



01-31-2003

D#

Form PTO-1595 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings ⇌ ⇌ ⇌		U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office	
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.			
1. Name of conveying party(ies): Message Pharmaceuticals, Inc. 30 Spring Mill Drive Malvern PA 19355 <i>1-27-03</i>		2. Name and address of receiving party(ies) Name: <u>S.R. One, Limited</u> Internal Address: <u>Four Tower Bridge</u> <u>Suite 250</u> Street Address: <u>200 Barr Harbor Drive</u> West Conshohocken PA 19428 City: _____ State: _____ Zip: _____	
Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Nature of conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Other <u>Convertible Secured Subordinated</u> <u>Bridge Note</u>			
Execution Date: <u>August 14, 2002</u>			
4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is: _____ A. Patent Application No.(s) <u>09/165,868;</u> <u>60/142,217; 09/603,522; 09/437,458;</u> <u>09/729,447; 09/516,061; 09/798,635;</u> <u>10/117,955; 10/106,572</u> Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Roberta Jacobs-Meadway, Esq.</u> Internal Address: <u>Ballard Spahr Andrews & Ingersoll, LLP</u> Street Address: <u>1735 Market Street</u> <u>51st Floor</u> City: <u>Philadelphia</u> State: <u>PA</u> Zip: <u>19103</u>		6. Total number of applications and patents involved: <u>17</u> 7. Total fee (37 CFR 3.41): \$ <u>490</u> <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account 8. Deposit account number: <u>02-0755</u> (Attach duplicate copy of this page if paying by deposit account)	
DO NOT USE THIS SPACE			
9. Statement and signature. <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i> <u>Roberta Jacobs-Meadway</u> <i>[Signature]</i> <u>12/9/02</u> Name of Person Signing Signature Date Total number of pages including cover sheet, attachments, and documents: <u>15</u>			

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

01/30/2003 6TOM11 00000139 020755 09163868
01 FC:8021 440.00 CH

THE SECURITIES REPRESENTED BY THIS NOTE (THE "SECURITIES") HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION. THE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE SECURITIES ACT OF 1933 AND OTHER APPLICABLE SECURITIES LAWS.

MESSAGE PHARMACEUTICALS, INC.

CONVERTIBLE SECURED SUBORDINATED BRIDGE NOTE

\$1,300,000

August 14, 2002

Message Pharmaceuticals, Inc. (the "Company"), a Delaware corporation, for value received, promises to pay to S.R. One, Limited, or registered assigns, the principal amount of One Million Three Hundred Thousand Dollars (\$1,300,000) upon written demand of the holder made any time after December 31, 2002, and to pay interest on the unpaid balance of this Note at the rate of 10% per annum, compounded daily (computed on the basis of a 365/366-day year and the actual number of days elapsed. Accrued interest shall be payable upon payment of the principal amount of this Note. The principal of and interest on this Note are payable in lawful money of the United States of America by check mailed to the address of the holder of this Note as such address shall appear on the record books of the Company. All payments shall be applied first to fees, costs and charges relating to this Note (including, without limitation, any costs of collection), then to accrued and unpaid interest and thereafter to principal.

This Note is subject to the following provisions, terms and conditions:

ARTICLE I - PREPAYMENT

1.1 Prepayment. This Note may be prepaid by the Company in full at any time, or in part from time to time, on or after the date hereof, at a price equal to the principal amount to be prepaid plus all accrued interest on such prepaid amount to the prepayment date.

ARTICLE II - CONVERSION

2.1 Conversion upon Future Equity Issuance. In the event that, at any time while this Note shall remain outstanding, the Company shall conclude its next round of equity financing (the "Equity Financing"), if the holder of this Note so elects in writing, the principal and accrued interest payable under this Note on the initial closing date of the Equity Financing shall be converted into shares of the equity security (the "Equity Security") being sold in the Equity Financing at a conversion price equal to the per share purchase price (the "Equity Purchase Price") being paid by the other purchasers of the Equity Security in the Equity Financing; provided, however, that no fractional share of the Equity Security shall be issued, and any amount payable under this Note that therefore cannot be applied to the purchase of the

Equity Security shall be forgiven by the holder. The holder of this Note shall be entitled to the same rights as the other purchasers of the Equity Security in the Equity Financing.

2.2 Optional Conversion upon a Sale Transaction. In the event that, at any time while this Note shall remain outstanding, the Company shall become a party to a merger or consolidation, a sale or other disposition of all or substantially all of its assets or any other acquisition transaction as the result of which more than 50% of the voting power of the Company is disposed of (a "Sale Transaction"), if the holder of this Note so elects in writing, the principal and accrued interest payable under this Note on the closing date of the Sale Transaction shall automatically be cancelled by issuance to the holder of shares of common stock of the Company at a conversion price that reflects a 50% discount from the pre-acquisition valuation of the Company, as established by the consideration payable in the Sale Transaction, so as to permit the holder to receive the cash, securities or other property to which the holder would be entitled in the Sale Transaction on account of the holder's ownership of the shares of common stock into which this Note shall so be converted. In such event, the Company shall take all action in connection with the Sale Transaction as may be necessary to ensure that the provisions of this Section 2.2 are effected in an appropriate and equitable manner.

2.3 Other Conversion. If the holder of this Note so elects in writing at any time prior to the consummation of an Equity Financing, the principal and accrued interest payable under this Note shall be converted into shares of a newly created series of the Company's preferred stock (the "New Preferred Stock") at a conversion price of \$1.29 per share or such other price as shall be mutually agreed upon by the Company and the holder of this Note (the "Conversion Price"); provided that no fractional share of the New Preferred Stock shall be issued, and any amount payable under this Note that therefore cannot be applied to the purchase of New Preferred Stock shall be forgiven by the holder; and further provided that the Conversion Price shall be appropriately adjusted in the event of a stock dividend, subdivision, split up or combination of the Company's common stock. Unless otherwise agreed by the Company and the holder of this Note, the New Preferred Stock (i) shall be convertible by the holders into shares of the Company's common stock at an initial conversion price equal to the Conversion Price, provided that the conversion price of the New Preferred Stock shall be subject to adjustment on a weighted average antidilution adjustment formula; (ii) shall have a preference on liquidation senior to all other classes of the Company's preferred stock in an amount equal to two times the purchase price for the New Preferred Stock and, after the liquidation preferences are paid to the holders of all series of the Company's preferred stock, the holders of New Preferred Stock shall participate with the holders of the common stock in any remaining liquidation proceeds; (iii) shall vote on an as-converted basis with the other stockholders of the Company; and (iv) shall have rights substantially equivalent to those set forth in Article VI of this Note. The New Preferred Stock shall be entitled to the same registration rights as those applicable to the Company's currently outstanding preferred stock.

2.4 Cancellation of Note. Promptly after the conversion of this Note pursuant to Section 2.1, 2.2 or 2.3, the holder shall tender this Note to the Company for cancellation, and the Company shall issue to the holder of this Note a certificate representing the securities issuable to the holder upon such conversion.

ARTICLE III – LIQUIDATION PREFERENCE

3.1 Liquidation of Preference. In the event of any liquidation, dissolution or winding up of the Company while this Note shall remain outstanding, the holder of this Note shall be entitled to receive, in addition to all principal, accrued interest and other amounts payable under this Note, an additional liquidation payment in an amount equal to the outstanding principal amount of this Note, such additional liquidation payment to be paid out of the assets of the Company prior to the payment of any sums or the distribution of any assets of the Company to: (i) any stockholder of the Company on account of such stockholder's ownership of the Company's common stock, preferred stock or any other class or series of the Company's capital stock then issued and outstanding, and (ii) any creditor of the Company in respect of any obligation of the Company that is subordinated in right of payment to this Note.

3.2 Effect of Sale Transaction. A Sale Transaction shall be deemed to be a liquidation, dissolution or winding up of the Company for purposes of this Article III unless the holder of this Note elects to convert this Note into equity pursuant to Section 2.2.

ARTICLE IV – SUBORDINATION

4.1 Subordination. All principal and accrued interest on this Note shall be subordinate in right of payment to the payment in full of all present and future indebtedness, liabilities, claims, rights and demands of any kind that may be now or hereafter owed by the Company to Comerica Bank (the "Bank Obligations"). Notwithstanding anything to the contrary set forth in this Note, until the Bank Obligations shall be repaid in full: (a) the holder of this Note may not demand payment of any principal amount of this Note; and (b) no accrued interest on this Note shall be payable to the holder hereof; provided, however, that interest on this Note shall accrue in accordance with the terms of this Note. This provision shall continue in effect until all of the Bank Obligations shall be repaid in full, notwithstanding any delay or failure of Comerica Bank in the exercise of any right or remedy with respect to the Bank Obligations.

4.2 No Limitation on Right to Convert. Nothing set forth in this Article IV shall be deemed to limit the right of the holder to convert this Note into equity of the Company in accordance with the terms of the Note or upon such other terms and conditions as the Company and the holder may from time to time agree.

ARTICLE V – REMEDIES OF HOLDER IN EVENT OF DEFAULT

5.1 Events of Default Defined. If any of the following events (each being hereinafter referred to as an "Event of Default") shall occur and be continuing for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or otherwise):

(a) The Company defaults in the payment of any principal of, interest on, or other payment obligation with respect to, this Note, whether at the due date thereof or upon acceleration thereof, and such default remains uncured for five business days after written notice thereof shall be received by the Company from the holder of this Note;

(b) any representation or warranty made by the Company in this Note shall prove to have been false or incorrect in any material respect on the date on which it was made;

(c) the Company shall fail to perform or observe any covenant or agreement set forth in this Note in any material respect and such failure continues uncured for 30 days after written notice thereof shall be received by the Company from the holder of this Note;

(d) if an order, judgment or decree is entered adjudicating the Company bankrupt or insolvent; or the Company shall commence any case, proceeding or other action relating to it in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or for any other relief, under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or if the Company shall apply for a receiver, custodian or trustee of it or for all or a substantial part of its property; or if the Company shall make an assignment for the benefit of creditors; or if the Company shall be unable to, or shall admit in writing the inability to, pay its debts as they become due; or if the Company shall take any action indicating its consent to, approval of, or acquiescence in, or in furtherance of, any of the foregoing;

(e) if any case, proceeding or other action against the Company shall be commenced in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts, or any other relief, under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or if a receiver, custodian or trustee of the Company or for all or a substantial part of its properties shall be appointed; or if a warrant of attachment, execution or distraint, or similar process, shall be issued against any substantial part of the property of the Company; and if in each such case such condition shall continue for a period of 90 days undismissed, undischarged or unbonded; or

(f) if the Company shall cease conducting its normal business activities;

then the holder of this Note may, at its option and in addition to any right, power or remedy permitted under this Note, or by law or equity or otherwise, by notice in writing to the Company, declare this Note to be, and this Note shall thereupon be and become, forthwith due and payable together with interest accrued hereon.

Except as otherwise provided herein, the Company hereby waives presentment, demand for payment, notice of dishonor, protest and notice of protest, and any or all other notices or demands in connection with this Note. The liability of the Company shall be unconditional without regard to the liability of any other party. No delay by the holder in exercising any power or right hereunder shall operate as a waiver of any power or right, nor shall any single or partial exercise of any power or right preclude other or further exercise thereof, or the exercise of any other power or right hereunder or otherwise; and no waiver or modification of the terms hereof shall be valid unless set forth in writing by the holder and then only to the extent set forth therein.

In case any one or more Events of Default shall occur and be continuing, and acceleration of this Note or any other indebtedness of the Company to the holder of this Note shall have occurred, the holder may, *inter alia*, proceed to protect and enforce its rights by an action at law, suit in equity and/or other appropriate proceeding, whether for the specific performance of any agreement contained in this Note, or for an injunction against a violation of any of the terms hereof or thereof or in and of the exercise of any power granted hereby or thereby or by law. No right conferred upon the holder by this Note shall be exclusive of any other right referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise.

5.2 Attorneys' Fees and Costs of Collection. Should the indebtedness evidenced by this Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceedings, the Company agrees to pay, in addition to principal and interest due and payable hereon, all costs of collection, including, without limitation, reasonable attorneys' fees and expenses, incurred by the holder in collecting or enforcing this Note.

5.3 Waivers; Confession of Judgment; Jurisdiction and Venue.

(a) Upon the occurrence of an Event of Default, the Company hereby authorizes any clerk of any Court of Common Pleas in the Commonwealth of Pennsylvania to enter judgment by confession against the Company in favor of the holder for the full amount of the indebtedness due hereunder, including all interest and costs, and the Company waives summons and other process and does further consent to the immediate execution of said judgment, expressly waiving the benefit of any homestead or other exemption laws. Any acknowledgement, waiver, new promise, payment of principal or interest or otherwise by any party, with respect to the obligations hereunder, shall be deemed to be made as agent of each other party for the purposes hereof, and shall, if the statute of limitations in favor of any party against the holder shall have commenced to run, toll the running of such statute of limitations, and if such statute of limitations shall have expired, prevent the operation of such statute. The authority and power to appear for and enter judgment against the Company shall not be exhausted by one or more exercises thereof, or by any imperfect exercise thereof, and shall not be extinguished by any judgment entered pursuant thereto; such authority and power may be exercised on one or more occasions, from time to time, in the same or different jurisdictions. Any judgment entered against the Company, whether by confession or otherwise, shall bear interest at a rate which is the highest rate of interest being paid by the Company on the loan evidenced by this Note on the date of judgment.

(b) THE COMPANY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE COMPANY AND THE HOLDER RELATING TO THE SUBJECT MATTER OF THIS NOTE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS NOTE, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENT OR AGREEMENT RELATING TO THE LOAN EVIDENCED BY THIS NOTE.

(c) The Company hereby irrevocably submits to the jurisdiction of any state or federal court setting in the Commonwealth of Pennsylvania over any suit, action or proceeding arising out of or relating to this Note. The Company hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note by delivery of a copy thereof by certified mail, postage prepaid, return receipt requested, to the Company. Refusal to accept delivery, and/or avoidance of delivery, shall be deemed to constitute delivery. The Company irrevocably agrees that service in accordance with this Section 5.2(c) shall be deemed in every respect effective service of process upon the Company in any such suit, action or proceeding, and shall, to the fullest extent permitted by law, be taken and held to be valid personal service upon the Company. Nothing in this Section 5.2(c) shall affect the right of the holder to serve process in any manner otherwise permitted by law or limit the right of the holder otherwise to bring proceedings against the Company in the courts of any jurisdiction or jurisdictions.

ARTICLE VI – COVENANTS

6.1 **Affirmative Covenants.** The Company hereby agrees that, as long as any principal and/or interest under this Note shall remain outstanding:

(a) Within two business days of the date of this Note, the Company shall (x) satisfy any remaining payment obligations to Toucan Capital Fund II, L.P. pursuant to the 12% Convertible, Secured Promissory Note dated March 8, 2002 in the original principal amount of \$400,000 and the 12% Convertible, Secured Promissory Note dated March 12, 2002 in the original principal amount of \$1,300,000, and (y) terminate any security interest granted to Toucan Capital Fund II, L.P. in any of the assets of the Company.

(b) The indebtedness evidenced by this Note: (x) shall be senior to all other indebtedness or obligations of the Company whether now existing or hereafter created, other than the indebtedness to Comerica Bank to the extent provided in the Subordination Agreement between Comerica Bank and S.R. One, Limited dated August 14, 2002, and (y) shall not be made subordinate or subject in right of payment to the prior payment of any other indebtedness or obligation of any kind, direct or indirect, contingent or otherwise, other than obligations of the Company owed directly to the state or federal government.

(c) The Company shall use all commercially reasonable efforts to maintain and enhance the value of the Company's intellectual property as defined in Exhibit A to this Note (the "Intellectual Property").

(d) The Company shall deliver annual financial statements to the holder within 60 days after the close of the Company's fiscal year, quarterly financial and monthly income statements within 30 days after the close of the respective period, and an annual budget and such other information as reasonably requested by the holder promptly after the same becomes available or, solely with respect to other information, promptly after the same is requested.

(e) Upon any officer of the Company obtaining knowledge thereof, the Company will promptly notify the holder in writing of any event that may have a material adverse effect on the condition, financial or otherwise, or operations of the Company (as they are currently conducted

and as they are proposed to be conducted), or on any material assets or any intellectual property developed, owned, controlled, licensed, possessed or used by the holder.

(f) The Company shall permit the holder and its agents or representatives to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such times during normal business hours as reasonably may be requested by the holder.

6.2 Negative Covenants. The Company hereby agrees that, as long as this Note shall remain outstanding, the Company shall not take any of the following actions without the consent of the holder of this Note:

(a) The Company shall not incur additional indebtedness for borrowed money, beyond (x) indebtedness of up to \$800,000 for advances for operating expenses contemplated as a series of bridge notes, (y) indebtedness already existing as of the date hereof, and (z) further indebtedness not to exceed \$25,000.

(b) The Company shall not grant to any person or entity a security interest, lien, license, or other encumbrance of any kind, direct or indirect, contingent or otherwise, in, to or upon any assets of the Company, including, without limitation, any intellectual property of any kind.

(c) The Company shall not enter into any agreement that would materially impair, interfere with or conflict with the Company's obligations hereunder.

(d) The Company shall not sell, lease, transfer or otherwise dispose of or encumber (including, without limitation through licensing or partnering arrangements) any of the Company's Intellectual Property or other material assets, other than in the ordinary course of business.

(e) The Company shall not issue any shares of capital stock or other securities, except for (i) shares of capital stock issuable upon exercise or conversion of currently outstanding warrants or convertible securities, including any shares issued upon the cancellation or conversion of currently outstanding bridge notes, and (ii) options to purchase common stock under the Company's Amended and Restated 1998 Equity Incentive Plan.

(f) The Company shall not declare or pay any dividends or make any distributions of cash, property or securities of the Company with respect to any shares of its common stock, preferred stock or any other class or series of its stock, or, directly or indirectly (except for repurchases of common stock by the Company in accordance with the terms of employee benefit plans or written agreement between the Company and any of its employees approved by the Board of Directors of the Company), redeem, purchase, or otherwise acquire for any consideration any shares of its common stock or any other class of its stock.

(g) The Company shall not merge or consolidate with any person except with a wholly owned subsidiary of the Company.

ARTICLE VII - SECURITY INTEREST

7.1 Grant of Security Interest. To secure its obligations under this Note, the Company hereby grants and pledges to the holder of this Note a first priority security interest (except as to Comerica Bank which shall have a first priority security interest in the Collateral on a pari passu basis with the security interest of the holder of this Note) in the Company's right, title and interest in, to and under all of the Company's Intellectual Property (the "Collateral"), and all proceeds from any disposition of any Collateral, such first priority security interest being the only existing security interest of any kind, direct or indirect, contingent or otherwise, in the Collateral other than the pari passu interest of Comerica Bank. If certificates of title are now, or hereafter become, issued or outstanding with respect to any of the Collateral, the Company promptly shall cause the senior security interest of the holder of this Note to be properly noted thereon.

7.2 Cumulative Remedies. The rights and remedies of the holder of this Note with respect to the senior security interest granted hereby are in addition to those which are now or may hereafter be available to the holder as a matter of law or equity. Each right, power and remedy of the holder of this Note provided for herein, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every right, power and remedy provided for herein, and the exercise by the holder of any one or more of the rights, powers and/or remedies provided for in this Note, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including a grantee, of any or all other rights, powers and/or remedies.

7.3 Perfection of Security Interest. The Company shall execute, deliver, file and refile any financing statements, instruments (including without limitation stock certificates), continuation statements, assignments, or other security agreements that the holder of this Note may require from time to time to confirm the liens arising out of this Note with respect to the Collateral. The Company agrees to pay all reasonable costs of filing and/or refiling of any financing statements, continuation statements or other security agreements required to perfect and to continue perfection of the holder's security interest in the Collateral and all reasonable costs required to evidence the first priority of the security interest. The Company further agrees not to abandon, conceal, injure, or destroy the Collateral, not to sell, lease, assign, or encumber the Collateral (including, without limitation, through licensing, partnering, or collaboration arrangements) without the prior written consent of the holder of this Note, and not to grant any further security interest of any kind, direct or indirect, contingent or otherwise, in the Collateral without the holder's prior written consent.

7.4 Material Impairment or Conflict. The Company shall not enter into any agreement that would materially impair or conflict with the Company's obligations hereunder without the prior written consent of the holder of this Note. Without the holder's prior written consent, the Company shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in the Company's rights and interest in any property included within the definition of the Collateral acquired under such contracts.

7.5 Notification of Adverse Developments. Upon any officer of the Company obtaining knowledge thereof, the Company will promptly notify the holder of this Note in writing of any event that materially adversely affects the value of any material Collateral, the ability of the Company to dispose of any material Collateral, or the rights and remedies of holder in relation thereto, including the levy of any legal process against any of the Collateral.

ARTICLE VIII - REPRESENTATIONS AND WARRANTIES

The Company hereby represents and warrants to the holder as follows:

8.1 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business, properties, operations, prospects or condition (financial or otherwise).

8.2 Authorization of Agreement, Etc. The execution, delivery and performance by the Company of this Note have been duly authorized by all requisite corporate action by the Company in accordance with Delaware law. This Note is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other laws of general application effecting enforcements of creditors' rights or general principles of equity.

8.3 No Conflicts. The execution, delivery, performance, issuance, sale and delivery of this Note, and compliance with the provisions hereof by the Company, will not (a) to the knowledge of the Company, violate any provision of any law, statute, rule or regulation applicable to the Company or any ruling, writ, injunction, order, judgment or decree of any court, arbitrator, administrative agency or other governmental body applicable to the Company or any of its properties or assets or (b) conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute (with notice or lapse of time or both) a material default (or give rise to any right of termination, cancellation or acceleration) under, or result in the creation of, any encumbrance upon any of the material assets of the Company under, the Certificate of Incorporation or By-Laws of the Company (as they may be amended to date) or any agreement or instrument to which the Company is a party, except for the consent of Comerica Bank, which the Company is in the process of obtaining. As used herein, "encumbrance" shall mean any liens, charges, encumbrances, equities, claims, options, proxies, pledges, security interests, licenses or other similar rights of any nature.

8.4 Approvals. No permit, authorization, consent or approval of or by, or any notification of or filing with, any person (governmental or private) is required in connection with the execution, delivery, performance, issuance, sale and/or delivery of this Note, and consummation by the Company of the transactions contemplated hereby, except those that have been obtained.

8.5 Liens. Except as set forth in the Disclosure Schedule attached as Exhibit B to this Note, neither the Company's Intellectual Property nor any of the Company's material assets are

subject to any existing lien, pledge, security interest or other encumbrance of any kind, direct or indirect, contingent or otherwise.

ARTICLE IX – REGISTRATION, TRANSFER, ETC.

9.1 Note Record. The Company shall keep at its principal office in Malvern, Pennsylvania (or such other office or agency of the Company as it may designate by notice in writing to the holder hereof), a register in which, subject to such reasonable regulations as it may prescribe, the Company shall record the transfer of this Note. Any reference in this Note to a "holder" of this Note shall refer to the registered holder hereof, as set forth from time to time in the register kept by the Company and referred to in this Section 8.1.

9.2 Instruments of Transfer. This Note, if presented or surrendered for exchange or registration of transfer, shall, if so required by the Company, be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company, duly executed by the registered holder or by its duly authorized attorney.

9.3 Person Deemed Owner. Prior to due presentation of this Note for registration of transfer, the Company may deem and treat the person in whose name this Note shall be registered upon the Note register of the Company as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing hereon) for the purpose of receiving payment of or on account of the principal hereof and interest due hereon and for all other purposes, and the Company shall not be affected by any notice to the contrary.

ARTICLE X – MISCELLANEOUS

10.1 Section and Other Headings. The section and other headings contained in this Note are for reference purposes only and shall not affect the meaning or interpretation of this Note.

10.2 Governing Law. This Note shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the Company has caused this Note to be signed by its duly authorized officer as of the day and year first above written.

MESSAGE PHARMACEUTICALS, INC.

By: Chap L. M. Carl

Title: President & CEO

PH11001892.3

Exhibit A**Intellectual Property**

"Intellectual Property" shall mean all foreign and domestic intangible property and rights, existing as of the date hereof and/or discovered, developed or obtained subsequent to the date hereof, and owned, controlled, licensed, possessed or otherwise obtained or used by the Company, including, without limitation, (i) trademarks, service marks, brand names, certification marks, collective marks, d/b/a's, Internet domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and other indicia of origin, all applications and registration for the foregoing, and all goodwill associated therewith and symbolized thereby, including all extensions, modifications and renewals of same (collectively, "Trademarks"); (ii) inventions, discoveries and ideas, whether patentable or not, and all patents, registrations and applications therefor, including divisions, continuations, continuations-in-part, requests for continued examination, and renewal applications, and including renewals, extensions and reissues (collectively, "Patents"); (iii) confidential and proprietary information, trade secrets and know-how, including processes, schematics, formulae, drawings, prototypes, models, designs and customer lists (collectively, "Trade Secrets"); (iv) published and unpublished works of authorship, whether copyrightable or not (including, without limitation, databases and other compilations of information), copyrights therein and thereto, and registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof (collectively, "Copyrights"); (v) all FDA applications, registrations, filings and other rights (collectively, "FDA Rights"); and (vi) all other intellectual property or proprietary rights and claims or causes of action arising out of or related to any infringement, misappropriation or other violation of any of the foregoing, including rights to recover for past, present and future violations thereof (collectively, "Other Proprietary Rights").

Exhibit B

Existing Liens and Encumbrances

The Company has outstanding loans in the amount of \$242,123.43 from Comerica Bank, successor to Progress Bank. The Bank holds a lien on the Company's accounts, chattel paper, inventory, equipment and fixtures and the proceeds thereof. The Company has also pledged certificates of deposit in the amount of approximately one-half of the balance of the loan.

Schedule of Patents and Patent Applications

Patent Registration Nos. 6,107,029 and 6,004,749

Patent Application Nos. 09/165,868; 60/142,217; 09/603,522; 09/437,458; 09/729,447;
09/516,061; 09/798,635; 10/117,955; and 10/106,572