted to you, the grantee named above, a right to purchase One Hundred Thousand (100,000) shares (the "Shares") of the $.0001 par value common stock of the Company ("Common Stock"), pursuant to the terms of this Restricted Stock Purchase Agreement (this "Agreement") and the Plan. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Plan.

I. *Purchase Price*. Subject to the terms and conditions of this Agreement, the Shares may be purchased from the Company at a purchase price per share of $.0001 for a total purchase price of $10.00 (the "Total Purchase Price"). The Total Purchase Price shall be paid in cash at the time of purchase.

II. *Repurchase Option*.

(1) Subject to Sections II (2) and III (1), if your employment is terminated for any reason, the Company shall have the right and option to purchase from you or any holder of the Shares as permitted under Section III (5) (a "Holder") any or all of the Shares at the per Share purchase price paid by you for such Shares (the "Repurchase Option").

(2) If, during the Employment Period, your employment is terminated by the Company for Cause or by you without Good Reason, then any and all of the Shares which remain subject to the Repurchase Option pursuant to Section II (6) as of the Termination Date shall be forfeited and the Company shall purchase such Shares from you or any Holder at the per Share purchase price paid by you for such Shares in accordance with the provisions set forth in Sections II (3) and (4).

(3) The Company may exercise the Repurchase Option by delivering personally or by registered mail, to you or a Holder within ninety (90) days of the date of termination of your employment, a notice in writing indicating the Company's intention to exercise the Repurchase Option and setting forth a date for closing not later than thirty (30) days from the mailing of such notice. The closing shall take place at the Company's office. At the closing, the Secretary of the Company or other escrow agent as provided in Section VI shall deliver to the Company the stock certificate or certificates evidencing the Shares, and the Company shall deliver the purchase price therefor.

(4) At its option, the Company may elect to make payment for the Shares to a bank selected by the Company. The Company shall avail itself of this option by a

notice in writing to you or a Holder stating the name and address of the bank, date of closing, and waiving the closing at the Company's office.

(5) If the Company does not elect to exercise the Repurchase Option conferred above by giving the requisite notice to you or a Holder within ninety (90) days following the date of termination of your employment, the Repurchase Option shall terminate, and any restrictions on Shares remaining as of the date of the termination of your employment shall lapse immediately.

(6) One hundred percent (100%) of the Shares shall initially be subject to the Repurchase Option. The Shares shall be released from the Repurchase Option in accordance with the schedule set forth in Section III (1).

III. *Lapse of Repurchase Option.*

(1) Subject to Sections III (2), (3) and (4), the Repurchase Option shall lapse in accordance with the following schedule with respect to the Shares which have not previously been forfeited by you, provided you are actively employed by the Company on the respective dates:

Date	Number of Shares for Which Repurchase Option Shall Lapse
Grant Date	34,000
First Anniversary of Grant Date	33,000
Second Anniversary of Grant Date	33,000

(2) In addition, the lapsing of the Repurchase Option pursuant to Section III (1) may be suspended during a leave of absence as provided from time to time according to Company policies and practices.

(3) If, during the Employment Period:

(a) Your employment is terminated (a) by you for Good Reason or (b) by the Company other than by reason of death, disability pursuant to Section 13 of the Employment Agreement (as defined below), or Cause, then immediately prior to the Termination Date the Repurchase Option shall lapse with respect to all Shares; or

(b) Your employment is terminated due to your death, then immediately prior to the Termination Date, the Repurchase Option shall lapse with respect to all Shares; or

(c) Your employment is terminated on account of your disability (as set forth in Section 10(a) of the Plan) in accordance with Section 13 of the Employment Agreement (as defined below), then immediately prior to the Termination Date, the Repurchase Option shall lapse with respect to all Shares.

For purposes of Sections II and III, the terms “Employment Period”, “Cause”, “Good Reason”, and “Termination Date” shall have the meanings assigned to such terms in the Employment Agreement dated as of July 15, 2002, between the Company and you (as amended from time to time, the “Employment Agreement”). For purposes of Sections II and III, “your employment is terminated” shall mean the last date you are either an employee of the Company or an Affiliate or engaged as a consultant or director to the Company or an Affiliate.

(4) Notwithstanding anything to the contrary contained herein, the Committee may, as it deems appropriate, in its sole discretion, accelerate the date on which the Repurchase Option shall lapse with respect to any of the Shares which have not been previously forfeited by you.

(5) Your Shares are not assignable or transferable, except by will or the laws of descent and distribution. Notwithstanding the foregoing, all or a portion of the Shares subject to the Repurchase Option may be transferred to an Alternate Payee if required by the terms of a QDRO, as further described in the Plan; provided, that such Alternate Payee is subject to the same terms and conditions as set forth in this Agreement

IV. *Legends.* Certificates representing the Shares issued pursuant to this Agreement shall, until all restrictions lapse or shall have been removed and new certificates are issued pursuant to Section V, bear the following legend:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS AND REPURCHASE RIGHTS AND MAY BE SUBJECT TO FORFEITURE UNDER THE TERMS OF THAT CERTAIN RESTRICTED STOCK PURCHASE AGREEMENT BY AND BETWEEN AMGEN INC. AND THE REGISTERED OWNER OF SUCH SHARES, AND SUCH SHARES MAY NOT BE, DIRECTLY OR INDIRECTLY, OFFERED, TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNDER ANY CIRCUMSTANCES, EXCEPT PURSUANT TO THE PROVISIONS OF SUCH AGREEMENT.”

V. *Issuance of Certificates; Tax Withholding.*

(1) Subject to subsection (2) below, upon the lapse of the Repurchase Option with respect to any of the Shares as provided in Section III, the Company shall cause new certificates to be issued with respect to such Shares and delivered to you or a Holder, free from the legend provided for in Section IV and of the Repurchase Option. Such Shares shall cease to be subject to the terms and conditions of this Agreement.

(2) Notwithstanding subsection (1), no such new certificate shall be delivered to you or a Holder unless and until you or a Holder shall have paid to the Company the full amount of all federal, state and local tax withholding or other employment taxes applicable to your taxable income resulting from the grant of the Shares or the lapse or removal of the restrictions. You hereby agree that you will satisfy any federal, state and local tax withholding obligation relating to the grant of the Shares (resulting from an election under Internal Revenue Code Section 83(b) or otherwise) or the lapse of the Repurchase Option with respect to any of the Shares as provided in Section III by authorizing the Company to withhold from the shares of the Common Stock otherwise deliverable to you upon grant or as a result of the lapse of the Repurchase Option with respect to any of the Shares as provided in Section III, a number of shares having a fair market value less than or equal to the amount of the Company's required minimum statutory withholding. Shares of Common Stock tendered by you pursuant to this paragraph shall be valued at the fair market value of the Common Stock on the date your tax obligations arise. You agree to take any further actions and execute any additional documents as may be necessary to effectuate the provisions of this Section V.

VI. *Escrow.* The Secretary of the Company or such other escrow holder as the Committee may appoint shall retain physical custody of the certificates representing the Shares until all of the restrictions lapse or shall have been removed; and in no event shall you retain physical custody of any certificates representing Shares issued to you which are subject to the Repurchase Option.

VII. *No Contract for Employment.* This Agreement is not an employment or service contract and nothing in this Agreement shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ or service of the Company, or of the Company to continue your employment or service with the Company.

VIII. *Notices.* Any notices provided for in this Agreement or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at such address as is currently maintained in the Company's records or at such other address as you hereafter designate by written notice to the Company.

IX. *Plan.* This Agreement is subject to all the provisions of the Plan and its provisions are hereby made a part of this Agreement, including without limitation the provisions of paragraph 7 of the Plan relating to purchases of restricted stock, and is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of this Agreement and those of the Plan, the provisions of the Plan shall control.

Very truly yours,

AMGEN INC.

By: /S/ STEVEN M. ODRE

Duly authorized on behalf of the Board of Directors

Agreed and Accepted
as of the date first written above

/S/ EDWARD V. FRITZKY

Edward V. Fritzky

Exhibit 10.84

GRANT OF STOCK OPTION

Edward V. Fritzky, Amgen Inc. Stock Optionee:

Amgen Inc., a Delaware corporation (the "Company"), pursuant to its Amended and Restated 1991 Equity Incentive Plan (the "Plan") has on July 15, 2002 (the "Grant Date"), granted to you, the optionee named above, an option to purchase 450,000 shares (the "Option Shares") of the $.0001 par value common stock of the Company ("Common Stock") pursuant to the terms hereof. This option is not intended to qualify and will not be treated as an "incentive stock option" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

The provisions of your option are as follows:

I. Subject to Section V and the limitations contained herein, this option shall be exercisable as follows:

# Option Shares	Date Exercisable
150,000	Grant Date
150,000	First anniversary of Grant Date
150,000	Second anniversary of Grant Date

Notwithstanding anything herein to the contrary, such vesting schedule may be accelerated by the Company in its sole discretion at any time during the term of this option. In addition, vesting may be suspended during a leave of absence as provided from time to time according to Company policies and practices.

II. (1) The per share exercise price of this option is *$31.07*, being not less than the fair market value of the Common Stock on the date of grant of this option.

(2) To the extent permitted by applicable statutes and regulations, payment of the exercise price per share is due in full in cash or check upon exercise of all or any part of each installment which has become exercisable by you. However, if at the time of exercise, the Company's Common Stock is publicly traded and quoted regularly in the *Wall Street Journal*, payment of the exercise price may be made by delivery of already-owned shares of Common Stock of a value equal to the exercise price of the shares of Common Stock for which this option is being exercised. The already-owned shares must have been owned by you for the period required to avoid a charge to the Company's reported earnings and owned free and clear of any liens, claims, encumbrances or security interests. Payment may also be made by a combination of cash and already-owned Common Stock.

III. Notwithstanding anything to the contrary contained herein, this option may not be exercised unless the shares issuable upon exercise of this option are then registered under the Securities Act of 1933, as amended (the "Act"), or, if such shares are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Act.

IV. The term of this option commences on the Grant Date and, unless sooner terminated as set forth in the Plan, terminates on the fifth anniversary of the Grant Date (the "Expiration Date").

V. If, during the Employment Period:

(1) Your employment is terminated by the Company for Cause, or by you without Good Reason, then any portion of the Option Shares which is unvested as of the Termination Date shall be forfeited and the option shall remain exercisable until the Expiration Date with respect to any vested portion of the option; or

(2) Your employment is terminated (a) by you for Good Reason or (b) by the Company other than by reason of death, disability pursuant to Section 13 of the Employment Agreement (as defined below), or Cause, then immediately prior to the Termination Date the option shall accelerate and be exercisable in full and the option shall remain exercisable until the Expiration Date; or

(3) Your employment is terminated due to your death, then immediately prior to the Termination Date, the option shall accelerate and be exercisable in full and the option remain exercisable until the Expiration Date; or

(4) Your employment is terminated on account of your disability (as set forth in Section 10(a) of the Plan) in accordance with Section 13 of the Employment Agreement (as defined below), then immediately prior to the Termination Date, the option shall accelerate and be exercisable in full and the option shall remain exercisable until the Expiration Date.

For purposes of this Section V, the terms "Employment Period", "Cause", "Good Reason", and "Termination Date" shall have the meanings assigned to such terms in the Employment Agreement dated as of July 15, 2002, between the Company and you (as amended from time to time, the "Employment Agreement"). For purposes of this Section V, "your employment is terminated" shall mean the last date you are either an employee of the Company or an Affiliate or engaged as a consultant or director to the Company or an Affiliate.

VI. (1) To the extent specified above, this option may be exercised by delivering a Notice of Exercise of Stock Option form, together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then

require pursuant to subparagraph 5(f) of the Plan.

(2) As a condition to the issuance of shares upon the exercise of this option, the Company may require you to enter an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of: (1) the exercise of this option; (2) the lapse of any substantial risk of forfeiture of which the shares are subject at the time of exercise; or (3) the disposition of shares acquired upon such exercise.

VII. This option is not transferable, except by will or the laws of descent and distribution, and is exercisable during your life only by you except as set forth below:

(1) If you have named a Trust (as defined in the Plan) as beneficiary of this option, this option may be exercised by the Trust after your death; and

(2) All or a portion of your option may be transferred to an Alternate Payee (as defined in the Plan) if required by the terms of a QDRO (as defined in the Plan), as further described in the Plan.

VIII. This option is not an employment or service contract and nothing in this option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ or service of the Company, or of the Company to continue your employment or service with the Company.

IX. Any notices provided for in this option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the address specified in the Option Notice or at such other address as you hereafter designate by written notice to the Company.

X. This option is subject to all the provisions of the Plan and its provisions are hereby made a part of this option, including without limitation the provisions of paragraph 5 of the Plan relating to option provisions, and is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of this option (including the Option Notice) and those of the Plan, the provisions of the Plan shall control.

Very truly yours,

AMGEN INC.

By: /S/ STEVEN M. ODRE

Duly authorized on behalf of the Board of Directors

Exhibit 10.85

July 15, 2002

Dr. Douglas E. Williams, Ph.D.

Dear Doug:

It is our sincere pleasure to welcome you to Amgen. This letter summarizes the terms of your continuing employment. You will continue to be employed as a full time staff member. Your position will be Senior Vice President, Research, Amgen salary grade 37. Your base salary will be $37,500.00 per month.

In addition, a stock option for you to purchase 125,000 shares of Common Stock at a price equal to 100% of the fair market value on the date of close has been approved by the Amgen's Compensation Committee. All of these shares will vest at the following rate: Forty thousand (40,000) shares shall vest on the date which is two years and one day after the date of grant, forty thousand (40,000) shares shall vest on the date which is three years and one day after the date of grant, and forty five thousand (45,000) shares shall vest on the date which is four years and one day after the date of grant, provided you are still employed on those dates and the options will expire seven years from the date of grant.

In addition, you will receive a grant of restricted stock for 15,000 shares. All of the shares will vest at the following rate: Seven thousand five hundred (7,500) shares will vest and the restrictions thereon will lapse on the date which is two years and one day after the date of grant, and seven thousand five hundred (7,500) shares will vest and the restrictions thereon will lapse on the date which is three years and one day after the date of grant. Should you terminate employment with Amgen prior to the vesting dates, unvested shares will be repurchased by Amgen at the per share ($0.01) purchase price paid by you for such shares. Amgen will hold these stock certificates until they vest.

Immunex will pay a prorated 2002 incentive payment through close. Effective as of the date of close, you will be eligible to participate in Amgen's Management Incentive Plan (MIP) with a target award of 65% of eligible base pay. Through December 31, 2005, your incentive target will be the higher of the incentive target applicable to your Amgen grade or your current Immunex incentive target. In order to be eligible to receive an incentive payment under MIP, you must be an active employee on December 31 of the plan year.

You will also be eligible to participate in the Amgen Deferred Compensation Plan (the "DCP"). The DCP is a non-qualified executive benefit plan that enables staff at grade levels 30 and above to defer, on a pre-tax basis, a portion of their annual pay, including MIP payments. Information about the DCP and the necessary enrollment forms were provided to you at briefings the week of July 8th. They are also available from the HR Service Center (extension 56100). Should you decide to accept this offer of employment and participate in the DCP for the remainder of 2002 (base and/or bonus), you must complete the enrollment materials and return them in the envelope provided to Clark/Bardes no later than July 31, 2002. Enrollment for the 2003 plan year will be conducted during November 2002. Enrollment materials received after July 31, 2002 will not be accepted.

Amgen and Immunex have designed a total benefits program for the combined company which is very competitive. Best practices from both companies have been incorporated to produce what we believe is an industry leading benefit package. Informational briefings will be available to you, and a benefits summary brochure is concurrently being made available. We anticipate that the combined benefit offering will be effective January 1, 2003.

By signing this letter, you understand and agree that your employment with Immunex and Amgen (collectively, "the Company") is at-will. Therefore, your employment can terminate, with or without cause, and with or without notice, at any time, at your option or the Company's option, and the Company can terminate or change all other terms and conditions of your employment, with or without cause, and with or without notice, at any time. This at-will relationship will remain in effect throughout your employment with the Company or any of its subsidiaries or affiliates. This letter constitutes the entire agreement, arrangement and understanding between you and the Company on the nature and terms of your employment with the Company. This letter supersedes any prior or contemporaneous agreement, arrangement or understanding on this subject matter. By executing this letter as provided below, you expressly acknowledge the termination of any such prior agreement, arrangement or understanding. (However, nothing in this paragraph shall limit or in any other way affect any Mutual Agreement to Arbitrate Claims—or amendments thereto—that you have entered into with the Company.) Also, by your execution of this letter, you affirm that no one has made any written or verbal statement that contradicts the provisions of this letter. The at-will nature of your employment, as set forth in this paragraph, can be modified only by a written agreement signed by both Amgen's Senior Vice President of Human Resources and you which expressly alters it. This at-will relationship may not be modified by any oral or implied agreement or by any Company policies, practices or patterns of conduct. Please note that this letter does not alter or waive your potential benefits, if any, under the Immunex Corporation Retention Plan, Immunex Corporation Leadership Continuity Plan, Immunex Corporation Employee Severance Plan, and/or the Purchase Agreement among American Homes Products Corporation (now named Wyeth)/AHP Subsidiary Holding Corporation and Immunex Corporation and the Severance Agreement by and between the Company and Douglas E. Williams dated December 16, 2001.

We are excited to have you join Amgen and are enthusiastic about the contribution that you can make. We also believe that Amgen can provide you with attractive opportunities for professional achievement and growth. As a precondition to employment with Amgen, it is necessary for you to (1) sign and date the enclosed copy of this letter, (2) complete, sign and date the attached Amended and Restated Proprietary Information and Inventions Agreement and Data Request and Transfer Form, and (3) return all three fully-executed documents to Attn: HR Service Center, 51 University Street, Seattle WA 98101 no later than the close of business on the second business day following receipt of this assignment letter. Please retain one original offer letter for your records. If you do not return fully executed copies of the foregoing documents by the close of business on the second business day following receipt of this assignment letter, Amgen will consider you to have voluntarily resigned your employment (in which case you would not be eligible to receive severance benefits). If you have any questions regarding this offer, please contact your HR manager, the Amgen HR representative who is on site, or *HR On-Call* in Thousand Oaks at (800) 9-AMGEN-9, extension 71111.

Sincerely,

Roger M. Perlmutter
Executive Vice President, Research & Development

RMP:ma
Enclosures

/s/ DOUGLAS E. WILLIAMS	7/15/02
Signature of Acceptance	**Date**

ATTACHMENT 1
Page 1 of 1

As a precondition to employment with Amgen you are required to:

A) Sign, date and return the enclosed copy of this letter.

B) Complete, date and sign the Amended and Restated Proprietary Information and Inventions Agreement and return it with your signed assignment letter.

C) Complete, sign and date all sections of the enclosed Data Request and Transfer Form and return it with your signed assignment letter.

EXHIBIT 10.86

PROMISSORY NOTE

$500,000.00

1. Promise to Pay.

For value received, I, Hassan Dayem ("Staff Member"), a married man, and I, Katherine Dayem, wife of Staff Member, promise to pay to the order of Amgen Inc., a Delaware corporation ("Payee"), at its office at One Amgen Center Drive, Thousand Oaks, CA 91320-1789, the sum of Five Hundred Thousand Dollars and No Cents ($500,000.00) (the "Principal"), payable in full on the earlier of five (5) years from date of execution of this Note or thirty (30) days from the date on which Staff Member ceases to be an employee of Payee, whichever first occurs, together with interest on the Principal from the date of this Note until such date as the Note is paid in full. Interest on this Note shall be computed as set forth below. The interest rate for the period from the date of this Note through December 31, 2002 (the "initial rate") is 4.00% per annum on the unpaid Principal. After December 31, 2002 the interest rate on this Note shall change as set forth below.

2. Adjustable Interest Rate.

The interest rate shall be adjusted annually on January 1 of each year (the "Change Date") so as to equal the average interest rate designated as the "Introduction Rates" on adjustable rate loans as publicly offered by the banks and savings and loans in California as published by the Los Angeles Times in its Sunday edition. The rate shall be set using the rates published in the Los Angeles Times on the Sunday immediately preceding the Change Date. In the event that the "Introduction Rates" list is not published in the Los Angeles Times for any reason, then, in such event, the Payee shall establish the interest rate based on a survey by it of the introductory interest rates on adjustable loans offered by no fewer than five banking institutions located in Southern California that the Payee, in its sole discretion, deems representative of banking institutions in the Ventura and Los Angeles County areas. Payee shall give Staff Member notice if the interest rate shall be determined using this alternative method. Notwithstanding the foregoing, the interest rate shall never be increased or decreased on any single Change Date by more than one percentage point from the interest rate for the preceding 12 months. At no time during the term of this Note shall the annual interest rate exceed 7.00% per annum.

Payee shall deliver or mail to Staff Member a notice of any changes in the adjustable interest rate on this Note and the amount of the Staff Member's semi-monthly payroll deductions before the effective date of any change. The notice shall include information required by law to be given to Staff Member and also the title and telephone number of a person who shall answer any questions Staff Member may have regarding the notice.

3. Salary Deduction.

The interest on this Note shall be payable by semi-monthly deductions from Staff Member's salary. The amount of such deductions shall initially be Eight Hundred Thirty-Three Dollars and Thirty-Three Cents ($833.33) per installment; provided, however, that the manner of payment of this Note shall not be limited to deductions from Staff Member's salary. The amount of such deductions shall be adjusted annually concurrently with any adjustment in the interest rate on this Note to ensure that interest to be incurred during the ensuing calendar year shall be paid in twenty-four (24) equal payments. The first such installment shall be on July 31, 2002; second installment shall be on August 15, 2002; and each successive installment shall be on the fifteenth and last days of each successive month until the Principal is repaid. Payee shall give Staff Member at least seven (7) days advance notice of any adjustment in the amount of said payroll deductions. Staff Member

acknowledges and agrees that by executing this Note, Staff Member agrees to the payroll deductions described in this Note.

4. Option to Convert.

At the end of the term of this Note, Staff Member shall have the option to seek to convert this loan to a loan amortized over an additional five-year period by executing a new Promissory Note at terms to be mutually agreed upon by Staff Member and Payee. In the event that Staff Member and Payee are unable to reach agreement on such terms, this Note shall become immediately due and payable.

5. Prepayment.

Staff Member may prepay without penalty this Note in whole or in part at any time. Any and all payments or prepayments under this Note may be made by Staff Member to Payee at the following address (or such other address as it designates in writing to Staff Member):

AMGEN INC.
One Amgen Center Drive
Thousand Oaks, California 91320-1789
Attention: Accounting Manager

6. Attorneys' Fees.

Staff Member agrees to pay all costs and expenses, including, without limitation, collection agency fees and expenses, reasonable attorneys' fees, costs of suit and costs of appeal, which Payee may incur in the exercise, preservation or enforcement of its right, powers and remedies hereunder, or under any documents or instruments securing this Note, or under law.

7. Modification of Terms.

Payee may, with or without notice to Staff Member, cause additional parties to be added to this Note, or release any party to this Note, or revise, extend, or renew the Note, or extend the time for making any installment provided for by this Note, or accept any installment in advance, all without affecting the liability of Staff Member. Staff Member may not assign or transfer in any manner whatsoever this Note or any of Staff Member's obligations under this Note.

8. Security Interest.

The purpose of this loan is to purchase a personal residence. Staff Member shall secure this loan by executing and causing to be filed, immediately upon close of escrow, a trust deed on this residence, commonly known as 13527 River Run Drive, Camarillo, CA 93012 whose property description is as follows: legal description attached hereto and made a part hereof.

9. Acceleration.

A) In the event Staff Member fails to pay when due any sums under this Note, then:

(1) the entire unpaid balance of this Note shall, at the option of the Payee hereof, immediately become due and payable in full and unpaid Principal thereafter shall bear

interest at the lesser of the maximum rate permitted by law or at the rate of 7.00% per annum; and

(2) Staff Member authorizes Payee to deduct any sums due to Payee under this Note from any monies, including any wages due, otherwise owing to Staff Member.

B) If Staff Member sells the residence which is purchased with the funds herein provided, this Note shall immediately become due and payable upon the sale of such residence.

10. Waiver of Rights by Staff Member.

Staff Member waives (1) presentment, demand, protest, notice of dishonor and/or protest and notice of non-payment; (2) the right, if any, to the benefit of, or to direct the application of, any security hypothecated to Payee until all indebtedness of Staff Member to Payee, however arising, has been paid; and (3) the right to require the Payee to proceed against any party to this Note, or to pursue any other remedy in Payee's power. Payee may proceed against Staff Member directly and independently of any other party to this Note, and the cessation of the liability of any other party for any reason other than full payment, or any revision, renewal, extension, forbearance, change of rate of interest, or acceptance, release or substitution of security, or any impairment or suspension of Payee's remedies or rights against any other party, shall not in any way affect the liability of Staff Member.

11. Obligations of Persons Under this Note.

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Payee may enforce its rights under this Note against each person individually or against all of the signatories to this Note. This means that any one of the signatories to this Note may be required to pay all of the amounts owed under this Note.

12. Governing Law.

This Note and the obligations under this Note of Staff Member or any other signatory to this Note shall be governed by and interpreted and determined in accordance with the laws of the State of California as applied to contracts between California residents entered into and to be performed entirely within said State.

IN WITNESS WHEREOF, the undersigned has/have executed and delivered this Note as of the 10th day of July, 2002.

/s/ HASSAN DAYEM

Hassan Dayem

/s/ KATHERINE DAYEM

Katherine Dayem