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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d) of the**  
**Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) **July 28, 2003**

**SONUS PHARMACEUTICALS, INC.**

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(Exact name of Registrant as specified in charter)

Delaware  
(State or other jurisdiction  
of incorporation)

0-26866  
(Commission  
File Number)

95-4343413  
(I.R.S. Employer  
Identification No.)

**22026 20th Avenue S.E.**  
**Bothell, Washington 98021**  
(Address of principal executive offices and zip code)

**(425) 487-9500**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed, since last report)

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**ITEM 5. OTHER EVENTS AND REGULATION FD DISCLOSURE.**

On July 29, 2003, Sonus Pharmaceuticals, Inc., a Delaware corporation (“Sonus”), issued a press release announcing that it raised approximately \$14.2 million in gross proceeds through a private placement to accredited investors of approximately 3.9 million shares of Sonus Common Stock and warrants to purchase approximately 1.95 million shares of Sonus Common Stock. The Common Stock was sold at a price of \$3.56 per share. The warrants were sold at a price of \$0.125 per share underlying each warrant and have an exercise price of \$4.09 per share. A copy of the press release is attached hereto as Exhibit 99.1.

The Securities issued in the private placement have not been registered under the Securities Act of 1933, as amended, and until so registered the Securities may not be offered or sold in the United States absent registration or availability of an applicable exemption from registration. Pursuant to a Registration Rights Agreement, Sonus is required to prepare and file with the Securities and Exchange Commission, within 30 days after the closing date, a registration statement for the purpose of registering for resale all of the shares of Sonus’ Common Stock sold and issuable upon exercise of the warrants sold in the private placement.

The foregoing description of the private placement does not purport to be complete and is qualified in its entirety by reference to the Securities Purchase Agreement dated July 25, 2003, which is attached hereto as Exhibit 10.1, the Registration Rights Agreement dated July 25, 2003, which is attached hereto as Exhibit 10.2, and the form of Purchase Warrant attached hereto as Exhibit 4.1, each of which is incorporated herein by this reference.

**ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS.**

(a)-(b) Not applicable.

(c)	Exhibits.
4.1	Form of Purchase Warrant issued by the Company to each investor dated July 28, 2003.
10.1	Securities Purchase Agreement by and among the Company and the investors named therein, dated July 25, 2003.
10.2	Registration Rights Agreement by and among the Company and the investors named therein, dated July 25, 2003.
99.1	Press Release of Sonus Pharmaceuticals, Inc. issued on July 29, 2003, announcing \$14.2 million private placement financing.

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**SIGNATURES**

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

Dated: August 8, 2003

SONUS PHARMACEUTICALS, INC.

/s/ Richard J. Klein \_\_\_\_\_

Richard J. Klein  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

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**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
4.1	Form of Purchase Warrant issued by the Company to each investor dated July 28, 2003.
10.1	Securities Purchase Agreement by and among the Company and the investors named therein, dated July 25, 2003.
10.2	Registration Rights Agreement by and among the Company and the investors named therein, dated July 25, 2003.
99.1	Press Release of Sonus Pharmaceuticals, Inc. issued on July 29, 2003, announcing \$14.2 million private placement financing.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD, EXCHANGED, HYPOTHECATED OR TRANSFERRED IN ANY MANNER EXCEPT PURSUANT TO A REGISTRATION OR AN EXEMPTION FROM SUCH REGISTRATION.

PURCHASE WARRANT

Issued to:

\_\_\_\_\_

Exercisable to Purchase

\_\_\_\_\_ Shares of Common Stock

of

SONUS PHARMACEUTICALS, INC.

Void after July \_\_, 2008

This is to certify that, for the value described herein and subject to the terms and conditions set forth below, the Warrantholder is entitled to purchase, and the Company promises and agrees to sell and issue to the Warrantholder, at any time on or after July , 2003 (the "Effective Date"), pursuant to Section 3 hereof, up to \_\_\_\_\_ shares of the Company's Common Stock at the Exercise Price.

This Warrant certificate is issued subject to the following terms and conditions:

1. Definitions of Certain Terms. Except as may be otherwise clearly required by the context, the following terms have the following meanings:

(a) "Common Stock" means the common stock, \$0.001 par value, of the Company.

(b) "Company" means Sonus Pharmaceuticals, Inc., a Delaware corporation.

(c) "Effective Date" has the meaning set forth in the preamble to this Agreement.

(d) "Exercise Period" means the period of time commencing on the Effective Date and ending at 5 p.m. Pacific Time on the fifth anniversary of the Effective Date during the Exercise Period.

(e) "Exercise Price" means the price at which the Warrantholder may purchase one Share upon exercise of Warrants as determined from time to time pursuant to the provisions hereof. The initial Exercise Price is \$4.09 per Share, which is equal to 115% of the purchase price per share of Common Stock paid by Warrantholder under the Securities Purchase Agreement.

(f) "Securities Act" means the Securities Act of 1933, as amended.

(g) "Securities Purchase Agreement" means the Securities Purchase Agreement dated as of July 25, 2003 among the Company and the Investors referenced therein.

(h) "Share" or "Shares" refers to one or more shares of Common Stock issuable on exercise of the Warrant.

(i) "Warrant" means the warrant evidenced by this certificate or any certificate obtained upon transfer or partial exercise of the Warrant evidenced by any such certificate.

(j) "Warrantholder" means a record holder of the Warrant or Shares. The initial Warrantholder is \_\_\_\_\_.

2. Purchase of Warrant. Concurrently with the issuance hereof, the Warrantholder shall pay to the Company as consideration for the Warrant the sum of \$0.125 per Share issuable upon exercise of the Warrant, or \$\_\_\_\_\_ in the aggregate.

3. Exercise of Warrants. All or any part of the Warrant may be exercised during the Exercise Period by surrendering the Warrant, together with appropriate instructions, duly executed by the Warrantholder or by its duly

authorized attorney, and delivery of payment in full by the Warrantholder, in lawful money of the United States, of the Exercise Price payable with respect to the Shares being purchased at the office of the Company, 22026 20th Avenue S.E., Bothell, Washington, 98021, Attention: President, or at such other office or agency as the Company may designate. The date on which such instructions and the Exercise Price are received by the Company shall be the date of exercise. Upon receipt of notice of exercise and the Exercise Price, the Company shall immediately instruct its transfer agent to prepare certificates for the Shares to be received by the Warrantholder and shall use commercially reasonable efforts to cause such certificates to be prepared and delivered to the Warrantholder in accordance with the Warrantholder's instructions within three business days after the date of exercise. If the Warrantholder shall provide the Company with an opinion of counsel to the effect that the legend set forth on the face of this Warrant is not required, such certificates shall not bear a legend with respect to the Securities Act.

If fewer than all the Shares purchasable under the Warrant are purchased, the Company will, upon such partial exercise, execute and deliver to the Warrantholder a new Warrant certificate (dated the date hereof), in form and tenor similar to this Warrant certificate, evidencing that portion of the Warrant not exercised. The Shares to be obtained on exercise of the Warrant will be deemed to have been issued, and any person exercising the Warrants will be deemed to have become a holder of record of those Shares, as of the date of the payment of the Exercise Price.

4. Adjustments in Certain Events. The number, class, and price of the Shares for which this Warrant is exercisable are subject to adjustment from time to time upon the happening of certain events as follows:

(a) If the outstanding shares of the Company's Common Stock are divided into a greater number of shares or a dividend in stock is paid on the Common Stock, the number of Shares for which the Warrant is then exercisable will be proportionately increased and the Exercise Price will be proportionately reduced; and, conversely, if the outstanding shares of Common Stock are combined into a smaller number of shares of Common Stock, the number of Shares for which the Warrant is then exercisable will be proportionately reduced and the Exercise Price will be proportionately increased. The increases and reductions provided for in this subsection 4(a) will be made with the intent and, as nearly as practicable, the effect that neither the percentage of the total equity of the Company obtainable on exercise of the Warrants nor the price payable for such percentage upon such exercise will be affected by any event described in this subsection 4(a).

(b) In case of any change in the Common Stock through merger, consolidation, reclassification, reorganization, partial or complete liquidation, purchase of substantially all the assets of the Company, or other change in the capital structure of the Company, then, as a condition of such change, lawful and adequate provision will be made so that the holder of this Warrant will have the right thereafter to receive upon the exercise of the Warrant the kind and amount of shares of stock or other securities or property to which he would have been entitled if, immediately prior to such event, he had held the number of Shares obtainable upon the exercise of the Warrant. In any such case, appropriate adjustment

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will be made in the application of the provisions set forth herein with respect to the rights and interest thereafter of the Warrantholder, to the end that the provisions set forth herein will thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the exercise of the Warrant. The Company will not permit any change in its capital structure to occur unless the issuer of the shares of stock or other securities to be received by the holder of this Warrant, if not the Company, agrees to be bound by and comply with the provisions of this Warrant.

(c) When any adjustment is required to be made in the number of Shares or other securities or property purchasable upon exercise of the Warrant, the Company will promptly determine the new number of such Shares or other securities or property purchasable upon exercise of the Warrant and (i) prepare and retain on file a statement describing in reasonable detail the method used in arriving at the new number of such Shares or other securities or property purchasable upon exercise of the Warrant and (ii) cause a copy of such statement to be mailed to the Warrantholder within thirty (30) days after the date of the event giving rise to the adjustment.

(d) No fractional shares of Common Stock or other securities will be issued in connection with the exercise of the Warrant, but the Company will pay, in lieu of fractional shares, a cash payment therefor on the basis of the mean between the bid and asked prices of the Common Stock in the over-the-counter market or the closing price on a national securities exchange on the day immediately prior to exercise.

(e) If securities of the Company or securities of any

subsidiary of the Company are distributed pro rata to holders of Common Stock, such number of such securities will be distributed to the Warrantholder or his assignee upon exercise of this Warrant as the Warrantholder or assignee would have been entitled to if the portion of the Warrant evidenced by this Warrant certificate had been exercised prior to the record date for such distribution. The provisions with respect to adjustment of the Common Stock provided in this Section 4 will also apply to the securities to which the Warrantholder or his assignee is entitled under this subsection 4(e).

(f) In the event (i) the Company establishes a record date to determine the holders of any class of securities who are entitled to receive any dividend or other distribution or (ii) there occurs any change in the Common Stock through merger, consolidation, reclassification, reorganization, partial or complete liquidation, purchase of substantially all of the assets of the Company or other change in the capital structure of the Company, the Company shall give to the holder hereof a notice specifying (a) the date of such record date for the purpose of such dividend or distribution and a description of such dividend or distribution, (b) the date on which any such merger, consolidation, reclassification, reorganization, sale, liquidation or other change in the capital structure of the Company is expected to become effective, and (c) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such merger, consolidation, reclassification, reorganization, sale, liquidation or other change in the capital structure of the Company. Such written notice shall be given to the holder of this Warrant at least twenty (20) days prior to the date specified in such notice on which any such action is to be taken.

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5. Reservation of Shares. The Company agrees that the number of shares of Common Stock or other securities sufficient to provide for the exercise of the Warrant upon the basis set forth above will at all times during the term of the Warrant be reserved for exercise. If at any time the Company does not have a sufficient number of shares of Common Stock or other securities authorized to provide for the exercise of the Warrant, the Company shall take such actions as may be reasonably necessary to increase the number of authorized shares of Common Stock or other securities to provide for exercise of the Warrant.

6. Validity of Shares. All Shares or other securities delivered upon the exercise of the Warrant will be duly and validly issued in accordance with their terms, and, in the case of capital stock, will, when issued and delivered in accordance with their terms against payment therefor as provided in the Warrant, be fully paid and nonassessable, and the Company will pay all documentary and transfer taxes, if any, in respect of the original issuance thereof upon exercise of the Warrant.

7. Restrictions on Transfer. This Warrant may not be sold, transferred, assigned or hypothecated except as permitted pursuant to Section 2.6 of the Securities Purchase Agreement. The Warrant may be divided or combined, upon request to the Company by the Warrantholder, into a certificate or certificates evidencing the same aggregate number of Warrants.

8. No Rights as a Stockholder. Except as otherwise provided herein, the Warrantholder will not, by virtue of ownership of the Warrant, be entitled to any rights of a stockholder of the Company but will, upon written request to the Company, be entitled to receive such quarterly or annual reports as the Company distributes to its stockholders.

9. Notice. Any notices required or permitted to be given under the terms of this Warrant must be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile and will be effective five (5) days after being placed in the mail, if mailed by regular U.S. mail, or upon receipt, if delivered personally, by courier (including a recognized overnight delivery service) or by facsimile, in each case addressed to a party. The addresses for such communications are:

If to the Company:

Chief Financial Officer  
Sonus Pharmaceuticals, Inc.  
22026 20th Avenue S.E.  
Bothell, Washington 98021  
fax (425) 489-0626

If to a Warrantholder: to the address set forth immediately below the Warrantholder's name on the signature pages hereto.

Each party will provide written notice to the other parties of any change in its address.



10. Applicable Law. This Warrant will be governed by and construed in accordance with the laws of the State of Delaware, without reference to conflict of laws principles thereunder.

11. Entire Agreement. This Warrant, the exhibits and schedules hereto, and the documents referred to herein, constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof.

12. Waiver; Consent. This Warrant may not be changed, amended, terminated, augmented, rescinded or discharged (other than by performance), in whole or in part, except by a writing executed by the parties hereto, and no waiver of any of the provisions or conditions of this Warrant or any of the rights of a party hereto shall be effective or binding unless such waiver shall be in writing and signed by the party claimed to have given or consented thereto.

13. No Impairment. The Company will not, by amendment of its Charter or by any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder of this Warrant against impairment.

14. Remedies. The Company stipulates that the remedies at law of the Warrantholder of this Warrant in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not adequate and may be enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

15. Severability. If one or more provisions of this Warrant are held to be unenforceable under applicable law, such provision shall be excluded from this Warrant and the balance of the Warrant shall be interpreted as if such provision were so excluded and the balance shall be enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Warrant effective as of the date set forth below.

Dated as of July \_\_, 2003

SONUS PHARMACEUTICALS, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Agreed and Accepted as of July \_\_, 2003

[WARRANTHOLDER]

By: \_\_\_\_\_  
Its: \_\_\_\_\_

NOTICE OF EXERCISE

To: SONUS PHARMACEUTICALS, INC.

The undersigned hereby elects to purchase \_\_\_\_\_ shares of Common Stock (the "Shares") of Sonus Pharmaceuticals, Inc., a Delaware corporation (the "Company") pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price pursuant to the terms of the Warrant.

Please issue certificates representing the Common Stock purchased hereunder in the names and in the denominations indicated below.

Please issue a new Warrant for the unexercised portion of the attached Warrant, if any, in the name of the undersigned.

Dated: \_\_\_\_\_

No. Warrant Shares: \_\_\_\_\_ Name: \_\_\_\_\_

Print Name of Stockholder: \_\_\_\_\_ Title: \_\_\_\_\_



## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of July 25, 2003 is made by and among Sonus Pharmaceuticals, Inc., a Delaware corporation, with headquarters located at 22026 20th Avenue S.E., Bothell, Washington 98021 (the "Company"), and the investors named on the signature pages hereto, together with their permitted transferees (each, an "Investor" and collectively, the "Investors").

## RECITALS:

A. The Company and the Investors are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act and Rule 506 under Regulation D.

B. The Investors desire, upon the terms and conditions stated in this Agreement, to purchase shares of the Company's Common Stock (the "Common Shares") and warrants, in the form of Exhibit A hereto, to purchase such number of shares of the Company's Common Stock equal to 50% of the Common Shares purchased by the Investors, rounded down to the nearest whole share (the "Warrants," and collectively with the Common Shares, the "Securities"), for an aggregate purchase price of at least Ten Million Dollars (\$10,000,000) and not to exceed Twenty Million Dollars (\$20,000,000). The purchase price per share of the Common Shares is \$3.56, which is equal to the lesser of (i) average per share closing prices as reported on Nasdaq for the five (5) trading days ending on the day prior to the date of this Agreement or (ii) the per share closing price as reported on Nasdaq on the trading day immediately preceding the date of this Agreement. The purchase price for each Warrant is \$.125 multiplied by the number of Shares of Common Stock purchasable under each Warrant (the "Warrant Shares").

C. Contemporaneously with the execution and delivery of this Agreement, the parties hereto are executing and delivering a Registration Rights Agreement under which the Company has agreed to provide certain registration rights under the Securities Act, the rules and regulations promulgated thereunder and applicable state securities laws.

D. The capitalized terms used herein and not otherwise defined have the meanings given them in Article IX hereof.

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

ARTICLE I  
PURCHASE AND SALE OF SECURITIES

1.1 Purchase and Sale of Securities. At the Closing, subject to the terms of this Agreement and the satisfaction or waiver of the conditions set forth in Articles VI and VII hereof, the Company will issue and sell to each Investor, and each Investor will (on a several and not a joint basis) purchase from the Company, the number of Securities set forth beneath such Investor's name on the signature pages hereof.

1.2 Payment. At or prior to the Closing, each Investor will pay the purchase price for the number of Securities set forth beneath its name on the signature pages hereof, by wire transfer of immediately available funds in accordance with the wire instructions set forth on Exhibit B hereto. Such funds shall be held, without interest, by the Company's legal counsel in trust for the benefit of each such Investor until the Closing Date and such time as the Company or the Company's legal counsel receives written confirmation from each Investor (which may be transmitted by facsimile or email) that all closing conditions have been satisfied, at which time such funds shall be immediately forwarded by wire transfer to the Company. The Company shall deliver to each Investor certificates representing the Securities so purchased by such Investor within two (2) business days following the Closing Date against delivery of the purchase price as described above.

1.3 Closing Date. Subject to the satisfaction or waiver of the conditions set forth in Articles VI and VII hereof, the Closing will take place at 8 a.m. Pacific Standard Time on July 25, 2003 or at such other date or time agreed upon by the parties to this Agreement (the "Closing Date"). The Closing will be held at the offices of Stradling Yocca Carlson & Rauth or at such other place as the parties agree. In no event (i) will the Closing occur unless and until the Company's legal counsel has received deposits for the purchase of Securities in accordance with Section 1.2 of at least Ten Million Dollars (\$10,000,000) or (ii) will the Company sell Securities pursuant to this Agreement for an aggregate purchase price in excess of Twenty Million Dollars (\$20,000,000).

ARTICLE II  
INVESTOR'S REPRESENTATIONS AND WARRANTIES

Each Investor represents and warrants to the Company, severally and solely with respect to itself and its purchase hereunder and not with respect to any other Investor, that:

2.1 Investment Purpose. The Investor is purchasing the Securities for its own account and not with a present view toward the public sale or distribution thereof, except pursuant to sales registered or exempted from registration under the Securities Act; provided, however, that by making the representation herein, the Investor does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption from registration under the Securities Act.

2.2 Accredited Investor Status. The Investor is an "accredited investor" as defined in Rule 501(a) of Regulation D. The Investor has delivered an Investor Questionnaire in the form of Exhibit C to the Company and to Punk, Ziegel & Company.

2.3 Reliance on Exemptions. The Investor understands that the Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities.

2.4 Information. The Investor has received and read the Confidential Offering Memorandum, dated July 21, 2003, as the same has been amended or supplemented, including the Exhibits A, B and C thereto (Exhibit A, being the Company's 10-Q for the period ended March 31,

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2003; Exhibit B, the Company's 10-K for the period ended December 31, 2002; and Exhibit C, the Company's Proxy Statement filed on March 2, 2003) (the "Offering Memorandum"). The Investor and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Company, and materials relating to the offer and sale of the Securities, that have been requested by the Investor or its advisors, if any. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Neither such inquiries nor any other due diligence investigation conducted by Investor or any of its advisors or representatives modify, amend or affect the Investor's right to rely on the Company's representations and warranties contained in Article III below. The Investor acknowledges and understands that its investment in the Securities involves a significant degree of risk, including the risks reflected in the Offering Memorandum.

2.5 Governmental Review. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities or an investment therein.

2.6 Transfer or Resale. The Investor understands that:

(a) except as provided in the Registration Rights Agreement, the Securities have not been and are not being registered under the Securities Act or any applicable state securities laws and, consequently, the Investor may have to bear the risk of owning the Securities for an indefinite period of time because the Securities may not be transferred unless (i) the resale of the Securities is registered pursuant to an effective registration statement under the Securities Act; (ii) the Investor has delivered to the Company an opinion of counsel (in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from such registration; (iii) the Securities are sold or transferred pursuant to Rule 144; or (iv) the Securities are sold or transferred to an affiliate (as defined in Rule 144) of the Investor;

(b) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder; and

(c) except as set forth in the Registration Rights Agreement, neither the Company nor any other person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

2.7 Legends. The Investor understands that until (a) the Securities may be sold by the Investor under Rule 144(k) or (b) such time as the resale of the Securities has been registered under the Securities Act as contemplated by the Registration Rights Agreement, the certificates representing the Securities will bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates for such Securities):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE

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SECURITIES MAY NOT BE SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS, OR UNLESS OFFERED, SOLD OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

The legend set forth above will be removed and the Company will issue a certificate without the legend to the holder of any certificate upon which it is stamped, in accordance with the terms of Article V hereof.

2.8 Authorization; Enforcement. This Agreement and the Registration Rights Agreement have been duly and validly authorized, executed and delivered on behalf of the Investor and are valid and binding agreements of the Investor enforceable in accordance with their terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and the application of general principles of equity.

2.9 Residency. The Investor is a resident of (or, if an entity, has its principal place of business in) the jurisdiction set forth immediately below such Investor's name on the signature pages hereto.

2.10 Acknowledgements Regarding Placement Agent. The Investor acknowledges that Punk, Ziegel & Company is acting as placement agent (the "Placement Agent") for the Securities being offered hereby and will be compensated by the Company for acting in such capacity. The Investor further acknowledges that the Placement Agent has acted solely as placement agent in connection with the offering of the Securities by the Company, that the information and data provided to the Investor in connection with the transactions contemplated hereby have not been subjected to independent verification by the Placement Agent, and that the Placement Agent makes no representation or warranty with respect to the accuracy or completeness of such information, data or other related disclosure material. The Investor further acknowledges that in making its decision to enter into this Agreement and purchase the Securities it has relied on its own examination of the Company and the terms of, and consequences, of holding the Securities. The Investor further acknowledges that the provisions of this Section 2.10 are for the benefit of, and may be enforced by, the Placement Agent.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Investors that:

3.1 Organization and Qualification. The Company is duly incorporated, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated, with full power and authority (corporate and other) to own, lease, use and operate its properties and to carry on its business as and where now owned, leased, used, operated and conducted. The Company is duly qualified to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect.

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3.2 Authorization; Enforcement. (a) The Company has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement, the Registration Rights Agreement and the Warrants, to consummate the transactions contemplated hereby and thereby and to issue the Securities in accordance with the terms hereof and thereof; (b) the execution, delivery and performance of this Agreement, the Registration Rights Agreement and the Warrants by the Company and the consummation by it of the transactions contemplated hereby and thereby (including without limitation the issuance of the Securities) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board or Directors, or its shareholders is required; (c) this Agreement, the Registration Rights Agreement and the Warrants have been duly executed by the Company; and (d) each of this Agreement, the Registration Rights Agreement and the Warrants

constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, or moratorium or similar laws affecting the rights of creditors generally and the application of general principles of equity.

3.3 Capitalization. As of the date hereof, the authorized capital stock of the Company consists of (a) 30,000,000 shares of Common Stock, par value \$.001 per share, of which 13,749,237 shares are issued and outstanding, 2,095,647 shares are reserved for issuance upon exercise of stock options outstanding under the Company's employee and director stock option plans, 907,164 shares are reserved for grants of rights to purchase under the Company's employee and director stock option plans, 19,297 shares are reserved for issuance pursuant to the Company's employee stock purchase plan and 516,675 shares are reserved for issuance under warrants issued by the Company on June 15, 2001 and January 18, 2002; (b) 5,000,000 shares of preferred stock, par value \$.001 per share, 500,000 of which shares are designated Series A Junior Participating Preferred Stock, par value \$.001 per share, none of which is issued and outstanding. All of such outstanding shares of capital stock are, or upon issuance will be, duly authorized, validly issued, fully paid and nonassessable. No shares of capital stock of the Company, including the Securities issuable pursuant to this Agreement, are subject to preemptive rights or any other similar rights of the stockholders of the Company or any liens or encumbrances imposed through the actions or failure to act of the Company. Except as disclosed in this Section 3.3 and except for the transactions contemplated hereby, (i) there are no outstanding options, warrants, scrip, rights to subscribe for, puts, calls, rights of first refusal or preemptive or other similar rights, agreements, understandings, claims or other commitments or rights of any character whatsoever relating to, or securities or rights directly or indirectly convertible into, exercisable for, or exchangeable for any shares of capital stock of the Company, or arrangements by which the Company is or may become bound to issue additional shares of capital stock of the Company; (ii) there are no agreements or arrangements (other than the Registration Rights Agreement, the Registration Rights Agreements entered into on June 15, 2001 and January 18, 2002 and the Purchase Warrants dated June 15, 2001) under which the Company is obligated to register the sale of any of its securities under the Securities Act and (iii) there are no anti-dilution or price adjustment provisions contained in any security issued by the Company (or in any agreement providing rights to security holders) that will be triggered by the issuance of the Securities (other than the exercise price adjustments pursuant to the warrants to purchase an aggregate of 385,800 shares of Common Stock, issued by the Company on January 18, 2002). The Company has furnished to the Investors true and correct copies of the Company's Certificate of Incorporation, as amended, as in effect on the date hereof, the Company's Bylaws as in effect on the date hereof and the terms of all securities convertible into or exercisable for Common Stock of the Company and the material rights of the holders thereof in respect thereto.

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3.4 Issuance of Securities. The Securities are duly authorized and, upon issuance in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, free from all taxes, liens, claims, encumbrances and charges with respect to the issue thereof, will not be subject to preemptive rights or other similar rights of stockholders of the Company, and will not impose personal liability on the holders thereof. The Company has reserved a sufficient number of shares of Common Stock for issuance upon exercise of the Warrants, and upon payment of the exercise price and exercise of the Warrants in accordance with its terms, the Warrant Shares will be validly issued, fully paid and non-assessable, free from all taxes, liens, claims, encumbrances and charges with respect to the issue thereof, will not be subject to preemptive rights or other similar rights of stockholders of the Company and will not impose personal liability on the holders thereof.

3.5 No Conflicts; No Violation.

(a) The execution, delivery and performance of this Agreement, the Registration Rights Agreement and the Warrants by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities) will not (i) conflict with or result in a violation of any provision of its Certificate of Incorporation or Bylaws or (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both could become a default) under, or give to others any rights of termination, amendment (including without limitation, the triggering of any anti-dilution provision), acceleration or cancellation of, any agreement, indenture, patent, patent license, or instrument to which the Company is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including U.S. federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or by which any property or asset of the Company is bound or affected (except for such conflicts, breaches, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate,

have a Material Adverse Effect).

(b) The Company is not in violation of its Certificate of Incorporation, Bylaws or other organizational documents and the Company is not in default (and no event has occurred which with notice or lapse of time or both could put the Company in default) under any agreement, indenture or instrument to which the Company is a party or by which any property or assets of the Company is bound or affected, except for possible defaults as would not, individually or in the aggregate, have a Material Adverse Effect.

(c) The Company is not conducting its business in violation of any law, ordinance or regulation of any governmental entity, the failure to comply with which would, individually or in the aggregate, have a Material Adverse Effect.

(d) Except as specifically contemplated by this Agreement and as required under the Securities Act and any applicable state securities laws or any listing agreement with any securities exchange or automated quotation system, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency or any regulatory or self regulatory agency in order for it to execute, deliver or perform any of its obligations under this Agreement, the Registration Rights Agreement or the Warrants, in each case in accordance with the terms hereof or thereof, or to issue and sell the Securities in accordance with the terms hereof. All consents, authorizations, orders, filings and registrations which the

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Company is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof. The Company is not in violation of the listing requirements of Nasdaq.

3.6 SEC Documents, Financial Statements. Since June 30, 2000, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits) incorporated by reference therein, being hereinafter referred to herein as the "SEC Documents"). The Company has delivered to each Investor, or each Investor has had access to, true and complete copies of the SEC Documents, except for such exhibits and incorporated documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The Offering Memorandum does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the Offering Memorandum complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with U.S. generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). Except as set forth in the financial statements included in the Offering Memorandum, the Company has no liabilities, contingent or otherwise, other than liabilities incurred in the ordinary course of business subsequent to March 31, 2003, and liabilities of the type not required under generally accepted accounting principles to be reflected in such financial statements. Such liabilities incurred subsequent to March 31, 2003, are not, in the aggregate, material to the financial condition or operating results of the Company.

3.7 Absence of Certain Changes. Except as disclosed in the Offering Memorandum, since December 31, 2002, there has been no material adverse change in the assets, liabilities, business, properties, operations, financial condition, prospects or results of operations of the Company, and the Company has not (i) varied its business plan or practices, in any material respect, from past practices, (ii) entered into any material financing, joint venture, license or similar arrangements or (iii) suffered or permitted to be incurred any liability or obligation against any of its properties or assets that would limit or restrict its ability to perform its obligations hereunder.

3.8 Absence of Litigation. Except as disclosed in the SEC Documents, there is no action, suit, claim, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its officers or directors acting as such that could, individually or in the aggregate, have a Material Adverse Effect.

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3.9 Intellectual Property Rights. The Company owns or possesses the licenses or rights to use all patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names and copyrights necessary to enable it to conduct its business as now operated or as currently proposed to be operated (the "Intellectual Property"). Except as set forth in the SEC Documents, there are no material outstanding options, licenses or agreements relating to the Intellectual Property, nor is the Company bound by or a party to any material options, licenses or agreements relating to the patents, patent applications, patent rights, inventions, know-how, trade secrets, trademarks, trademark applications, service marks, service names, trade names or copyrights of any other person or entity. Except as disclosed in the SEC Documents, there is no claim or action or proceeding pending or, to the Company's knowledge, threatened that challenges the right of the Company with respect to any Intellectual Property. Except as set forth in the SEC Documents, to the knowledge of the Company, the Company's Intellectual Property does not infringe any intellectual property rights of any other person which, if the subject of an unfavorable decision, ruling or finding would have a Material Adverse Effect.

3.10 Tax Status. The Company has timely made or filed all federal, state and foreign income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has timely paid all taxes and other governmental assessments and charges, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith, and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. To the knowledge of the Company, there are no unpaid taxes claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company has not executed a waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax. None of the Company's tax returns is presently being audited by any taxing authority.

3.11 Environmental Laws. The Company (i) is in compliance with all applicable foreign federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"), (ii) has received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct its business and (iii) is in compliance with all terms and conditions of any such permit, license or approval where, in each of the three foregoing clauses, the failure to so comply would have, individually or in the aggregate, a Material Adverse Effect.

3.12 No Integrated Offering. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has directly or indirectly made any offers or sales in any security or solicited any offers to buy any security under circumstances that would require registration under the Securities Act of the issuance of the Securities to the Investors. The issuance of the Securities to the Investors will not be integrated with any other issuance of the Company's securities (past, current or future) for purposes of the Securities Act or any applicable rules of Nasdaq.

3.13 No Brokers. The Company has taken no action which would give rise to any claim by any person for brokerage commissions, finder's fees or similar payments relating to this Agreement or the transactions contemplated hereby, except for dealings with Punk, Ziegel & Company, whose commissions and fees will be paid for by the Company.

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3.14 Insurance. The Company is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company is engaged.

3.15 Employment Matters. The Company is in compliance with all federal, state, local and foreign laws and regulations respecting employment and employment practices, terms and conditions of employment and wages and hours, except where failure to be in compliance would not have a Material Adverse Effect. The Company is not bound by or subject to (and none of its assets or



properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Company's knowledge, has sought to represent any of the employees, representatives or agents of the Company. There is no strike or other labor dispute involving the Company pending, or to the Company's knowledge, threatened nor is the Company aware of any labor organization activity involving its employees. The Company is not aware that any officer or key employee, or that any group of officers or key employees, intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing.

3.16 Employee Benefit Plans. Except as set forth in the Offering Memorandum, the Company does not have any Employee Benefit Plans, as such term is defined in the Employee Retirement Security Act of 1974.

3.17 Investment Company Status. The Company is not and upon consummation of the sale of the Securities will not be an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

3.18 No Subsidiaries. The Company does not presently own or control, directly or indirectly, any interest in any other corporation, association, joint venture, partnership or other business entity and the Company is not a direct or indirect participant in any joint venture or partnership.

3.19 No Conflict of Interest. The Company is not indebted, directly or indirectly, to any of its officers or directors or to their respective spouses or children, in any amount whatsoever other than in connection with expenses or advances of expenses incurred in the ordinary course of business or relocation expenses of employees. None of the Company's officers, directors or employees, or any members of their immediate families, are directly, or indirectly, indebted to the Company or, to the best of the Company's knowledge, have any direct or indirect ownership interest in any entity with which the Company is affiliated or with which the Company has a business relationship, or any entity which competes with the Company, except that officers, directors, employees and/or stockholders of the Company may own stock in (but not exceeding five percent (5%) of the outstanding capital stock of) any publicly traded company that may compete with the Company. To the best of the Company's knowledge, none of the Company's officers, directors or employees or any members of their immediate families are, directly or indirectly, interested in any material contract with the Company. The Company is not a guarantor or indemnitor of any indebtedness of any other person or entity.

3.20 Nasdaq Notification. The Company has notified Nasdaq of the issuance and listing of the Common Shares and Warrant Shares on Nasdaq and the Common Shares and Warrant Shares

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have been approved for quotation on Nasdaq, upon official notice of issuance.

3.21 Reporting Status; Eligibility to Use Form S-3. The Company's Common Stock is registered under Section 12g of the Exchange Act. The Company currently meets the "registrant eligibility" requirements set forth in the general instructions to Form S-3 to enable the registration of the Registrable Securities, as defined in the Registration Rights Agreement.

3.22 No Manipulation of Stock. The Company has not taken and will not, in violation of applicable law, take, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Common Stock to facilitate the sale or resale of the Common Shares.

3.23 Representations Complete. The representations and warranties made by the Company in this Agreement, the statements made in any certificates furnished by the Company pursuant to this Agreement, and the statements made by the Company in any documents mailed, delivered or furnished to the Investors in connection with this Agreement, taken as a whole, do not contain and will not contain, as of their respective dates and as of the Closing Date, any untrue statement of a material fact, nor do they omit or will they omit, as of their respective dates or as of the Closing Date, to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

#### ARTICLE IV COVENANTS

4.1 Best Efforts. Each party will use its best efforts to satisfy in a timely fashion each of the conditions to be satisfied by it under Articles VI and VII of this Agreement.

4.2 Form D; Blue Sky Laws. The Company will timely file a Notice of Sale of Securities on Form D with respect to the Securities, as required

under Regulation D. The Company will, on or before the Closing Date, take such action as it reasonably determines to be necessary to qualify the Securities for sale to the Investors under this Agreement under applicable securities (or "blue sky") laws of the states of the United States (or to obtain an exemption from such qualification).

4.3 Continued Eligibility to Use Form S-3. Throughout the Registration Period (as defined in the Registration Rights Agreement), the Company will timely file all reports, schedules, forms, statements and other documents required to be filed by it with the SEC under the reporting requirements of the Exchange Act, and the Company will not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination. The Company will take all reasonably necessary action to continue to meet, the "registrant eligibility" requirements set forth in the general instructions to Form S-3 to enable the registration of the Registrable Securities as defined in the Registration Rights Agreement.

4.4 Expenses. The Company and each Investor is liable for, and will pay, its own expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the other agreements to be executed in connection herewith, including, without

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limitation, attorneys' and consultants' fees and expenses; provided, that if the transactions contemplated hereby are consummated, the Company will pay the fees and expenses of one special counsel to the Investors, not to exceed \$15,000.

4.5 Financial Information. As long as an Investor owns any of the Securities or Warrant Shares, the financial statements of the Company will be prepared in accordance with United States generally accepted accounting principles, consistently applied, and will fairly present in all material respects the consolidated financial position of the Company and results of its operations and cash flows as of, and for the periods covered by, such financial statements (subject, in the case of unaudited statements, to normal year-end audit adjustments).

4.6 Compliance with Law. As long as an Investor owns any of the Securities or Warrant Shares, the Company will conduct its business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, including, without limitation, all applicable local, state and federal environmental laws and regulations, the failure to comply, individually or in the aggregate, with which would have a Material Adverse Effect.

4.7 No Integration. The Company will not make any offers or sales of any security or solicit offers to buy or otherwise negotiate in respect of any offer or sale of any security (other than the Securities) under circumstances that would cause the offering of the Securities to be integrated with any other offering of securities by the Company (i) for the purpose of any stockholder approval provision applicable to the Company or its securities or (ii) for purposes of any registration requirement under the Securities Act.

4.8 Sales by Investors. Each Investor will sell any Securities sold by it in compliance with applicable prospectus delivery requirements, if any, or otherwise in compliance with the requirements for an exemption from registration under the Securities Act and the rules and regulations promulgated thereunder. No Investor will make any sale, transfer or other disposition of the Securities in violation of federal or state securities laws.

#### ARTICLE V TRANSFER AGENT INSTRUCTIONS; REMOVAL OF LEGENDS

5.1 Issuance of Certificates. The Company will, or will instruct its transfer agent to, issue certificates, registered in the name of each Investor or its nominee, for the Securities and, promptly upon exercise of any Warrants, the applicable Warrant Shares. All such certificates will bear the restrictive legend described in Section 2.7, except as otherwise specified in this Article V. The Company will not give to its transfer agent any instruction other than as described in this Article V and stop transfer instructions to give effect to Section 2.7 hereof (prior to registration of the Securities under the Securities Act). Nothing in this Section will affect in any way the Investor's obligations to comply with all applicable prospectus delivery requirements, if any, upon resale of the Common Shares and/or Warrant Shares.

5.2 Unrestricted Securities. If, unless otherwise required by applicable state securities laws, (a) the Securities or Warrant Shares represented by a certificate have been registered under an effective registration statement filed under the Securities Act, (b) a holder of Securities or Warrant Shares provides the Company and its transfer agent with an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that a public

sale or transfer of such Securities or Warrant Shares may be made without registration under the Securities Act and such sale either has occurred or may occur without restriction on the manner of such sale or transfer, (c) such holder provides the Company and its transfer agent with reasonable assurances that such Securities or Warrant Shares can be sold under Rule 144, or (d) the Securities or Warrant Shares represented by a certificate can be sold without restriction as to the number of securities sold under Rule 144(k), the Company will permit the transfer of the Securities or Warrant Shares, and the Company's transfer agent will issue one or more certificates, free from any restrictive legend, in such name and in such denominations as specified by such holder. Notwithstanding anything herein to the contrary, the Securities or Warrant Shares may be pledged as collateral in connection with a bona fide margin account or other lending arrangement; provided that such pledge will not alter the provisions of this Article V with respect to the removal of restrictive legends.

5.3 Enforcement of Provision. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Investor by vitiating the intent and purpose of the transaction contemplated hereby. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Article V will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section, that the Investor will be entitled, in addition to all other available remedies, to an injunction restraining any breach and requiring immediate transfer of the Securities and/or Warrant Shares, as applicable, without the necessity of showing economic loss and without any bond or other security being required.

#### ARTICLE VI CONDITIONS TO THE COMPANY'S OBLIGATION TO SELL

The obligation of the Company to issue and sell the Securities to each Investor at the Closing is subject to the satisfaction by such Investor, on or before the Closing Date, of each of the following conditions. These conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion:

6.1 The Investor will have executed this Agreement, the Investor Questionnaire and the Registration Rights Agreement and will have delivered those agreements to the Company.

6.2 The Investor will have delivered the purchase price for the Securities to the Company in accordance with this Agreement.

6.3 The representations and warranties of the Investor must be true and correct in all material respects as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date, which representations and warranties must be correct as of such date), and the Investor will have performed and complied in all material respects with the covenants and conditions required by this Agreement to be performed or complied with by the Investor at or prior to the Closing.

6.4 No statute, rule, regulation, executive order, decree, ruling or injunction will have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the transactions contemplated by this Agreement or the Registration Rights Agreement or the Warrants.

#### ARTICLE VII CONDITIONS TO THE INVESTOR'S OBLIGATION TO PURCHASE

The obligation of each Investor hereunder to purchase the Securities from the Company at the Closing is subject to the satisfaction, on or before the Closing Date, of each of the following conditions. These conditions are for each Investor's respective benefit and may be waived by any Investor at any time in its sole discretion:

7.1 The Company will have executed this Agreement, the Registration Rights Agreement and the Warrants and will have delivered those Agreements to the Investor.

7.2 The Investors shall have received an opinion of counsel from Stradling Yocca Carlson & Rauth, counsel to the Company, in customary form, acceptable to Investors and their counsel.

7.3 Each of the representations and warranties of the Company qualified by materiality must be true and correct in all respects as of the Closing as though made at that time (except for representations and warranties

that speak as of a specific date, which representations and warranties must be true and correct as of such date) and each of the representations and warranties of the Company not qualified by materiality must be true and correct in all material respects as of the Closing as though made at that time (except for representations and warranties that speak as of a specific date, which representations and warranties must be true and correct as of such date) and the Company must have performed and complied in all material respects with the covenants and conditions required by this Agreement to be performed or complied with by the Company at or prior to the Closing. The Investor must have received a certificate or certificates dated as of the Closing Date and executed by the Chief Executive Officer or the Chief Financial Officer of the Company certifying as to the matters in contained in this Section 7.3 and as to such other matters as may be reasonably requested by such Investor, including, but not limited to, the Company's Certificate of Incorporation, Bylaws, Board of Directors' resolutions relating to the transactions contemplated hereby and the incumbency and signatures of each of the officers of the Company who may execute on behalf of the Company any document delivered at the Closing.

7.4 No litigation, statute, rule, regulation, executive order, decree, ruling or injunction will have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the transactions contemplated by this Agreement or the Registration Rights Agreement or the Warrants and which could, individually or in the aggregate, have a Material Adverse Effect.

7.5 Trading and listing of the Common Stock on Nasdaq must not have been suspended by the SEC or Nasdaq.

7.6 Irrevocable transfer agent instructions, in form and substance satisfactory to the Investors, will have been delivered to the Company's transfer agent and acknowledged in writing by such transfer agent.

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#### ARTICLE VIII INDEMNIFICATION

In consideration of each Investor's execution and delivery of this Agreement and its acquisition of the Securities hereunder, and in addition to all of the Company's other obligations under this Agreement and the Registration Rights Agreement and the Warrants, the Company will defend, protect, indemnify and hold harmless each Investor and each other holder of the Securities and all of their stockholders, officers, directors, employees and direct or indirect investors and any of the foregoing person's agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "Indemnitees") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (regardless of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by an Indemnitee as a result of, or arising out of, or relating to (a) any breach of any representation or warranty made by the Company herein or in any other certificate, instrument or document contemplated hereby or thereby, (b) any breach of any covenant, agreement or obligation of the Company contained herein or in any other certificate, instrument or document contemplated hereby or thereby or (c) any cause of action, suit or claim brought or made against such Indemnitee and arising out of or resulting from the execution, delivery, performance, breach or enforcement of this Agreement or the Registration Rights Agreement or Warrants by the Company. To the extent that the foregoing undertaking by the Company is unenforceable for any reason, the Company will make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law.

The Indemnitees shall have the right to employ separate counsel in any such proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnitees unless: (i) the Company has agreed in writing to pay such fees and expenses; (ii) the Company shall have failed to promptly assume the defense of such proceeding and to employ counsel reasonably satisfactory to such Indemnitees in any such proceeding; or (iii) the named parties to any such proceeding (including any impleaded parties) include both such Indemnitees and the Company, and such Indemnitees shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnitees and the Company (in which case, if such Indemnitees notify the Company in writing that they elect to employ separate counsel at the expense of the Company, the Company shall not have the right to assume the defense thereof and such counsel shall be at the reasonable expense of the Company; provided, however, that in no event shall the Company be responsible for the fees and expenses of more than one separate counsel). The Company shall not be liable for any settlement of any such proceeding effected without its written consent, which consent shall not be unreasonably withheld. The Company shall not, without the prior written consent

of a majority of the Indemnitees, effect any settlement of any pending proceeding in respect of which Indemnitees are a party, unless such settlement includes an unconditional release of such Indemnitees from all liabilities that are the subject matter of such proceeding. Subject to the foregoing, all fees and expenses (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend any such proceeding in a manner inconsistent with this Article VIII) of the Indemnitees shall be paid to the Indemnitees as incurred, within ten (10) business days of written notice thereof to the Company, which notice shall be delivered no more frequently than on a monthly basis; provided, that the Indemnitees shall reimburse the Company for any and all such fees and expenses to the extent it is finally judicially determined that such Indemnitees are not entitled to indemnification hereunder.

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ARTICLE IX  
DEFINITIONS

- 9.1 "Closing" means the closing of the purchase and sale of the Securities under this Agreement.
- 9.2 "Closing Date" has the meaning set forth in Section 1.3.
- 9.3 "Common Shares" has the meaning set forth in the Recitals.
- 9.4 "Common Stock" means the common stock, par value \$.001 per share, of the Company.
- 9.5 "Company" means Sonus Pharmaceuticals, Inc.
- 9.6 "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- 9.7 "Indemnified Liabilities" has the meaning set forth in Article VIII.
- 9.8 "Indemnitees" has the meaning set forth in Article VIII.
- 9.9 "Investors" means the investors whose names are set forth on the signature pages of this Agreement, and their permitted transferees.
- 9.10 "Material Adverse Effect" means a material adverse effect on (a) the business, operations, prospects, assets or financial condition of the Company or (b) the ability of the Company to perform its obligations pursuant to the transactions contemplated by this Agreement or under the agreements or instruments to be entered into or filed in connection herewith, including the Registration Rights Agreement and the Warrants.
- 9.11 "Nasdaq" means the Nasdaq National Market System.
- 9.12 "Offering Memorandum" has the meaning set forth in Section 2.4.
- 9.13 "Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date of this Agreement and among the parties to this Agreement, in the form attached hereto as Exhibit D.
- 9.14 "Regulation D" means Regulation D as promulgated under by the SEC under the Securities Act.
- 9.15 "Rule 144" and "Rule 144(k)" mean Rule 144 and Rule 144(k), respectively, promulgated under the Securities Act, or any successor rule.
- 9.16 "SEC" means the United States Securities and Exchange Commission.
- 9.17 "SEC Documents" has the meaning set forth in Section 3.6.
- 9.18 "Securities" has the meaning set forth in the Recitals.

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- 9.19 "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute.
- 9.20 "Warrants" and "Warrant Shares" have the meanings set forth in the Recitals.

ARTICLE X  
GOVERNING LAW; MISCELLANEOUS

10.1 Governing Law; Jurisdiction; Jury Trial Waiver. This Agreement will be governed by and interpreted in accordance with the laws of the State of

Delaware without regard to the principles of conflict of laws. The parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts located in the State of Delaware with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY.

10.2 Counterparts; Signatures by Facsimile. This Agreement may be executed in two or more counterparts, all of which are considered one and the same agreement and will become effective when counterparts have been signed by each party and delivered to the other parties. This Agreement, once executed by a party, may be delivered to the other parties hereto by facsimile transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

10.3 Headings. The headings of this Agreement are for convenience of reference only, are not part of this Agreement and do not affect its interpretation.

10.4 Severability. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision will be deemed modified in order to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law will not affect the validity or enforceability of any other provision hereof.

10.5 Entire Agreement; Amendments. This Agreement and the Registration Rights Agreement (including all schedules and exhibits thereto) and the Warrants constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to the subject matter hereof. No provision of this Agreement may be waived or amended other than by an instrument in writing signed by the party to be charged with enforcement.

10.6 Notices. Any notices required or permitted to be given under the terms of this Agreement must be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile and will be effective five days after being placed in the mail, if mailed by regular U.S. mail, or upon receipt, if delivered personally, by courier (including a recognized overnight delivery service) or by facsimile, in each case addressed to a party. The addresses for such communications are:

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If to the Company: Chief Financial Officer  
Sonus Pharmaceuticals, Inc.  
22026 20th Avenue S.E.  
Bothell, Washington 98021  
Fax: (425) 489-0626

With copies to: K.C. Schaaf, Esq.  
Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Fax: (949) 725-4100

Edwin H. Gordon  
Punk Ziegel & Company, L.P.  
520 Madison Avenue  
New York, New York 10020  
Fax: (212) 308-2203

If to an Investor: To the address set forth immediately below such Investor's name on the signature pages hereto.

Each party will provide written notice to the other parties of any change in its address in accordance with the notice provisions hereof.

10.7 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. The Company will not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Investors, and no Investor may assign this Agreement or any rights or obligations hereunder without the prior written consent of the Company. Notwithstanding the foregoing, an Investor may assign all or part of its rights and obligations hereunder to any of its "affiliates," as that term is defined under the Securities Act, without the consent of the Company so long as the affiliate is an accredited investor (within the meaning of Regulation D under the Securities Act) and agrees in writing to be bound by this Agreement. This provision does not limit the Investor's right to transfer the Securities pursuant to the terms of this Agreement or to assign the

Investor's rights hereunder to any such transferee pursuant to the terms of this Agreement.

10.8 Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and, except as contemplated in Section 2.10, is not for the benefit of, nor may any provision hereof be enforced by, any other person.

10.9 Survival. The representations and warranties of the Company and the agreements and covenants set forth herein will survive the Closing hereunder for a period of twelve (12) months. The Company makes no representations or warranties in any oral or written information provided to Investors, other than the representations and warranties included herein.

10.10 Further Assurances. Each party will do and perform, or cause to be done and performed, all such further acts and things, and will execute and deliver all other agreements, certificates, instruments and documents, as another party may reasonably request in order to carry out

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the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

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

10.12 Equitable Relief. The Company recognizes that, if it fails to perform or discharge any of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the Investors. The Company therefore agrees that the Investors are entitled to seek temporary and permanent injunctive relief in any such case.

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

COMPANY:

SONUS PHARMACEUTICALS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

For purposes of Section 2.10 hereof:

PUNK ZIEGEL & COMPANY

By: \_\_\_\_\_

Edwin H. Gordon  
Managing Director

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OMNIBUS SIGNATURE PAGE TO  
SONUS PHARMACEUTICALS, INC.  
SECURITIES PURCHASE AGREEMENT

The undersigned hereby executes and delivers the Securities Purchase Agreement to which this Signature Page is attached, which, together with all counterparts of the Agreement and Signature Pages of the other parties named in said Agreement, shall constitute one and the same document in accordance with the terms of the Agreement.

Sign Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Number of Securities Purchased:

Common Shares: \_\_\_\_\_  
Warrants (Number of Warrant Shares): \_\_\_\_\_

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SCHEDULE OF INVESTORS

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Exhibit A  
Form of Warrant

Exhibit A-1

Exhibit B  
Wire Transfer Instructions

Please remit payment to:

Wells Fargo Bank  
5 Corporate Plaza  
Newport Beach, CA 92660

Routing #: 121 000 248  
Account #: 0643108848

A/C Name: Stradling Yocca Carlson & Rauth  
Trust Account

Exhibit B-1

Exhibit C  
Investor Questionnaire

I CERTIFY THAT I AM AN ACCREDITED INVESTOR BECAUSE I FALL WITHIN ONE OF THE FOLLOWING CATEGORIES.

\_\_\_ A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;

\_\_\_ A natural person who had "Individual Income" in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

\_\_\_ An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, and the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company or registered investment advisor or if the employee benefit plan has total assets in excess of \$5,000,000, or, if a self-directed plan, with investment decisions made solely by persons that are Accredited Investors;

\_\_\_ A bank as defined in Section 3(a)(2) of the Securities Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in its individual or fiduciary capacity;

\_\_\_ A broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended;

\_\_\_ An insurance company as defined in Section 2(13) of the Securities Act;

\_\_\_ An investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act;

\_\_\_ A Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

\_\_\_ A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;

\_\_\_ A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

\_\_\_ An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total



assets in excess of \$5,000,000;

\_\_\_ A director, executive officer, or general partners of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

\_\_\_ A trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person who has such

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knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of investing in the Company; or

\_\_\_ An entity in which all of the equity owners qualify under any of the above subparagraphs.

NET WORTH. The term "net worth" means the excess of total assets over total liabilities. In calculating net worth, the stockholder may include the estimated fair market value of the stockholder's principal residence as an asset.

INCOME. In determining individual "income," the stockholder should add to the stockholder's individual taxable adjusted gross income (exclusive of any spousal income) any amounts attributable to tax exempt income received, losses claimed as a limited partner in any limited partnership, deductions claimed for depletion, contributions to an IRA or Keogh retirement plan, alimony payments, and any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income.

Dated: July \_\_, 2003

\_\_\_\_\_

Exhibit C-2

Exhibit D

Registration Rights Agreement

Exhibit D-1

## REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT, dated as of July 25, 2003 (this "Agreement"), is made by and among Sonus Pharmaceuticals, Inc., a Delaware corporation, with headquarters located at 22026 20th Avenue S.E., Bothell, Washington 98021 (the "Company"), and the investors named on the signature pages hereto (the "Initial Investors").

## RECITALS:

A. In connection with the Securities Purchase Agreement dated July 25, 2003 between the Initial Investors and the Company (the "Purchase Agreement"), the Company has agreed, upon the terms and subject to the conditions of the Purchase Agreement, to issue and sell to the Initial Investors 3,930,071 shares of the Company's Common Stock (the "Common Shares") and warrants to purchase up to 1,965,031 shares of the Company's Common Stock, subject to adjustment (the "Warrants" and, collectively with the Common Shares, the "Securities").

B. In order to induce the Initial Investors to execute and deliver the Purchase Agreement, the Company has agreed to provide certain registration rights under the Securities Act and applicable state securities laws with respect to the Securities.

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

ARTICLE I  
DEFINITIONS

Capitalized terms used and not otherwise defined herein have the respective meanings given them set forth in the Purchase Agreement. In addition, as used in this Agreement, the following terms have the following meanings:

1.1 "Closing Date" means the date on which the purchase of the Securities is consummated pursuant to the Purchase Agreement.

1.2 "Common Shares" means the shares of Common Stock sold pursuant to the Purchase Agreement.

1.3 "Investors" means the Initial Investors and any of their transferees or assignees who agree to become bound by the provisions of this Agreement in accordance with Article IX hereof.

1.4 "Registrable Securities" means the Common Shares and the Warrant Shares, and any shares of capital stock issued or issuable from time to time (with any adjustments) in exchange for or otherwise with respect to the Common Shares or Warrant Shares (including shares issued pursuant to Section 2.2 hereof).

1.5 "Registration Period" means the period between the date of this Agreement and the earlier of (i) the date on which (x) all of the Registrable Securities have been sold by the Investors pursuant to the Registration Statement and (y) are freely tradable under the Securities Act (except that this clause (y) shall not apply with respect to Shares sold to affiliates) and no further Registrable Securities may be issued in the future, (ii) the second anniversary of the last date on which Warrant Shares are purchased under any then-outstanding Warrants, or (iii) the date on which all the Registrable Securities may be immediately sold by the Investors without registration and without restriction as to the number of Registrable Securities to be sold, pursuant to Rule 144 or otherwise.

1.6 "Registration Statement" means a Registration Statement of the Company filed under the Securities Act.

1.7 The terms "register," "registered," and "registration" refer to a registration effected by preparing and filing a Registration Statement or statements in compliance with the Securities Act and pursuant to Rule 415 and the declaration or ordering of effectiveness of such Registration Statement by the SEC.

1.8 "Rule 415" means Rule 415 under the Securities Act, or any successor Rule providing for offering securities on a continuous basis, and applicable rules and regulations thereunder.

1.9 "Securities" means the Common Shares and the Warrants sold pursuant to the Purchase Agreement.

1.10 "Warrants" means the warrants to purchase shares of the Company's Common Stock sold pursuant to the Purchase Agreement.

1.11 "Warrant Shares" means the shares of the Company's Common Stock that may be purchased upon exercise of the Warrants.

ARTICLE II  
REGISTRATION

2.1 Mandatory Registration. The Company will use best efforts to file with the SEC a Registration Statement on Form S-3 registering all of the Registrable Securities for resale within 30 days after the Closing Date under the Purchase Agreement. If Form S-3 is not available at that time, then the Company will file a Registration Statement on such form as is then available to effect a registration of all of the Registrable Securities, subject to the consent of the Investors, which consent will not be unreasonably withheld.

2.2 Effectiveness of the Registration Statement. The Company will use its best efforts to cause the Registration Statement to be declared effective by the SEC as soon as practicable after filing, and in any event no later than the 90th day after the Closing Date (the "Required Effective Date"). However, so long as the Company filed the Registration Statement within 30 days after the Closing Date, (a) if the SEC takes the position that registration of the resale of the Registrable Securities by the Investors is not available under applicable laws, rules and regulation and that the Company must register the offering of the Registrable Securities as a primary offering by the Company, or (b) if the Registration Statement receives SEC review, then the Required Effective Date will be the 120th day after the Closing Date. In the case of an SEC response described in clause (a),

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the Company will, within 40 business days after the date the Company receives such SEC response, file a Registration Statement as a primary offering. The Company's best efforts will include, but not be limited to, promptly responding to all comments received from the staff of the SEC. If the Company receives notification from the SEC that the Registration Statement will receive no action or review from the SEC, then the Company will cause the Registration Statement to become effective within five business days after such SEC notification. Once the Registration Statement is declared effective by the SEC, the Company will cause the Registration Statement to remain effective throughout the Registration Period, except as permitted under Section 3. On the date of each monthly anniversary of the date on which any breach of this Section 2.2 first occurs (including failure to file a Registration Statement or to cause a Registration Statement to be declared effective within the time periods set forth herein) until the applicable default is cured (each a "Payment Date"), the Company shall pay to each Investor as damages 1.5% of the purchase price paid by such Investor pursuant to the Purchase Agreement. Such payment shall be the sole remedy to the Investors for the Company's default of this Section 2.2 and shall be made in shares of Common Stock, valued at the average closing sale prices of the Company's Common Stock during five (5) trading days ending on the day prior to the Payment Date, provided, that the total number of shares of the Company's Common Stock payable pursuant to this Section 2.2 to any Investor shall not exceed the lower of (i) the aggregate number of shares purchased pursuant to the Purchase Agreement by such Investor and (ii) the number of shares, less one share, which, if issued, would have, at the time of the Closing Date or the Payment Date, required shareholder approval of such issuance pursuant to Section 4350(i)(1)(D) of the Nasdaq Marketplace Rules. In the event the number of shares of the Company's Common Stock issuable under this Section 2.2 is restricted by the limitations in the previous sentence, the balance of the damages payable by the Company pursuant to this Section 2.2 shall be paid in cash on the applicable Payment Date in accordance with payment instructions provided by each Investor.

2.3 Piggyback Registrations.

(a) If, at any time prior to the expiration of the Registration Period, the Registration Statement contemplated in Section 2.1 above is not declared effective with respect to all of the Registrable Securities and the Company decides to register any of its securities for its own account or for the account of others, then the Company will promptly give the Investors written notice thereof and will use its best efforts to include in such registration all or any part of the Registrable Securities requested by such Investors to be included therein (excluding any Registrable Securities previously included in a Registration Statement which has been declared effective and has not been withdrawn). This requirement does not apply to Company registrations on Form S-4 or S-8 or their equivalents relating to equity securities to be issued solely in connection with an acquisition of any entity or business or equity securities issuable in connection with stock option or other employee benefit plans. Each Investor must give its request for registration under this paragraph to the Company in writing within 15 days after receipt from the Company of notice of such pending registration. If the registration for which the Company gives notice is a public offering involving an underwriting, the Company will so advise the Investors as part of the above-described written notice. In that event, if the managing underwriter(s) of the public offering impose a limitation on the number of shares of Common Stock that may be included in the Registration Statement because, in such

underwriter(s)' judgment, such limitation would be necessary to effect an orderly public distribution, then the Company will be obligated to include only such limited portion, if any, of the Registrable Securities with respect to which such Investors have requested inclusion hereunder. Any exclusion of Registrable Securities will be made pro rata among all holders of the Company's securities seeking to include shares of Common Stock in proportion to the number of shares of Common Stock

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sought to be included by those holders. However, the Company will not exclude any Registrable Securities unless the Company has first excluded all outstanding securities the holders of which are not entitled by right to inclusion of such securities in such Registration Statement or are not entitled pro rata inclusion with the Registrable Securities. No registration rights that limit or subordinate the rights of the Investors to register the Registrable Securities will be granted by the Company until one or more registration statements covering all of the Registrable Securities have become effective.

(b) No right to registration of Registrable Securities under this Section 2.3 limits in any way the registration required under Section 2.1 above. The obligations of the Company under this Section 2.3 expire upon the earlier of (i) the effectiveness of the Registration Statement filed pursuant to Section 2.1 above, (ii) after the Company has afforded the opportunity for the Investors to exercise registration rights under this Section 2.3 for two registrations (provided, however, that any Investor that has had any Registrable Securities excluded from any Registration Statement in accordance with this Section 2.3 may include in any additional Registration Statement filed by the Company the Registrable Securities so excluded), (iii) when all of the Registrable Securities held by any Investor may be sold by such Investor under Rule 144 without being subject to any volume restrictions, or (iv) the second anniversary of the last date on which Warrant Shares are purchased under any then outstanding Warrants.

2.4 Eligibility to use Form S-3. The Company represents and warrants that it meets the requirements for the use of Form S-3 for registration of the sale by the Investors of the Registrable Securities. The Company will file all reports required to be filed by the Company with the SEC in a timely manner so as to preserve its eligibility for the use of Form S-3.

#### ARTICLE III ADDITIONAL OBLIGATIONS OF THE COMPANY

3.1 Continued Effectiveness of Registration Statement. Subject to the limitations set forth in Section 3.6, the Company will keep the Registration Statement covering the Registrable Securities effective under Rule 415 at all times during the Registration Period. In the event that the number of shares available under a Registration Statement filed pursuant to this Agreement is insufficient to cover all of the Registrable Securities issued, the Company will (if permitted) amend the Registration Statement or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover all of the Registrable Securities. The Company will file such amendment or new Registration Statement as soon as practicable, but in no event later than 30 business days after the necessity therefor arises (based upon the market price of the Common Stock and other relevant factors on which the Company reasonably elects to rely). The Company will use its best efforts to cause such amendment or new Registration Statement to become effective as soon as is practicable after the filing thereof, but in no event later than 90 days after the date on which the Company reasonably first determines the need therefor.

3.2 Accuracy of Registration Statement. Any Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) filed by the Company covering Registrable Securities will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading. The Company will prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to permit sales pursuant to the Registration Statement at all times during the

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Registration Period, and, during such period, will comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities of the Company covered by the Registration Statement until the termination of the Registration Period, or if earlier, until such time as all of such Registrable Securities have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in the Registration Statement.

3.3 Furnishing Documentation. The Company will furnish to each Investor whose Registrable Securities are included in a Registration Statement,

or to its legal counsel, (a) promptly after such document is filed with the SEC, one copy of any Registration Statement filed pursuant to this Agreement and any amendments thereto, each preliminary prospectus and final prospectus and each amendment or supplement thereto; and (b) a number of copies of a prospectus, including a preliminary prospectus, and all amendments and supplements thereto, and such other documents as the Investor may reasonably request in order to facilitate the disposition of the Registrable Securities owned by the Investor. The Company will promptly notify by facsimile or email each Investor whose Registrable Securities are included in any Registration Statement of the effectiveness of the Registration Statement and any post-effective amendment.

3.4 Additional Obligations. The Company will use its best efforts to (a) register and qualify the Registrable Securities covered by a Registration Statement under such other securities or blue sky laws of such jurisdictions as each Investor who holds (or has the right to hold) Registrable Securities being offered reasonably requests, (b) prepare and file in those jurisdictions any amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain their effectiveness during the Registration Period, (c) take any other actions necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (d) take any other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions. Notwithstanding the foregoing, the Company is not required, in connection with such obligations, to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3.4, (ii) subject itself to general taxation in any such jurisdiction, (iii) file a general consent to service of process in any such jurisdiction, (iv) provide any undertakings that cause material expense or material burden to the Company, or (v) make any change in its charter or bylaws, which in each case the Board of Directors of the Company determines to be contrary to the best interests of the Company and its stockholders.

3.5 Underwritten Offerings. If the Investors who hold a majority in interest of the Registrable Securities being offered in an offering pursuant to a Registration Statement or any amendment or supplement thereto under this Agreement select underwriters reasonably acceptable to the Company for such offering, the Company will enter into and perform its obligations under an underwriting agreement in usual and customary form including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering.

#### 3.6 Suspension of Registration.

(a) The Company will notify (by telephone and also by facsimile and reputable overnight courier) each Investor who holds Registrable Securities being sold pursuant to a Registration Statement of the happening of any event of which the Company has knowledge as a result of which the prospectus included in the Registration Statement as then in effect includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made,

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not misleading. The Company will make such notification as promptly as practicable (but in no event more than two business days) after the Company becomes aware of the event, will promptly (but in no event more than ten business days) prepare and file a supplement or amendment to the Registration Statement to correct such untrue statement or omission, and will deliver a number of copies of such supplement or amendment to each Investor as such Investor may reasonably request.

(b) Notwithstanding the obligations under Section 3.6(a), if in the good faith judgment of the Company, following consultation with legal counsel, it would be detrimental to the Company and its stockholders for resales of Registrable Securities to be made pursuant to the Registration Statement due to the existence of a material development or potential material development involving the Company which the Company would be obligated to disclose in the Registration Statement, but which disclosure would be premature or otherwise inadvisable at such time or would reasonably be expected to have a material adverse effect upon the Company and its stockholders, the Company will have the right to suspend the use of the Registration Statement for a period of not more than forty-five days, provided, however, that the Company may so defer or suspend the use of the Registration Statement no more than one time in any twelve-month period.

(c) Subject to the Company's rights under this Section 3, the Company will use its best efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement and, if such an order is issued, will use its best efforts to obtain the withdrawal of such order at the earliest possible time and to notify each Investor that holds Registrable Securities being sold (or, in the event of an underwritten offering, the managing underwriters) of the issuance of such order and the resolution thereof.

(d) Notwithstanding anything to the contrary contained herein or in the Purchase Agreement, if the use of the Registration Statement is suspended by the Company, the Company will promptly (but in no event more than two business days) give notice of the suspension to all Investors whose securities are covered by the Registration Statement, and will promptly (but in no event more than two business days) notify each such Investor as soon as the use of the Registration Statement may be resumed. Notwithstanding anything to the contrary contained herein or in the Purchase Agreement, the Company will cause the Transfer Agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Purchase Agreement in connection with any sale of Registrable Securities with respect to which such Investor has entered into a contract for sale prior to receipt of notice of such suspension and for which such Investor has not yet settled, unless otherwise prohibited by law.

3.7 Review by the Investors. The Company will permit a single firm f legal counsel, designated by the Investors who hold a majority in interest of the Registrable Securities being sold pursuant to a Registration Statement ("Investor's Counsel"), to review the Registration Statement and all amendments and supplements thereto (as well as all requests for acceleration or effectiveness thereof) a reasonable amount of time (not to exceed seven (7) days) prior to their filing with the SEC, and will not file any document in a form to which such counsel reasonably objects, unless otherwise required by law in the opinion of the Company's counsel. The sections of any such Registration Statement including information with respect to the Investors, the Investors' beneficial ownership of securities of the Company or the Investors' intended method of disposition of Registrable Securities must conform to the information provided to the Company by each of the Investors or Investors Counsel.

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3.8 Comfort Letter; Legal Opinion. At the request of the Investors who hold a majority in interest of the Registrable Securities being sold pursuant to a Registration Statement, and on the date that Registrable Securities are delivered to an underwriter for sale in connection with the Registration Statement, the Company will furnish to the Investors and the underwriters (i) a letter, dated such date, from the Company's independent certified public accountants, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters; and (ii) an opinion, dated such date, from counsel representing the Company for purposes of the Registration Statement, in form and substance as is customarily given in an underwritten public offering, addressed to the underwriters and Investors.

3.9 Due Diligence; Confidentiality.

(a) The Company will make available for inspection by any Investor whose Registrable Securities are being sold pursuant to a Registration Statement, any underwriter participating in any disposition pursuant to the Registration Statement, and any attorney, accountant or other agent retained by any such Investor or underwriter (collectively, the "Inspectors"), all pertinent financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as each Inspector reasonably deems necessary to enable the Inspector to exercise its due diligence responsibility. The Company will cause its officers, directors and employees to supply all information that any Inspector may reasonably request for purposes of performing such due diligence.

(b) Each Inspector will hold in confidence, and will not make any disclosure (except to an Investor) of, any Records or other information that the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court or government body of competent jurisdiction, (iii) the information in such Records has been made generally available to the public other than by disclosure in violation of this or any other agreement (to the knowledge of the relevant Inspector), (iv) the Records or other information was developed independently by an Inspector without breach of this Agreement, (v) the information was known to the Inspector before receipt of such information from the Company, or (vi) the information was disclosed to the Inspector by a third party without restriction. The Company is not required to disclose any confidential information in the Records to any Inspector unless and until such Inspector has entered into a confidentiality agreement (in form and substance reasonably satisfactory to the Company) with the Company with respect thereto, substantially in the substance of this Section 3.9(b). Each Investor will, upon learning that disclosure of Records containing confidential information is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein will be deemed to limit the Investor's ability to sell Registrable Securities in a manner that is otherwise consistent with

applicable laws and regulations.

(c) The Company will hold in confidence, and will not make any disclosure of, information concerning an Investor provided to the Company under this Agreement unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or

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other order from a court or governmental body of competent jurisdiction, (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement, (v) the information was disclosed to the Company by a third party without restriction or (vi) such Investor consents to the form and content of any such disclosure. If the Company learns that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, the Company will give prompt notice to such Investor prior to making such disclosure and allow such Investor, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

3.10 Listing. The Company will (i) cause all of the Registrable Securities covered by each Registration Statement to be listed on each national securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange, or (ii) to the extent the securities of the same class or series are not then listed on a national securities exchange, secure the designation and quotation of all of the Registrable Securities covered by each Registration Statement on Nasdaq.

3.11 Transfer Agent; Registrar. The Company will provide a transfer agent and registrar, which may be a single entity, for the Registrable Securities not later than the effective date of the Registration Statement.

3.12 Share Certificates. The Company will cooperate with the Investors who hold Registrable Securities being sold and with the managing underwriter(s), if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities to be offered pursuant to a Registration Statement and will enable such certificates to be in such denominations or amounts as the case may be, and registered in such names as the Investors or the managing underwriter(s), if any, may reasonably request, all in accordance with Article V of the Purchase Agreement.

3.13 Plan of Distribution. At the request of the Investors holding a majority in interest of the Registrable Securities registered pursuant to a Registration Statement, the Company will promptly prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement, and the prospectus used in connection with the Registration Statement, as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

3.14 Securities Laws Compliance. The Company will comply with all applicable laws related to any Registration Statement relating to the offer and sale of Registrable Securities and with all applicable rules and regulations of governmental authorities in connection therewith (including, without limitation, the Securities Act, the Exchange Act and the rules and regulations promulgated by the SEC).

3.15 Further Assurances. The Company will take all other reasonable actions as any Investor or the underwriters, if any, may reasonably request to expedite and facilitate disposition by such Investor of the Registrable Securities pursuant to the Registration Statement.

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#### ARTICLE IV OBLIGATIONS OF THE INVESTORS

4.1 Investor Information. As a condition to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of each Investor, such Investor will furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as is reasonably required by the Company to effect the registration of the Registrable Securities. At least 10 business days prior to the first anticipated filing date of a Registration Statement for any registration under this Agreement, the Company will notify each Investor of the information the Company requires from that Investor if the Investor elects to have any of its

Registrable Securities included in the Registration Statement. If, within three business days prior to the filing date, the Company has not received the requested information from an Investor, then the Company may file the Registration Statement without including Registrable Securities of that Investor.

4.2 Further Assurances. Each Investor will cooperate with the Company, as reasonably requested by the Company, in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from the Registration Statement.

4.3 Suspension of Sales. Upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.6, each Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until it receives copies of the supplemented or amended prospectus contemplated by Section 3.6. If so directed by the Company, each Investor will deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of destruction) all copies in the Investor's possession (other than a limited number of file copies) of the prospectus covering such Registrable Securities that is current at the time of receipt of such notice.

#### 4.4 Underwritten Offerings.

(a) If Investors holding a majority in interest of the Registrable Securities being registered (with the approval of the Initial Investors) determine to engage the services of an underwriter, each Investor will enter into and perform such Investor's obligations under an underwriting agreement, in usual and customary form, including, without limitation, customary indemnification and contribution obligations, with the managing underwriter of such offering, and will take such other actions as are reasonably required in order to expedite or facilitate the disposition of the Registrable Securities, unless such Investor has notified the Company in writing of such Investor's election to exclude all of its Registrable Securities from such Registration Statement.

(b) Without limiting any Investor's rights under Section 2.1 hereof, no Investor may participate in any underwritten distribution hereunder unless such Investor (a) agrees to sell such Investor's Registrable Securities on the basis provided in any underwriting arrangements approved by the Investors entitled hereunder to approve such arrangements, (b) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements, and (c) agrees to pay its pro rata share of all underwriting discounts and commissions applicable with respect to its Registrable Securities.

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### ARTICLE V EXPENSES OF REGISTRATION

The Company will bear all reasonable expenses, other than underwriting discounts and commissions, and transfer taxes, if any, incurred in connection with registrations, filings or qualifications pursuant to Articles II and III of this Agreement, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, the fees and disbursements of counsel for the Company, and the reasonable fees and disbursements of one firm of legal counsel selected by the Initial Investors pursuant to Section 3.7 hereof.

### ARTICLE VI INDEMNIFICATION

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

6.1 To the extent permitted by law, the Company will indemnify, defend and hold harmless each Investor that holds such Registrable Securities, and agents, employees, attorneys, accountants, underwriters (as defined in the Securities Act) for such Investors and any directors or officers of such Investor or such underwriter and any person who controls such Investor or such underwriter within the meaning of the Securities Act or the Exchange Act (each, an "Investor Indemnified Person") against any losses, claims, damages, expenses or liabilities (collectively, and together with actions, proceedings or inquiries by any regulatory or self-regulatory organization, whether commenced or threatened in respect thereof, "Claims") to which any of them become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Claims arise out of or are based upon any of the following statements, omissions or violations in a Registration Statement filed pursuant to this Agreement, any post-effective amendment thereof or any prospectus included therein: (a) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any post-effective amendment thereof or the omission



or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, (b) any untrue statement or alleged untrue statement of a material fact contained in the prospectus or any preliminary prospectus (as it may be amended or supplemented) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, or (c) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any other law, including without limitation any state securities law or any rule or regulation thereunder (the matters in the foregoing clauses (a) through (c) being, collectively, "Violations"). Subject to the restrictions set forth in Section 6.4 with respect to the number of legal counsel, the Company will reimburse the Investors and each such attorney, accountant, underwriter or controlling person and each such other Investor Indemnified Person, promptly as such expenses are incurred and are due and payable, for any legal fees or other reasonable expenses incurred by them in connection with investigating or defending any Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6.1 (i) does not apply to a Claim by an Investor Indemnified Person arising out of or based upon a Violation that occurs in reliance upon and in conformity with information furnished in writing to the Company by such Investor Indemnified Person expressly for use in the Registration Statement or any such amendment thereof or supplement thereto, if such prospectus or supplement thereto was timely made available by the Company pursuant to Section 3.3 hereof; and (ii) does not apply to amounts paid in settlement of any Claim if such settlement is made without the prior written consent of the Company, which consent will not be unreasonably withheld. This indemnity obligation will remain in full force

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and effect regardless of any investigation made by or on behalf of the Indemnified Persons and will survive the transfer of the Registrable Securities by the Investors under Article IX of this Agreement.

6.2 In connection with any Registration Statement in which an Investor is participating, each such Investor will indemnify and hold harmless, to the same extent and in the same manner set forth in Section 6.1 above, the Company, each of its directors, each of its officers who signs the Registration Statement, each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act, and any other stockholder selling securities pursuant to the Registration Statement or any of its directors or officers or any person who controls such stockholder within the meaning of the Securities Act or the Exchange Act (each a "Company Indemnified Person") against any Claim to which any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such Claim arises out of or is based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished to the Company by such Investor expressly for use in such Registration Statement. Subject to the restrictions set forth in Section 6.4 with respect to the number of legal counsel, such Investor will promptly reimburse each Company Indemnified Person for any legal or other expenses (promptly as such expenses are incurred and due and payable) reasonably incurred by them in connection with investigating or defending any such Claim. However, the indemnity agreement contained in this Section 6.2 does not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent will not be unreasonably withheld, and no Investor will be liable under this Agreement (including this Section 6.2 and Article VII) for the amount of any Claim that exceeds the net proceeds actually received by such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. This indemnity will remain in full force and effect regardless of any investigation made by or on behalf of a Company Indemnified Party and will survive the transfer of the Registrable Securities by the Investors under Article IX of this Agreement.

6.3 If any proceeding shall be brought or asserted against any person entitled to indemnity under Sections 6.1 or 6.2 hereof (an "Indemnified Party"), such Indemnified Party promptly shall notify the person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all reasonable fees and expenses incurred in connection with defense thereof; provided, however, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

6.4 An Indemnified Party shall have the right to employ separate counsel in any such proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless: (i) the Indemnifying Party has agreed in writing to pay such fees and expenses; (ii) the Indemnifying Party shall have failed promptly to assume the defense of such proceeding and to

employ counsel reasonably satisfactory to such Indemnified Party in any such proceeding; or (iii) the named parties to any such proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such Indemnified Party shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to

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employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the reasonable expense of the Indemnifying Party; provided, however, that in no event shall the Indemnifying Party be responsible for the fees and expenses of more than one separate counsel). The Indemnifying Party shall not be liable for any settlement of any such proceeding effected without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on Claims that are the subject matter of such proceeding.

6.5 Subject to the foregoing, all reasonable fees and expenses of the Indemnified Party (including fees and expenses to the extent incurred in connection with investigating or preparing to defend such proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten (10) Business Days of written notice thereof to the Indemnifying Party, which notice shall be delivered no more frequently than on a monthly basis (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnifying Party may require such Indemnified Party to undertake to reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

#### ARTICLE VII CONTRIBUTION

To the extent that any indemnification provided for herein is prohibited or limited by law, the indemnifying party will make the maximum contribution with respect to any amounts for which it would otherwise be liable under Article VI to the fullest extent permitted by law. However, (a) no contribution will be made under circumstances where the maker would not have been liable for indemnification under the fault standards set forth in Article VI (without giving effect to any prohibition or limitation or indemnification under applicable law), (b) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation, and (c) contribution (together with any indemnification or other obligations under this Agreement) by any seller of Registrable Securities will be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities.

#### ARTICLE VIII EXCHANGE ACT REPORTING

In order to make available to the Investors the benefits of Rule 144 or any similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration, the Company will:

(a) File with the SEC in a timely manner, and make and keep available, all reports and other documents required of the Company under the Securities Act and the Exchange Act so long as the Company remains subject to such requirements (it being understood that nothing herein limits the Company's obligations under Section 4.3 of the Purchase Agreement) and file and make available of such reports and other documents as required for the applicable provisions of Rule 144; and

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(b) Furnish to each Investor, so long as such Investor holds Registrable Securities, promptly upon the Investor's request, (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents filed by the Company with the SEC and (iii) such other information as may be reasonably requested to permit the Investors to sell such securities pursuant to Rule 144 without registration.

#### ARTICLE IX ASSIGNMENT OF REGISTRATION RIGHTS

The rights of the Initial Investors hereunder, including the right to have the Company register Registrable Securities pursuant to this Agreement, may be assigned by the Initial Investors to transferees or assignees of all or any portion of the Registrable Securities, but only if (a) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment, (b) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being transferred or assigned, (c) after such transfer or assignment, the further disposition of such securities by the transferee or assignee is restricted under the Securities Act and applicable state securities laws, (d) at or before the time the Company received the written notice contemplated by clause (b) of this sentence, the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein, (e) such transfer is made in accordance with the applicable requirements of the Purchase Agreement, and (f) the transferee is an "accredited investor" as that term is defined in Rule 501 of Regulation D.

ARTICLE X  
AMENDMENT OF REGISTRATION RIGHTS

This Agreement may be amended and the obligations hereunder may be waived (either generally or in a particular instance, and either retroactively or prospectively) only with the written consent of the Company and of the Investors who then hold a majority interest of the Registrable Securities. Any amendment or waiver effected in accordance with this Article X is binding upon each Investor and the Company.

ARTICLE XI  
MISCELLANEOUS

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

11.2 Notices. Any notices required or permitted to be given under the terms of this Agreement will be given as set forth in the Purchase Agreement.

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

11.4 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware without regard to the principles of conflict of laws. The parties hereto hereby submit to the exclusive jurisdiction of the United States federal and state courts located in the State of Delaware with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT THAT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY.

11.5 Severability. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision will be deemed modified in order to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law will not affect the validity or enforceability of any other provision hereof.

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

11.7 Successors and Assigns. Subject to the requirements of Article IX hereof, this Agreement inures to the benefit of and is binding upon the successors and assigns of each of the parties hereto. Notwithstanding anything to the contrary herein, including, without limitation, Article IX, the rights of an Investor hereunder are assignable to and exercisable by a bona fide pledgee of the Registrable Securities in connection with an Investor's margin or brokerage accounts.

11.8 Headings. The headings of this Agreement are for convenience of reference only, are not part of this Agreement and do not affect its interpretation.

11.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all of which constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by facsimile transmission, and facsimile signatures are binding on the parties hereto.

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

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11.11 Consents. Unless otherwise provided in this Agreement, all consents and other determinations to be made by the Investors pursuant to this Agreement will be made by the Investors holding a majority in interest of the Registrable Securities.

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

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

COMPANY:

SONUS PHARMACEUTICALS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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OMNIBUS SIGNATURE PAGE TO  
SONUS PHARMACEUTICALS, INC.  
REGISTRATION RIGHTS AGREEMENT

The undersigned hereby executes and delivers the Registration Rights Agreement to which this Signature Page is attached, which, together with all counterparts of the Agreement and Signature Pages of the other parties named in said Agreement, shall constitute one and the same document in accordance with the terms of the Agreement.

Sign Name: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Number of Common Shares: \_\_\_\_\_  
Number of Warrant Shares: \_\_\_\_\_

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NEWS RELEASE

**Sonus Pharmaceuticals Announces \$14.2 Million Private Placement Financing**

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**BOTHELL, Washington – July 29, 2003** – Sonus Pharmaceuticals, Inc. (Nasdaq:SNUS) today announced that it has raised \$14.2 million in gross proceeds (approximately \$13.1 million in net proceeds after expenses) through the private placement of 3.9 million newly issued shares of Sonus common stock to several new and current institutional shareholders at a purchase price of \$3.56 per share. For an additional \$0.125 per underlying share, the investors also purchased 1.95 million five-year warrants with an exercise price of \$4.09 per share. Punk Ziegel & Company acted as the placement agent for the financing.

“We are pleased to have the support and confidence of the excellent group of investors participating in this financing. Raising these funds provides us with greater flexibility to accelerate initiation of the late-stage clinical studies for our lead cancer product, TOCOSOL™ Paclitaxel, and to continue to advance other products in our pipeline,” said Michael A. Martino, President and Chief Executive Officer of Sonus Pharmaceuticals.

The securities issued in the private placement have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration under the Securities Act and applicable state securities laws or an applicable exemption from those registration requirements.

**About Sonus Pharmaceuticals**

Sonus is developing a number of potential product candidates for the treatment of cancer and other serious diseases utilizing its proprietary TOCOSOL drug delivery technology. The development of therapeutic drugs with the TOCOSOL technology may result in products that can be delivered more safely and effectively. The Company’s news releases and other information are available on the Sonus web site at [www.sonuspharma.com](http://www.sonuspharma.com).

**About TOCOSOL Paclitaxel**

TOCOSOL Paclitaxel is a ready-to-use formulation of paclitaxel, one of the world’s most widely prescribed anticancer drugs. TOCOSOL Paclitaxel does not require reconstitution, dilution or preparation as with the currently marketed paclitaxel products and other paclitaxel formulations

[More...](#)

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under development. In clinical studies to date, TOCOSOL Paclitaxel is demonstrating favorable anti-tumor activity in cancer patients who have failed prior chemotherapeutic regimens. The

product is also showing excellent tolerability over multiple treatment cycles, and as a result, most patients do not need to have doses reduced or delayed. TOCOSOL Paclitaxel is administered to patients in a short 15-minute infusion, compared to the prolonged three-hour infusion required with available paclitaxel products.

Contact: Pamela L. Dull, Investor Relations Manager, Sonus Pharmaceuticals, (425) 487-9500.

#### Forward-looking Statements

Certain statements made in this press release are forward-looking such as those, among others, relating to the development of drug delivery products and potential applications for these products. As discussed in the Sonus Pharmaceuticals Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 10, 2003, actual results could differ materially from those projected in the forward-looking statements as a result of the following factors, among others: the Company's products will require extensive clinical testing and approval by regulatory authorities; such approvals are lengthy and expensive and may never occur; risks that clinical studies with TOCOSOL Paclitaxel will not be successful or demonstrate increased efficacy; risks of successful development of additional drug delivery products; variability of quarterly operating results, primarily due to timing and costs of clinical trials; risks that the Company will not receive any future collaborative partner payments or other external financing on acceptable terms or at all.

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