

SIMES STEPHEN M
Form 4
February 03, 2010

FORM 4

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

OMB APPROVAL

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
SIMES STEPHEN M

2. Issuer Name and Ticker or Trading Symbol
BIOSANTE PHARMACEUTICALS
INC [bpax]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)

111 BARCLAY BOULEVARD

(Street)

3. Date of Earliest Transaction
(Month/Day/Year)
02/02/2010

Director 10% Owner
 Officer (give title below) Other (specify below)
V Chair, Pres. and CEO

LINCOLNSHIRE, IL 60069

(City) (State) (Zip)

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
Common Stock				(A) or (D)	197,167	I	By Trust
Common Stock				(A) or (D)	100	I	By Child

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474
(9-02)

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Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)
				Code	V (A) (D)	Date Exercisable Expiration Date	Title Amount Number Shares
Employee Stock Option (right to buy)	\$ 1.54	02/02/2010		A	150,000	⁽¹⁾ 02/01/2020	Common Stock 150,000

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
SIMES STEPHEN M 111 BARCLAY BOULEVARD LINCOLNSHIRE, IL 60069	X		V Chair, Pres. and CEO	

Signatures

/s/ Stephen M. Simes 02/03/2010
 **Signature of Reporting Person Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, see Instruction 4(b)(v).
 - ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) This option vests with respect to 50,000 shares on each of February 2, 2011, February 2, 2012 and February 2, 2013.
 Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure.
 Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. " SIZE="2">% \$

\$10.18
 23.46 11/03/09
 09/15/15 \$
 \$281,116
 737,693 \$
 \$621,194
 1,869,460

J. Pekarsky

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10,000 .9% \$10.18 11/03/09 \$28,112 \$62,119

- (1) Options vested in full during fiscal 2005. The options were granted under the Company's stock option plans.
- (2) The exercise price is equal to the fair market value of the stock on the date of grant.
- (3) The 5% and 10% assumed rates of annual compounded stock price appreciation are set forth in the rules of the SEC and do not represent the Company's estimate or projection of future Common Stock prices.

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

The following table sets forth certain information regarding the exercise of stock options during the fiscal year ended September 24, 2005 and the fiscal year-end value of unexercised options for the Company's named executive officers.

Name	Shares Acquired on Exercise (#)	Value Realized (\$)	Number of	Value of Unexercised
			Securities Underlying Unexercised Options at Fiscal Year-End (#)	In-the-Money Options at Fiscal Year-End (\$) (1)
			Exercisable /Unexercisable	Exercisable / Unexercisable
J. Cumming	664,500	\$ 10,413,276	625,000 / 217,500	\$ 11,436,813 / \$4,385,775
J. Stein	168,000	\$ 1,900,743	277,000 / 35,000	\$ 5,874,521 / \$ 703,300
G. Muir	248,000	\$ 3,139,087	577,500 / 142,500	\$ 11,662,336 / \$2,904,150
R. Cascella	75,000	\$ 1,038,188	297,500 / 217,500	\$ 4,521,925 / \$4,555,275
J. Pekarsky	36,000	\$ 268,969	20,000 / 25,000	\$ 395,100 / \$ 529,038

- (1) Based upon the \$26.88 closing market price of the Company's Common Stock as reported on the Nasdaq Stock Market's National Market on September 24, 2005 minus the respective option exercise price.

Severance and Separation Agreements

Severance agreements are in effect between the Company and the following named executive officers: Messrs. Cumming, Muir and Cascella and Dr. Stein. The agreements are intended to encourage the executives to continue to carry on their duties in the event of a change of control of the Company. The agreements provide that 30 days after a change of control, the Company shall pay the executive a lump sum in cash equal to the sum of the executive's annual salary for the fiscal year immediately preceding the change of control plus the executive's highest annual bonus, multiplied by three. In addition, the agreements provide that, upon a change of control, all unvested stock options or stock appreciation rights held by the executive shall become immediately exercisable for a one-year period following the executive's termination date. These severance agreements confer no benefits prior to a change of control. In the event that any payments received by the executive in connection with a change of control are subject to the excise tax imposed upon certain change of control payments under federal tax laws, the agreements provide that the Company's auditing firm immediately preceding the change of control shall compute the excise tax imposed on the executive and the Company shall pay that amount to the executive to provide the executive with a payment that is economically equivalent to the payment he would have received but for the imposition of the excise tax. Under the terms of these severance agreements, if the executive remains employed through the one year anniversary of a change of control, then the executive will receive a special bonus (the "special bonus") equal to the sum of the executive's annual salary and highest annual bonus (as defined in the agreements). In addition, if termination of an executive's employment occurs within the three-year period following a change of control of the Company and such termination is by the Company (or its successor) without cause or termination is by the executive for good reason, then the executive will be entitled to receive, among other things, in a lump sum in cash: (i) the executive's accrued salary; (ii) a pro rata portion of such executive's highest annual bonus; (iii) to the extent not previously paid, the special bonus; (iv) continued welfare benefits for a period of one year; and (v) any compensation previously deferred by the executive and any accrued bonus amounts or vacation pay.

The Company also has separation agreements with Messrs. Cumming, Muir and Pekarsky. Under the terms of these agreements, if the executive's employment is terminated for any reason other than cause, the executive will receive a separation package which will include a salary contribution of up to one year of base salary and continued medical and dental benefits up to the earlier of one year or such time as the executive becomes re-employed. The separation agreements for Messr. Pekarsky survives a change in control, but cannot be triggered by a change in control or any voluntary separation notice given by the executive. These separation agreements for Messrs. Cumming and Muir do not survive a change in control.

Compensation Committee Interlocks and Insider Participation

During fiscal 2005, decisions regarding executive compensation were made by the Company's Compensation Committee of the Board of Directors, which was composed of Irwin Jacobs, David R. LaVance, Arthur G. Lerner, and Nancy L. Leaming. The Compensation Committee also administers the Company's stock option and incentive plans, Executive Bonus Program and Key Employee Bonus and Retention Program, and 401(k) Profit-Sharing Plan. None of these members of the Compensation Committee has ever been an officer or employee of the Company or any of its subsidiaries and no executive officer of the Company serves on the board of directors of any company at which any of the Compensation Committee members is employed.

REPORT OF THE COMPENSATION COMMITTEE ON EXECUTIVE COMPENSATION

The Compensation Committee of the Board of Directors, consisting entirely of independent non-management directors, approves all policies under which compensation is paid or awarded to the Company's executive officers. For fiscal 2005, the Committee was comprised of Messrs. Jacobs and LaVance, Dr. Lerner and Ms. Leaming.

The Company's Compensation Philosophy and Plan

The Company's executive compensation program is designed to attract and retain superior executive talent, to provide incentives and rewards to executive officers who will contribute to the long-term success of the Company and to closely align the interests of executives with those of the Company's stockholders.

The Committee reviews the Company's executive compensation program through the application of the subjective business judgment of each of its members, through a discussion with an independent compensation consultant retained by the Committee and a survey of executive compensation programs of peer companies. The Compensation Committee does not use a quantitative method or use a mathematical formula to set any element of compensation for a particular executive officer. The Compensation Committee uses discretion and considers all elements of an executive's compensation package when setting each portion of compensation, which is based upon corporate performance and individual initiatives and performance. The principal elements of the Company's executive compensation program consist of: (i) base annual salary, (ii) executive bonus program and (iii) equity awards.

Base Annual Salaries. Base annual salaries for executive officers are initially determined by evaluating the responsibilities of the position and the experience and knowledge of the individual. Also taken into consideration is the competitiveness of the marketplace for executive talent, including a comparison of base annual salaries for comparable positions at peer companies. Individual adjustments are made at the discretion of the Compensation Committee, taking into consideration factors such as the Company's performance and the Compensation Committee's subjective perception of the individual's performance.

Executive Bonus Program. The Compensation Committee of the Board of Directors approved an Executive Bonus Program for fiscal 2005 under which executive officers, senior management and key contributors selected by the Compensation Committee were eligible for cash bonuses, stock options and stock grants, awarded at the discretion of the Compensation Committee. This program is designed to attract and retain key talent and is directly related to the Company's success and to an overall increase in shareholder value. To qualify for a bonus under this program, executive officers are measured against a combination of strategic, corporate, divisional and individual goals and overall market conditions. Considerations also include an evaluation of comparable salary and incentive data within the medical device industry, overall and divisional revenues and profitability, new product development and introductions, and improved shareholder value. Based on an evaluation of the foregoing, including in particular the Company's overall profitability and appreciation in shareholder value during fiscal 2005, bonuses aggregating \$1,536,000 were granted under the Executive Bonus Program to the Company's executive officers. Included in this bonus total is a deferred portion equal to \$300,000, to be paid to these executive officers in the deferred bonus pool who are employed by the Company on October 1, 2006. In the event that one or more persons that have been allocated a portion of the deferred bonus pool are not employed by the Company on October 1, 2006, the amounts allocated to such persons will be reallocated to the remaining participants in the deferred bonus pool on a pro rata basis. See Executive Compensation Summary Compensation Table .

Equity Awards. The third component of executive officers' compensation are equity awards in the form of stock options.

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Stock options are designed to align the interests of the executive with those of the stockholders. Stock options are granted at an exercise price equal to the fair market value of the Common Stock on the date of grant.

The size of individual stock options are based upon the Committee's subjective review of the job responsibility and individual contribution to the Company's success. Previous stock options are considered when awards are determined. These equity awards are designed to provide incentives for the creation of long-term value for the Company's stockholders. During fiscal 2005, options to purchase an aggregate of 462,500 shares of the Company's Common Stock were granted to executive officers under the Company's stock option plans. These options vested in full during fiscal 2005 and are exercisable within five or ten years from the date of grant.

Section 162(m)

Section 162(m) of the Internal Revenue Code of 1986, as amended, provides that compensation in excess of \$1,000,000 paid to the Chief Executive Officer or to any of the other four most highly compensated executive officers of a company will not be deductible for federal income tax purposes unless such compensation is paid pursuant to one of the enumerated exceptions set forth in Section 162(m). The Company's primary objective in designing and administering its compensation policies is to support and encourage the achievement of the Company's long-term strategic goals and to enhance stockholder value. In general, stock options granted under the Company's 1999 Amended and Restated Equity Incentive Plan, as amended, are intended to qualify under and comply with the performance based compensation exemption provided under Section 162(m), thus excluding from the Section 162(m) compensation limitation any income recognized by executives pursuant to such stock options. Because salary and bonuses, excluding Mr. Cumming's bonus associated with his relocation described below, have generally been below the \$1,000,000 threshold, the Committee has elected, at this time, to retain discretion over bonus payments, rather than to ensure that payments of salary and bonus in excess of \$1,000,000 are deductible. The Committee intends to review periodically the potential impacts of Section 162(m) in structuring and administering the Company's compensation programs.

Compensation of the Chief Executive Officer

In January 2005, Mr. Cumming's salary was increased to \$465,000 from \$440,000, which the Committee considered at the time to be comparable to the salaries of chief executive officers of peer companies based on the Committee's survey of executive compensation at peer companies. In fiscal 2005, Mr. Cumming received a bonus of \$515,000, which was paid in the first quarter of fiscal 2006, and is eligible for a deferred portion of \$100,000 on October 1, 2006. In fiscal 2005, Mr. Cumming was instrumental in, among other things, driving the Company to increased revenues and earnings, expanding sales distribution efforts and developing new strategic alliances. In addition, in December 2002, in recognition of the exceptional service rendered to the Company by Mr. Cumming, the Compensation Committee approved a special bonus program to provide Mr. Cumming with the funds necessary to pay the quarterly installments due under an outstanding loan. The Company paid Mr. Cumming \$318,129 under this special bonus program in fiscal 2005. See "Certain Relationships and Related Transactions" below.

Conclusion

Through these programs, a significant portion of the Company's executive compensation is linked directly to individual and Company performance in pursuance of strategic goals as well as stock price appreciation. The Compensation Committee intends to continue the policy of linking executive compensation to Company performance and stockholder return, recognizing however, that fluctuations in the operating results of the business may result over time.

THE COMPENSATION COMMITTEE:

David R. LaVance, Jr., Chairman

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Irwin Jacobs

Nancy L. Leaming

Arthur G. Lerner

PERFORMANCE GRAPH

The following Performance Graph compares the yearly percentage change in the Company's cumulative total shareholder return on the Company's Common Stock for the period from September 30, 2000 through September 24, 2005, based upon the market price of the Company's Common Stock, with the cumulative total return on the Standard and Poor's Health Care Supplies Index (the S&P Health Care Supplies) and the Russell 2000 for that period. The Performance Graph assumes the investment of \$100 on September 30, 2000 in the Company's Common Stock, the S&P Health Care Supplies, and the Russell 2000, and the reinvestment of any and all dividends.

Cumulative Total Return

	<u>9/30/00</u>	<u>9/29/01</u>	<u>9/28/02</u>	<u>9/27/03</u>	<u>9/25/04</u>	<u>9/24/05</u>
HOLOGIC, INC.	100.00	67.89	132.43	183.11	256.25	722.77
RUSSELL 2000	100.00	78.79	71.46	97.55	115.86	136.66
S & P HEALTH CARE SUPPLIES	100.00	74.48	89.24	125.59	161.67	203.60

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

In January 2001, to assist John W. Cumming, the Company's Chairman, Chief Executive Officer and a director, in the purchase of a local primary residence in connection with his initial relocation to Danbury, Connecticut to take on the position of Senior Vice President and President of Lorad, the Company loaned Mr. Cumming the principal amount of \$300,000 pursuant to a promissory note. In August 2001, in connection with Mr. Cumming's move to the Company's Massachusetts headquarters in order to assume the position of Chief Executive Officer and President, the Company loaned Mr. Cumming an additional principal amount of \$200,000. This additional \$200,000 loan was consolidated with the original loan into one \$500,000 promissory note on the same terms as the original loan. The promissory note bears interest at the rate of 7.0% per year. In April 2002, the Board of Directors deferred the payment obligations under the note by one year, such that the note is now required to be repaid in quarterly installments of \$41,666 plus interest, commencing April 1, 2003 until paid in full no later than April 1, 2006. In the event that the Company undergoes a change of control, the balance of the note will be forgiven. In the event Mr. Cumming's employment with the Company is terminated, either voluntarily or for cause, Mr. Cumming has agreed to repay the balance of the note.

In December 2002, in recognition of the exceptional service rendered to the Company by Mr. Cumming, the Compensation Committee of the Board of Directors approved a special bonus program to provide Mr. Cumming with the funds necessary to pay the quarterly installments due under the loan. Under the special bonus program, for so long as Mr. Cumming remains an officer of the Company and there are amounts remaining to be repaid under the loan, the Company will pay Mr. Cumming a special quarterly bonus equal to the amount due under the loan, including interest due, plus an additional payment equal to the taxes due as a result of the special bonus and such additional payment, such that the net-after-tax special quarterly bonus to be received by Mr. Cumming will equal the principal and interest then due under the loan. During fiscal 2005, the Company paid Mr. Cumming \$318,129 under this special bonus program. As of the date of this proxy statement the full amount of the loan had been repaid, and no further amounts will be paid to Mr. Cumming under this special bonus program.

In fiscal 2005, the Company paid Mr. Cumming's wife compensation in the aggregate amount of approximately \$118,000 for services rendered to the Company in her capacity as the Company's Director of Marketing.

In fiscal 2004, the Audit Committee of the Board of Directors of the Company determined that it would be in the best interests of the Company to assist Mr. Robert A. Cascella, the Company's President and Chief Operating Officer, in relocating his principal residence from Connecticut to Massachusetts so that Mr. Cascella would be able to perform his duties and responsibilities at the Company's principal executive offices located in Bedford, Massachusetts.

On December 15, 2004, the Company's Audit Committee determined to make certain payments pursuant to the Company's relocation program with a relocation company to assist Mr. Cascella in his relocation. In connection with the Company's relocation program, Mr. Cascella and the relocation company entered into a purchase and sale agreement pursuant to which the relocation company paid Mr. Cascella \$551,904, which represented Mr. Cascella's equity value (representing the \$820,000 purchase price less the amounts then outstanding under his mortgage, taxes, maintenance, utilities and insurance) in his Madison, CT residence. After the signing of the purchase and sale agreement and through January 31, 2005, the date on which Mr. Cascella vacated his residence, Mr. Cascella remained responsible for paying taxes, maintenance, utilities, insurance and all other operating costs relating to the residence.

In connection with above-described transactions, on December 21, 2004, pursuant to the Company's relocation program with the relocation company, the Company paid the relocation company approximately \$82,000, representing 10% of the purchase price as an advance against the relocation company's management fee and direct expenses associated with the sale of his residence. In April 2005, an additional amount of \$1,518 was paid to the relocation company to settle the remaining expenses incurred in the sale of his residence. In April 2005, the relocation company sold Mr. Cascella's residence to a third party for the same price as the purchase

price paid to Mr. Cascella. In making its determination to approve the payments and transactions described above, the Company's Audit Committee, based upon the review of information presented to the Audit Committee, including, but not limited to, advice received from the relocation company and the receipt of appraisals from two independent real estate appraisers, concluded that the payments that the Company agreed to make were fair to and in the best interests of the Company.

On December 23, 2004, and April 6, 2005, as part of Mr. Cascella's relocation to Massachusetts, the Company reimbursed Mr. Cascella for approximately \$26,600 and \$9,500, respectively, to cover relocation costs and expenses in connection with the purchase of his new residence in Massachusetts.

Mr. Lawrence M. Levy, who was appointed to the Board of Directors on December 13, 2005, has served as senior counsel at Brown Rudnick Berlack Israels LLP, an international law firm that provides legal services to the Company, since February 2005 and, for more than 30 years before that, had been a partner at Brown Rudnick, specializing in Corporate and Securities Law. Mr. Levy was Secretary of the Company since its formation in 1985 until December 2005.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Under the securities laws of the United States, the Company's directors, its executive officers, and any persons holding more than ten percent of the Company's Common Stock are required to report their initial ownership of the Company's Common Stock and any subsequent changes in that ownership to the SEC. Specific filing deadlines of these reports have been established and the Company is required to disclose in this proxy statement any failure to file by these dates during the fiscal year ended September 24, 2005. To the best of the Company's knowledge, all of these filing requirements have been satisfied. In making this statement, the Company has relied solely on written representations of its directors and executive officers and any ten percent stockholders and copies of the reports that they filed with the SEC.

OTHER MATTERS

The Company knows of no other matters to be submitted at the meeting. If any other matters properly come before the meeting, it is the intention of the persons named in the accompanying proxy to vote the shares represented thereby on such matters in accordance with their best judgment.

STOCKHOLDER COMMUNICATIONS

Stockholders may contact the Board of Directors of the Company by writing to them c/o Investor Relations, Hologic, Inc., 35 Crosby Drive, Bedford, MA 01730. All communications directed to the Board will be delivered to the Board of Directors.

INCORPORATION BY REFERENCE

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To the extent that this proxy statement has been or will be specifically incorporated by reference into any filing by the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, the sections of the proxy statement entitled Report of the Compensation Committee on Executive Compensation, Audit Committee Report and Performance Graph shall not be deemed to be so incorporated, unless specifically otherwise provided in any such filing.

FINANCIAL MATTERS AND FORM 10-K REPORT

THE COMPANY WILL PROVIDE EACH BENEFICIAL OWNER OF ITS SECURITIES WITH A COPY OF AN ANNUAL REPORT ON FORM 10-K, INCLUDING THE FINANCIAL STATEMENTS AND SCHEDULES THERETO, REQUIRED TO BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION FOR THE COMPANY'S MOST RECENT FISCAL YEAR, WITHOUT CHARGE, UPON RECEIPT OF A WRITTEN REQUEST FROM SUCH PERSON. SUCH REQUEST SHOULD BE SENT TO INVESTOR RELATIONS, HOLOGIC, INC., 35 CROSBY DRIVE, BEDFORD, MASSACHUSETTS 01730. ALTERNATIVELY, A BENEFICIAL OWNER OF THE COMPANY'S SECURITIES MAY ACCESS THE COMPANY'S ANNUAL REPORT ON FORM 10-K ON THE COMPANY'S INTERNET WEBSITE AT: <http://www.hologic.com/investor>.

VOTING PROXIES

The Board of Directors recommends an affirmative vote on all proposals specified. Proxies will be voted as specified. If signed proxies are returned without specifying an affirmative or negative vote on any proposal, the shares represented by such proxies will be voted in favor of the Board of Directors' recommendations.

By order of the Board of Directors

Philip J. Flink, *Secretary*

Bedford, Massachusetts

January 20, 2006

APPENDIX A

HOLOGIC, INC.

SECOND AMENDED AND RESTATED

1999 EQUITY INCENTIVE PLAN

Section 1. Purpose

The purpose of the Hologic, Inc. Second Amended and Restated 1999 Equity Incentive Plan (the *Plan*) is to attract and retain employees and directors, to provide an incentive for them to assist Hologic, Inc. (the *Corporation*) to achieve long-range performance goals, and to enable them to participate in the long-term growth of the Corporation.

Section 2. Definitions

- (a) *Affiliate* means any business entity in which the Corporation owns directly or indirectly 50% or more of the total combined voting power or has a significant financial interest as determined by the Committee.

- (b) *Annual Meeting* means the annual meeting of shareholders or special meeting in lieu of annual meeting of shareholders at which one or more directors are elected.

- (c) *Award* means any Option, Stock Appreciation Right, Performance Share, Restricted Stock, Restricted Stock Unit or Stock Award awarded under the Plan.

- (d) *Award Share* means a share of Common Stock awarded to an employee or director, without payment therefore.

- (e) *Board* means the Board of Directors of the Corporation.

- (f) *Code* means the Internal Revenue Code of 1986, as amended from time to time.

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(g) **Committee** means the Compensation Committee of the Board, or such other committee of not less than two members of the Board appointed by the Board to administer the Plan, provided that the members of such Committee must be Non-Employee Directors as defined in Rule 16b-3(b) promulgated under the Securities Exchange Act of 1934, as amended.

(h) **Common Stock** or **Stock** means the Common Stock, par value \$.01 per share, of the Corporation.

(i) **Corporation** means Hologic, Inc.

(j) **Designated Beneficiary** means the beneficiary designated by a Participant, in a manner determined by the Board, to receive amounts due or exercise rights of the Participant in the event of the Participant's death. In the absence of an effective designation by a Participant, Designated Beneficiary shall mean the Participant's estate.

(k) **Eligible Director** means each director of the Corporation who is not then an employee of the Corporation or affiliated with any holder of more than 5% of the outstanding voting stock of the Corporation.

(l) **Fair Market Value** means, with respect to Common Stock, the last sale price of the Common Stock as reported on the National Association of Securities Dealers Automated Quotation System (NASDAQ) or on a national securities exchange on which the Common Stock may be traded on the date of the granting of the Award, or if such date is not a business day, the first business day preceding such grant. If the Common Stock is not publicly traded, the fair market value shall mean the fair market value of the Common Stock as determined by the Board of Directors.

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(m) **Incentive Stock Option** means an option to purchase shares of Common Stock, awarded to a Participant under Section 6, which is intended to meet the requirements of Section 422 of the Code or any successor provision.

(n) **Nonqualified Stock Option** means an option to purchase shares of Common Stock, awarded to a Participant under Section 6 or Section 12, which is not intended to be an Incentive Stock Option.

(o) **Option** means an Incentive Stock Option or a Nonqualified Stock Option.

(p) **Participant** means a person selected by the Board to receive an Award under the Plan.

(q) **Performance Cycle** or **Cycle** means the period of time selected by the Board during which performance is measured for the purpose of determining the extent to which an award of Performance Shares has been earned.

(r) **Performance Shares** mean shares of Common Stock which may be earned by the achievement of performance goals, awarded to a Participant under Section 8.

(s) **Restricted Period** means the period of time selected by the Board during which an award of Restricted Stock may be forfeited to the Corporation.

(t) **Restricted Stock** means shares of Common Stock subject to forfeiture, awarded to a Participant under Section 9.

(u) **Restricted Stock Unit** means a right granted under and subject to restrictions pursuant to Section 10.

(v) **Stock Appreciation Right** or **SAR** means a right to receive any excess in value of shares of Common Stock over the reference price, awarded to a Participant under Section 7.

(w) **Stock Award** means an award of Common Stock, including an Award Share, or an award of Common Stock and other rights granted as units that are valued in whole or in part by reference to, or otherwise based on, the value of Common Stock, awarded to a Participant under Section 11.

Section 3. Administration

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The Plan shall be administered by the Board, or if the Board so determines, by the Committee. The Committee shall serve at the pleasure of the Board, which may from time to time, and in its sole discretion, discharge any member, appoint additional new members in substitution for those previously appointed and/or fill vacancies however caused. A majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present shall be deemed the action of the Committee. The Board, including the Committee, shall have authority to adopt, alter and repeal such administrative rules, guidelines and practices governing the operation of the Plan as it shall from time to time consider advisable, and to interpret the provisions of the Plan. The Board's decisions shall be final and binding. To the extent permitted by applicable law, the Board may delegate to the Committee the power to make Awards to Participants and all determinations under the Plan with respect thereto. Administration of the automatic option grant provisions of the Plan shall be self-executing in accordance with the provisions of Section 12 hereof, and neither the Board nor the Committee shall exercise any discretionary functions with respect to the Option grants made pursuant to those provisions of the Plan, except in the event that the Board approves the grant of Awards in addition to, or in substitution for, those provided for in Section 12.

Section 4. *Eligibility*

All employees and, in the case of Awards other than Incentive Stock Options, directors of the Corporation or any Affiliate capable of contributing significantly to the successful performance of the Corporation, other than a person who has irrevocably elected not to be eligible, are eligible to be Participants in the Plan.

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Section 5. Stock Available for Awards

(a) Subject to adjustment under subsection (b), the maximum aggregate number of shares of Common Stock available for issuance under the Plan is 600,000 shares, plus an annual increase to be made on the first day of each fiscal year equal to the lesser of (a) 2¹/₂ % of the Issued Shares (as defined below) on the last day of the immediately preceding fiscal year, (b) 1,000,000 shares, or (c) an amount determined by the Board. Issued Shares shall mean the number of shares of Common Stock of the Company outstanding on the last day of the immediately preceding fiscal year, plus any shares reacquired by the Company during the fiscal year that ends on such date. If any Award in respect of shares of Common Stock expires or is terminated unexercised or is forfeited for any reason or settled in a manner that results in fewer shares outstanding than were initially awarded, including without limitation the surrender of shares in payment for the Award or any tax obligation thereon, the shares subject to such Award or so surrendered, as the case may be, to the extent of such expiration, termination, forfeiture or decrease, shall again be available for award under the Plan, subject, however, in the case of Incentive Stock Options, to any limitation required under the Code. Common Stock issued through the assumption or substitution of outstanding grants from an acquired corporation shall not reduce the shares available for Awards under the Plan. Shares issued under the Plan may consist in whole or in part of authorized but unissued shares or treasury shares. Subject to adjustment under subsection (b), the maximum aggregate number of shares of the Company's Common Stock for which grants may be made to any employee during any fiscal year shall be 1,000,000 shares.

(b) In the event that the Board determines that any stock dividend, extraordinary cash dividend, creation of a class of equity securities, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, exchange of shares, warrants or rights offering to purchase Common Stock at a price substantially below fair market value, or other similar transaction affects the Common Stock such that an adjustment is required in order to preserve the benefits or potential benefits intended to be made available under the Plan, then the Board, subject, in the case of Incentive Stock Options, to any limitation required under the Code, shall equitably adjust any or all of (i) the number and kind of shares in respect of which Awards may be made under the Plan, (ii) the number and kind of shares subject to outstanding Awards, (iii) the number and kind of shares for which automatic option grants are to be made pursuant to Section 12 hereof, and (iv) the award, exercise or conversion price with respect to any of the foregoing, and if considered appropriate, the Board may make provision for a cash payment with respect to an outstanding Award, provided that the number of shares subject to any Award shall always be a whole number.

Section 6. Stock Options

(a) Subject to the provisions of the Plan, the Board may award Incentive Stock Options and Nonqualified Stock Options and determine the number of shares to be covered by each Option, the option price therefor and the conditions and limitations applicable to the exercise of the Option. The terms and conditions of Incentive Stock Options shall be subject to and comply with Section 422 of the Code, or any successor provision, and any regulations thereunder.

(b) The Board shall establish the option price at the time each Option is awarded, which shall not be less than 100% of the Fair Market Value of the Common Stock on the date of award.

(c) Each Option shall be exercisable at such times and subject to such terms and conditions as the Board may specify in the applicable Award or thereafter. The Board may impose such conditions with respect to the exercise of Options, including conditions relating to applicable federal or state securities laws, as it considers necessary or advisable.

(d) No shares shall be delivered pursuant to any exercise of an Option until payment in full of the option price therefor is received by the Corporation. Such payment may be made in whole or in part in cash or, to the extent permitted by the Board at or after the award of the Option, by delivery of a note or shares of Common Stock owned by the optionholder, including Restricted Stock, provided, however, that the optionholder, must

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have owned at least such number of shares for at least six months, valued at their Fair Market Value on the date of delivery, by the reduction of the shares of Common Stock that the optionholder would be entitled to receive upon exercise of the Option provided, however, that the optionholder must have owned at least the number of shares by which the Common Stock is being reduced for at least six months, such shares to be valued at their Fair Market Value on the date of exercise, less their option price (a so-called "cashless exercise"), or such other lawful consideration as the Board may determine. In addition, to the extent permitted by the Board, an optionholder may engage in a successive exchange (or series of exchanges) in which the shares of Common Stock that such optionholder is entitled to receive upon the exercise of an Option may be simultaneously utilized as payment for the exercise of an additional Option or Options, provided, however, that the optionholder must have owned at least the number of shares to be used as payment for at least six months.

(e) The Board may provide for the automatic award of an Option upon the delivery of shares to the Corporation in payment of an Option for up to the number of shares so delivered.

(f) In the case of Incentive Stock Options the following additional conditions shall apply to the extent required under Section 422 of the Code for the options to qualify as Incentive Stock Options:

(i) Such options shall be granted only to employees of the Corporation, and shall not be granted to any person who owns stock that possesses more than ten percent of the total combined voting power of all classes of stock of the Corporation or of its parent or subsidiary corporation (as those terms are defined in Section 422(b) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder), unless, at the time of such grant, the exercise price of such option is at least 110% of the fair market value of the stock that is subject to such option and the option shall not be exercisable more than five years after the date of grant;

(ii) The option price with respect to Incentive Stock Options shall not be less than 100% of the Fair Market Value of the Common Stock on the date of award.

(iii) Such options shall, by their terms, be transferable by the optionholder only by the laws of descent and distribution, and shall be exercisable only by such optionholder during his lifetime.

(iv) Such options shall not be granted more than ten years from the effective date of the Plan and shall not be exercisable more than ten years from the date of grant.

(v) To the extent that the aggregate Fair Market Value of Common Stock with respect to which Incentive Stock Options (determined without regard to this section) are exercisable for the first time by any employee Participant during any calendar year exceeds \$100,000 (or such other amount as may be proscribed by the Code), such Incentive Stock Options shall be treated as options which are not Incentive Stock Options.

Section 7. Stock Appreciation Rights

Subject to the provisions of the Plan, the Board may award SARs in tandem with an Option (at or after the award of the Option), or alone and unrelated to an Option. SARs in tandem with an Option shall terminate to the extent that the related Option is exercised, and the related Option shall terminate to the extent that the tandem SARs are exercised.

Section 8. *Performance Shares*

(a) Subject to the provisions of the Plan, the Board may award Performance Shares and determine the number of such shares for each Performance Cycle and the duration of each Performance Cycle. There may be more than one Performance Cycle in existence at any one time, and the duration of Performance Cycles may differ from each other. Unless otherwise determined by the Board, the payment value of Performance Shares shall be equal to the Fair Market Value of the Common Stock on the date the Performance Shares are earned or, in the discretion of the Board, on the date the Board determines that the Performance Shares have been earned.

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(b) The Board shall establish performance goals for each Cycle, for the purpose of determining the extent to which Performance Shares awarded for such Cycle are earned, on the basis of such criteria and to accomplish such objectives as the Board may from time to time select. During any Cycle, the Board may adjust the performance goals for such Cycle as it deems equitable in recognition of unusual or non-recurring events affecting the Corporation, changes in applicable tax laws or accounting principles, or such other factors as the Board may determine.

(c) As soon as practicable after the end of a Performance Cycle, the Board shall determine the number of Performance Shares which have been earned on the basis of performance in relation to the established performance goals. The payment values of earned Performance Shares shall be distributed to the Participant or, if the Participant has died, to the Participant's Designated Beneficiary, as soon as practicable thereafter. The Board shall determine, at or after the time of award, whether payment values will be settled in whole or in part in cash or other property, including Common Stock or Awards.

Section 9. *Restricted Stock*

(a) Subject to the provisions of the Plan, the Board may award shares of Restricted Stock and determine the duration of the Restricted Period during which, and the conditions under which, the shares may be forfeited to the Corporation and the other terms and conditions of such Awards. Shares of Restricted Stock may be issued for no cash consideration or such minimum consideration as may be required by applicable law.

(b) Shares of Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered, except as permitted by the Board, during the Restricted Period. Shares of Restricted Stock shall be evidenced in such manner as the Board may determine. Any certificates issued in respect of shares of Restricted Stock shall be registered in the name of the Participant and unless otherwise determined by the Board, deposited by the Participant, together with a stock power endorsed in blank, with the Corporation. At the expiration of the Restricted Period, if the Corporation holds such certificates, the Corporation shall deliver such certificates to the Participant or if the Participant has died, to the Participant's Designated Beneficiary.

Section 10. *Restricted Stock Units*

Subject to the other terms and provisions of the Plan, the Board may grant Restricted Stock Units to eligible individuals and may impose conditions on such units as it may deem appropriate. Each Restricted Stock Unit shall be evidenced by an award agreement in the form that is approved by the Board and that is not inconsistent with the terms and conditions of the Plan. Each Restricted Stock Unit will represent a right to receive from the Company, upon fulfillment of any applicable conditions, an amount equal to the Fair Market Value (at the time of the distribution) of one share of Common Stock. Distributions may be made in cash and/or shares of Common Stock. All other terms governing Restricted Stock Units, such as vesting, time and form of payment and termination of units shall be set forth in the applicable award agreement.

Section 11. *Stock Awards*

(a) Subject to the provisions of the Plan, the Board may award Stock Awards subject to such terms, restrictions, conditions, performance criteria, vesting requirements and payment rules, if any, as the Board shall determine.

(b) Shares of Common Stock awarded in connection with a Stock Award shall be issued for no cash consideration or such minimum consideration as may be required by applicable law. Such shares of Common Stock may be designated as Award Shares by the Board.

Section 12. *Option Granted to Non-Employee*

(a) Each Eligible Director shall automatically be granted a Nonqualified Option to acquire 50,000 shares of Common Stock effective as of the date he or she is first elected to the Board or, with respect to Eligible Directors

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serving on the Board as of the Effective Date of the Plan, as of the date of the 1999 Annual Meeting of the Corporation, in each case, the option price for which shall be the Fair Market Value of the Common Stock on such date and the expiration of which shall be the tenth anniversary thereof. Each Nonqualified Option issued pursuant to this Section 12(a) shall become exercisable in 20% installments beginning on January 1 of the first year after the grant date, and on January 1 of each year thereafter, until such option is fully exercisable on January 1 of the fifth year following the grant date.

(b) Each Eligible Director who has served as a Director for six months shall automatically be granted a Nonqualified Option to acquire 8,000 shares of Common Stock on January 1 of each year thereafter, beginning with January 1, 2005, the option price for which shall be the Fair Market Value of the Common Stock on such date and the expiration of which shall be the tenth anniversary thereof.

(c) In addition, the Board may provide for such other terms and conditions of the Options granted pursuant to this Section 12 as it may determine in its sole discretion and as shall be set forth in the applicable Option agreements, including, without limitation, acceleration of exercise upon a change of control, termination of the Options, and the effect on such Options of the death, retirement or other termination of service as a director of the option holder. Notwithstanding the foregoing anything to the contrary in this Plan, nothing herein shall preclude the Board from granting Awards to such non-employee directors in addition to, or in substitution for, those provided for in this Section 12.

Section 13. *General Provisions Applicable to Awards*

(a) *Documentation.* Each Award under the Plan shall be evidenced by a written document delivered to the Participant specifying the terms and conditions thereof and containing such other terms and conditions not inconsistent with the provisions of the Plan as the Board considers necessary or advisable to achieve the purposes of the Plan or comply with applicable tax and regulatory laws and accounting principles.

(b) *Securities Laws.* The Participant shall make such representations and furnish such information as may, in the opinion of counsel for the Corporation, be appropriate to permit the Corporation to issue or transfer the Stock in compliance with the provisions of applicable federal or state securities laws. The Corporation, in its discretion, may postpone the issuance and delivery of any Stock until completion of such registration or other qualification of such shares under any federal or state laws, or stock exchange listing as the Corporation may consider appropriate. The Corporation may require that prior to the issuance or transfer of Stock, the Participant enter into a written agreement to comply with any restrictions on subsequent disposition that the Corporation deems necessary or advisable under any applicable federal and state securities laws. Certificates of Stock issued hereunder may be legended to reflect such restrictions.

(c) *Board Discretion.* Each type of Award may be made alone, in addition to or in relation to any other type of Award. The terms of each type of Award need not be identical, and the Board need not treat Participants uniformly. Except as otherwise provided by the Plan or a particular Award, any determination with respect to an Award may be made by the Board at the time of award or at any time thereafter. Without limiting the foregoing, an Award may be made by the Board, in its discretion, to any 401(k), savings, pension, profit sharing or other similar plan of the Corporation in lieu of or in addition to any cash or other property contributed or to be contributed to such plan.

(d) *Settlement.* The Board shall determine whether Awards are settled in whole or in part in cash, Common Stock, other securities of the Corporation, Awards, other property or such other methods as the Board may deem appropriate. The Board may permit a Participant to defer all or any portion of a payment under the Plan, including the crediting of interest on deferred amounts denominated in cash and dividend equivalents on amounts denominated in Common Stock. If shares of Common Stock are to be used in payment pursuant to an Award and such shares were acquired upon the exercise of a stock option (whether or not granted under this Plan), such shares must have been held by the Participant for at least six months.

(e) *Dividends and Cash Awards.* In the discretion of the Board, any Award under the Plan may provide the Participant with (i) dividends or dividend equivalents payable currently or deferred with or without interest, and (ii) cash payments in lieu of or in addition to an Award.

(f) *Termination of Employment.* The Board shall determine the effect on an Award of the disability, death, retirement or other termination of employment of a Participant and the extent to which, and the period during which, the Participant's legal representative, guardian or Designated Beneficiary may receive payment of an Award or exercise rights thereunder. The Board shall have complete discretion, exercisable either at the time the Award is made or at any time while the Award remains outstanding, to accelerate the vesting of any Award or any part of any Award remaining unvested upon the termination of employment of a Participant or to extend the period of time for which an Option is to remain exercisable following the termination of employment of a Participant, provided, however, that in no event shall such Option be exercisable after the specified expiration date of such Option.

(g) *Change in Control.* In order to preserve a Participant's rights under an Award in the event of a Change in Control of the Corporation, the Board in its discretion may, at the time an Award is made or at any time thereafter, take one or more of the following actions: (i) provide for the acceleration of any time period relating to the exercise or realization of the Award, (ii) provide for the purchase of the Award for an amount of cash or other property that could have been received upon the exercise or realization of the Award had the Award been currently exercisable or payable, (iii) adjust the terms of the Award in a manner determined by the Board to reflect the Change in Control, (iv) cause the Award to be assumed, or new rights substituted therefor, by another entity, or (v) make such other provision as the Board may consider equitable and in the best interests of the Corporation, provided that, in the case of an action taken with respect to an outstanding Award, the Participant's consent to such action shall be required unless the Board determines that the action, taking into account any related action, would not materially and adversely affect the Participant. Unless otherwise provided in any Award, for purposes hereof a Change in Control of the Corporation shall mean: (i) the acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the Exchange Act)) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of the then outstanding shares of common stock of the Corporation (the Outstanding Corporation Common Stock); provided, however, that any acquisition by the Corporation or its subsidiaries, or any employee benefit plan (or related trust) of the Corporation or its subsidiaries of 20% or more of Outstanding Corporation Common Stock shall not constitute a Change in Control; and provided, further, that any acquisition by a corporation with respect to which, following such acquisition, more than 50% of the then outstanding shares of common stock of such corporation, is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Corporation Common Stock immediately prior to such acquisition in substantially the same proportion as their ownership, immediately prior to such acquisition, of the Outstanding Corporation Common Stock, shall not constitute a Change in Control; or (ii) any transaction which results in the Continuing Directors (as defined in the Certificate of Incorporation of the Corporation) constituting less than a majority of the Board; or (iii) consummation by the Corporation of (i) a reorganization, merger or consolidation, in each case, with respect to which all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Corporation Common Stock immediately prior to such reorganization, merger or consolidation do not, following such reorganization, merger or consolidation, beneficially own, directly or indirectly, more than 50% of the then outstanding shares of common stock of the corporation resulting from such a reorganization, merger or consolidation or (ii) the sale or other disposition of all or substantially all of the assets of the Corporation, excluding a sale or other disposition of assets to a subsidiary of the Corporation.

(h) *Withholding.* The Corporation shall have the power and the right to deduct or withhold, or require a Participant to remit to the Corporation an amount sufficient to satisfy federal, state and local taxes (including the Participant's FICA obligation) required to be withheld with respect to an Award or any dividends or other distributions payable with respect thereto. In the Board's discretion, such tax obligations may be paid in whole or in part in shares of Common Stock, including shares retained from the Award creating the tax obligation, valued

at their Fair Market Value on the date of delivery, provided, however, that the optionholder must have owned at least such number of shares for at least six months. The Corporation and its Affiliates may, to the extent permitted by law, deduct any such tax obligations from any payment of any kind otherwise due to the Participant.

(i) *Amendment of Award.* The Board may amend, modify or terminate any outstanding Award, including substituting therefor another Award of the same or a different type, changing the date of exercise or realization and converting an Incentive Stock Option to a Nonqualified Stock Option, provided that the Participant's consent to such action shall be required unless the Board determines that the action, taking into account any related action, would not materially and adversely affect the Participant.

(j) *Awards Not Transferable.* Except as otherwise provided by the Board, Awards under the Plan are not transferable other than as designated by the participant by will or by the laws of descent and distribution.

Section 13. Miscellaneous

(a) *No Right To Employment.* No person shall have any claim or right to be granted an Award, and the grant of an Award shall not be construed as giving a Participant the right to continued employment. The Corporation expressly reserves the right at any time to dismiss a Participant free from any liability or claim under the Plan, except as expressly provided in the applicable Award.

(b) *No Rights As Shareholder.* Subject to the provisions of the applicable Award, no Participant or Designated Beneficiary shall have any rights as a shareholder with respect to any shares of Common Stock to be distributed under the Plan until he or she becomes the holder thereof. A Participant to whom Common Stock is awarded shall be considered the holder of the Stock at the time of the Award except as otherwise provided in the applicable Award.

(c) *Effective Date.* Subject to the approval of the shareholders of the Corporation, the Plan shall be effective on March 3, 1999 (the Effective Date). Prior to such approval, Awards may be made under the Plan expressly subject to such approval. Awards under the Plan may be made for a period of ten years commencing on the Effective Date. The period during which an Award may be exercise may extend beyond that time as provided herein.

(d) *Amendment of Plan.* The Board may amend, suspend or terminate the Plan or any portion thereof at any time, provided that no amendment shall be made without shareholder approval if such approval is necessary to comply with any applicable requirement of the laws of the jurisdiction of incorporation of the Corporation, any applicable tax requirement, any applicable rules or regulation of the Securities and Exchange Commission, including Rule 16(b)-3 (or any successor rule thereunder), or the rules and regulations of The Nasdaq Stock Market or any other exchange or stock market over which the Corporation's securities are listed.

(e) *Governing Law.* The provisions of the Plan shall be governed by and interpreted in accordance with the laws of the jurisdiction of incorporation of the Corporation.

(f) *Indemnity.* Neither the Board nor the Committee, nor any members of either, nor any employees of the Corporation or any parent, subsidiary, or other affiliate, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with their responsibilities with respect to this Plan, and the Corporation hereby agrees to indemnify the members of the Board, the members of the

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Committee, and the employees of the Corporation and its parent or subsidiaries in respect of any claim, loss, damage, or expense (including reasonable counsel fees) arising from any such act, omission, interpretation, construction or determination to the full extent permitted by law.

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HOLOGIC, INC.
35 Crosby Drive
Bedford, MA 01730
(781) 999-7300

PROXY FOR ANNUAL MEETING OF STOCKHOLDERS
February 28, 2006

The undersigned stockholder of HOLOGIC, INC., a Delaware corporation (the Company), acknowledges receipt of the Notice of Annual Meeting of Stockholders and Proxy Statement, dated January 20, 2006 and hereby appoints John W. Cumming and Glenn P. Muir, and each of them acting singly, with full power of substitution, attorneys and proxies to represent the undersigned at the Annual Meeting of Stockholders of the Company to be held at 35 Crosby Drive, Bedford, Massachusetts 01730, on Tuesday, February 28, 2006 at 9:00 A.M., local time, and at any adjournment or postponement thereof, with all power which the undersigned would possess if personally present, and to vote all shares of stock which the undersigned may be entitled to vote at said meeting upon the matters set forth in the Notice of Meeting in accordance with the following instructions and with discretionary authority upon such other matters as may come before the meeting. All previous proxies are hereby revoked.

The Board of Directors recommends a vote FOR the election of the nominees as directors and FOR the approval of Proposal No. 2.

Proposal 1. The election of eight (8) directors nominated by the Board of Directors for the ensuing year:

FOR all nominees listed below
(except as indicated)

WITHHOLD AUTHORITY
to vote for all nominees listed below

Nominees: John W. Cumming, Irwin Jacobs, David R. LaVance, Jr., Nancy L. Leaming, Arthur G. Lerner, Lawrence M. Levy, Glenn P. Muir, Jay A. Stein

(INSTRUCTIONS: To withhold authority to vote for any individual nominee, write that nominee's name on the space provided below.)

Proposal 2. To approve the Second Amended and Restated 1999 Equity Incentive Plan, as described in the Proxy Statement.

FOR

AGAINST

ABSTAIN

This proxy is solicited on behalf of the Board of Directors. This proxy will be voted as specified or, where no direction is given, will be voted FOR all nominees listed in Proposal No. 1 and FOR Proposal No. 2.

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PLEASE SIGN, DATE AND MAIL THIS PROXY IMMEDIATELY IN THE ENCLOSED ENVELOPE.

Dated _____, 2006

Please sign your name exactly as it appears hereon. When signing as attorney, executor, administrator, trustee or guardian, please give your full title as it appears hereon. When signing as joint tenants, all parties in the joint tenancy must sign. When a proxy is given by a corporation, it should be signed by an authorized officer and the corporate seal affixed.