UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

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

Date of report (Date of earliest event reported): September 30, 2015

NEKTAR THERAPEUTICS
(Exact Name of Registrant as Specified in Charter)

Delaware	**0-24006**	**94-3134940**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

455 Mission Bay Boulevard South
San Francisco, California 94158
(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code: (415) 482-5300

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

Please see the disclosure set forth under "Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant," which is incorporated by reference into this Item 1.01.

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

On September 30, 2015, Nektar Therapeutics (the "Company") entered into a Purchase Agreement (the "Purchase Agreement") with TC Lending, LLC and TAO Fund, LLC for the sale of $250.0 million in aggregate principal amount of 7.75% senior secured notes due 2020 (the "Notes"). The Purchase Agreement has customary Company representations and warranties, covenants and indemnification provisions.

On October 5, 2015, the Company issued the Notes pursuant to an indenture (the "Indenture") by and among the Company, Wilmington Trust, National Association, as trustee and TC Lending, LLC, as collateral agent. The Notes are to be sold through a private placement that is exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). The Notes will not be registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent an effective registration statement or an applicable exemption from registration requirements or a transaction not subject to the registration requirements of the Securities Act or any state securities laws. The holders of the Notes do not have any registration rights.

Under the terms of the Indenture, the Notes will bear interest at a rate of 7.75% per annum. The Company shall pay interest on the Notes in cash quarterly in arrears on January 15, April 15, July 15, and October 15 of each year, beginning on October 15, 2015. The Notes will mature on October 5, 2020. All outstanding principal will be paid at maturity.

The Indenture contains customary covenants, including covenants that limit or restrict the Company's ability to incur liens, incur indebtedness, declare or pay dividends, redeem stock, issue preferred stock, make certain investments, merge or consolidate, make dispositions of assets, or enter into certain new businesses or transactions with affiliates. The Indenture requires the Company to maintain a minimum cash balance of $60,000,000. The Company has reporting obligations under the Indenture regarding cash position and royalty revenues. The Indenture does not contain covenants related to future financial performance. The Indenture specifies a number of events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment defaults, covenant defaults, cross-defaults to other material indebtedness, bankruptcy and insolvency defaults, non-payment of material judgments, loss of any material business license, criminal indictment of the Company, and certain civil forfeiture proceedings involving material assets of the Company. Upon the occurrence and during the continuance of an event of default under the Indenture, subject to cure periods in certain circumstances, the Trustee or the holders of at least 50.1% of the aggregate principal amount of then outstanding Notes ("Requisite Holders") may declare all amounts outstanding to be immediately due and payable, and the Collateral Agent or the Requisite Holders may foreclose on or liquidate the Company's assets that comprise the collateral securing the Notes. In such circumstances, the Company would also be liable for the redemption premiums pursuant to the schedule set forth below and potentially additional interest (together, a "Make Whole Premium"). Subject to certain terms and conditions in the Indenture, the Company retains the ability to enter into future collaboration transactions and royalty financing transactions.

The Indenture provides that, beginning on October 5, 2017, the Company may redeem some or all of the Notes at a redemption price equal to 104% of the principal amount of the Notes to be redeemed if the redemption date is prior to October 5, 2018, 102% of the principal amount of the Notes to be redeemed if the redemption date is prior to October 5, 2019, or 100% of the principal amount of the Notes to be redeemed if the redemption date is on or after October 5, 2019, plus, in each case, accrued and unpaid interest to the applicable redemption date. In addition, the Company may, at its option, redeem some or all of the Notes at any time prior to October 5, 2017, by paying a Make Whole Premium, plus accrued and unpaid interest to the date of redemption. If the Company experiences certain change of control events, the holders of the Notes will have the right to require the Company to purchase all or a portion of their Notes at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest to the date of purchase. If the Company receives certain proceeds from a royalty monetization transaction, the holders of the Notes will have the right to require the Company to purchase in an amount not less than 50% of net proceeds from such transaction all or a portion of their Notes at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest to the date of purchase.

Under the terms of the Indenture, the Notes are fully and unconditionally guaranteed, jointly and severally, on a senior secured basis by the Company's future domestic restricted subsidiaries. Under the terms of the Indenture, the Company entered into a Pledge and Security Agreement dated October 5, 2015 (the "Security Agreement"), between the Company and Wilmington Trust, National Association, collateral agent. Pursuant to the Security Agreement, the Notes and the related guarantees are secured by a first-priority lien on substantially all of the Company's and the guarantors' assets, in each case, subject to certain prior liens and other exceptions, and a pledge of 65% of the voting equity interests of the Company's foreign subsidiaries as reasonably requested by the collateral agent. The Security Agreement also provides for a restricted account where $50,000,000 of proceeds received by the Company after closing will be held until such time as the collateral agent for the Existing Notes releases the liens securing such notes. The Company has received written confirmation from 100% of the holders of Existing Notes that all obligations have been satisfied by the Company and that the existing liens securing the Existing Notes are to be automatically and irrevocably released and discharged. As such, obtaining the release of the liens for the Existing Notes will require only administrative procedures and actions to be completed by the Company.

The preceding summaries of the Purchase Agreement, Indenture, and the Security Agreement are qualified in their entireties by reference to the text of the Purchase Agreement, Indenture, and the Security Agreement, which are filed as Exhibits 10.1, 10.2, 10.3, and 10.4 hereto, respectively, and incorporated herein by reference.

This report shall not constitute an offer to sell or the solicitation of an offer to buy any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering, solicitation or sale would be unlawful.

Item 7.01 Regulation FD Disclosure.

As of September 30, 2015, the Company had $125.0 million in aggregate principal amount of 12.00% senior secured notes due July 15, 2017 (the "Existing Notes") outstanding. On October 5, 2015, using the proceeds from the sale of the Notes, the Company repaid an aggregate of approximately $140.8 million, which equals $125.0 million in aggregate principal amount of Existing Notes, $11.3 million redemption premium, and $4.5 million in interest. In connection with the issuance of the Notes, the Company also paid fees and expenses of approximately $8.8 million, including transaction fees and a one-time facility fee to the Note lenders.

On October 6, 2015, Nektar issued the press release announcing the matters reported in this Form 8-K.

The information in this Item 7.01, including the exhibit hereto, is being furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that Section or Sections 11 and 12(a)(2) of the Securities Act. Such information shall not be incorporated by reference into any filing with the Securities and Exchange Commission made by Nektar Therapeutics, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Forward-Looking Statements

This report on Form 8-K contains forward-looking statements, which involve substantial risks and uncertainties including but not limited to, the Notes include a number of covenants and conditions and, in certain cases, if the Company fails to comply with these covenants and conditions, the maturity date of the Notes could be accelerated and penalties and premiums could apply. Actual results could differ materially from the forward-looking statements and Nektar undertakes no obligation to update forward-looking statements, whether as a result of new information, future events or otherwise.

Item 9.01 Financial Statements and Exhibits.

Exhibit Number	Description
10.1	Purchase Agreement dated September 30, 2015 by and among Nektar Therapeutics and TC Lending, LLC and TAO Fund, LLC.
10.2	Indenture dated October 5, 2015 by and among Nektar Therapeutics, Wilmington Trust, National Association, and TC Lending, LLC.
10.3	Pledge and Security Agreement dated October 5, 2015 by and among Nektar Therapeutics and TC Lending, LLC.
99.1	Press Release titled “Nektar Closes Direct Private Placement with TPG Special Situations Partners of $250 Million of Senior Secured Notes Due in 2020.”

SIGNATURES

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

NEKTAR THERAPEUTICS

October 6, 2015

By: /s/ *Gil M. Labrucherie*
Gil M. Labrucherie
General Counsel and Secretary

EXHIBIT INDEX

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Exhibit 10.1

$250,000,000

Nektar Therapeutics

7.750% Senior Secured Notes due 2020

PURCHASE AGREEMENT

September 30, 2015

TC Lending, LLC
TAO Fund, LLC
301 Commerce Street, Suite 3300
Fort Worth, Texas 76102

Ladies and Gentlemen:

Nektar Therapeutics, a Delaware corporation (the "Company" or the "Issuer"), and each of the Guarantors (as hereinafter defined) hereby agree with you as follows:

1. Issuance of Notes. Subject to the terms and conditions herein contained, the Issuer proposes to issue and sell to TC Lending, LLC ("TCL") and TAO Fund, LLC ("TAO", and together with TCL, the "Purchasers") $250,000,000 in aggregate principal amount of 7.750% Senior Secured Notes due 2020 (each a "Note" and, collectively, the "Notes"). The Notes will be (i) issued pursuant to an indenture in the form of Exhibit A attached hereto (the "Indenture"), to be entered into on the Closing Date (as hereinafter defined), by and among the Issuer, the Guarantors party thereto and Wilmington Trust, National Association, as trustee (in such capacity, the "Trustee"), and TC Lending, LLC, as collateral agent (in such capacity, the "Collateral Agent") and (ii) secured pursuant to a pledge and security agreement in the form of Exhibit B attached hereto (the "Pledge and Security Agreement"), to be entered into on the Closing Date, by and among the Company and the Guarantors party thereto in favor of the Collateral Agent. Capitalized terms used, but not defined herein, shall have the meanings set forth in the Indenture.

The Notes will be offered and sold (the "Offering") to the Purchasers pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission (the "SEC") thereunder (collectively, the "Securities Act").

2. **Terms of Offering**. Pursuant to the Indenture, all Domestic Restricted Subsidiaries of the Company shall fully and unconditionally guarantee, jointly and severally, on a senior secured basis, to each holder of the Notes and the Trustee, the payment and performance of the Issuer's obligations under the Indenture and the Notes (each such subsidiary being referred to herein as a "Guarantor" and each such guarantee being referred to herein as a "Guarantee" and, together with the Notes, the "Securities").

Pursuant to the terms of the Collateral Documents, all of the obligations under the Securities and the Indenture will be secured by a lien and security interest in substantially all of the assets (other than the Excluded Assets and subject to the Excluded Perfection Assets) of the Issuer and the Guarantors. Upon the taking of the required perfection actions set forth in the Collateral Documents, the lien and security interest in such assets of the Issuer and the Guarantors will be prior and superior in right to any other Person (except for any prior ranking liens by holders of certain Permitted Liens).

This Agreement, the Indenture, the Collateral Documents, the Notes and the Fee Letter are collectively referred to herein as the "Documents," and the transactions contemplated hereby and thereby are collectively referred to herein as the "Transactions."

3. **Purchase, Sale and Delivery**. On the basis of the representations, warranties, agreements and covenants herein contained and subject to the terms and conditions herein set forth, the Issuer agrees to issue and sell to the Purchasers, and the Purchasers, severally and not jointly, agree to purchase from the Issuer in the respective amounts set forth on Schedule I hereto, $250,000,000 aggregate principal amount of the Securities at a purchase price of 100% of the aggregate principal amount thereof, but subject to the payment by the Issuer of the fees set forth in the Fee Letter. Delivery to the Purchasers of, and payment for, the Securities shall be made at a closing (the "Closing") to be held at 10:00 a.m., New York City time, on October 5, 2015 (the "Closing Date") at the New York offices of Schulte Roth & Zabel LLP (or such other place as shall be reasonably acceptable to the Purchasers); provided, however, that if the Closing has not taken place on the Closing Date because of a failure to satisfy one or more of the conditions specified in Section 7 hereof and this Agreement has not otherwise been terminated by the Purchasers in accordance with its terms, "Closing Date" shall mean 10:00 a.m. New York City time on the first business day following the satisfaction (or waiver) of all such conditions.

The Issuer shall deliver to the Purchasers one or more certificates representing the Securities in definitive form, registered in such names and denominations as the Purchasers may request, against payment by the Purchasers of the purchase price therefor on the Closing Date by immediately available federal funds bank wire transfer to such bank account or accounts as the Issuer shall designate to the Purchasers at least one business day prior to the Closing Date; provided, that on the Closing Date, $50,000,000 of the cash proceeds from the issuance of the Securities (the "Reserved Funds") shall be deposited in a blocked deposit account of the Company maintained at Wells Fargo Bank, National Association ("Wells Fargo"), which deposit account shall not be able to be accessed by the Company and shall be subject to a Control Agreement, in form and substance satisfactory to the Collateral Agent, duly executed by the Company and such bank or financial institution pursuant to which such institution shall irrevocably agree, among other things, that (i) it will comply at any time with the instructions originated by the Collateral Agent (or its designee) to such bank or financial institution directing the disposition of such cash and other items from time to time credited to such account, without further consent of the Company, (ii) it will not comply with the instructions originated by the Company without the prior written consent of the Collateral Agent, (iii) all cash, securities and other items of the Company deposited in such account with such institution shall be subject to a perfected, first priority security interest in favor of the Collateral Agent (or its designee), and (iv) any right of set off, banker's Lien or other similar Lien, security interest or encumbrance shall be fully waived as against the Collateral Agent (or its designee). The Company hereby acknowledges and agrees that the Collateral Agent is authorized at all times to use all or any part of the Reserved Funds to pay all amounts required pursuant to the Existing Secured Notes Indenture to pay the Existing Secured Notes in full in cash in order for the Collateral Agent (as defined in the Existing Secured Notes Indenture) to release all Liens securing the Existing Secured Notes. Company further hereby acknowledges and agrees that the Reserved Funds constitute Collateral which secure the Secured Obligations. Promptly after the Collateral Agent receives evidence, in form and substance satisfactory to the Collateral Agent, that (x) all obligations with respect to the Existing Secured Notes have been repaid in full and (y) the Collateral Agent (as defined in the Existing Secured Notes Indenture) has released all Liens securing the Existing Secured Notes (the "Lien Release Date"), the Collateral Agent will consent to the withdrawal of the Reserved Funds from such account and the deposit thereof in another deposit account of the Company as elected in writing by the Company (but subject to (A) the Company's requirement to maintain $50,000,000 at Wells Fargo in accordance with Section 4(q)(iii) of the Pledge and Security Agreement and (B) such deposit account being subject to a Control Agreement if such withdrawal occurs on or after the Control Agreement Date (as defined in the Pledge and Security Agreement)). The parties hereto agree that the failure to timely comply with the foregoing provisions shall constitute an Event of Default. The certificates representing the Securities in definitive form shall be made available to the Purchasers for inspection at the New York offices of Schulte Roth & Zabel LLP (or such other place as shall be reasonably acceptable to the Purchasers) not later than 10:00 a.m. New York City time one business day immediately preceding the Closing Date. The certificates representing the Securities will be delivered to the Purchasers on the Closing Date.

4. Representations and Warranties of the Issuer and the Guarantors. Each of the Issuer and the Guarantors jointly and severally represents and warrants to, and agrees with, the Purchasers that, as of the date hereof and as of the Closing Date:

(a) *Preparation of the Financial Statements*. The financial statements set forth in the Company's Annual Report on Form 10-K filed with the SEC on February 26, 2015 (the "Financial Statements") present fairly in all material respects the financial position, results of operations and cash flows of the Company and its consolidated Subsidiaries, as of the respective dates and for the respective periods to which they apply and have been prepared in accordance with generally accepted accounting principles as applied in the United States, applied on a consistent basis throughout the periods involved ("GAAP"). The (i) historical financial statements delivered to the Purchasers prior to the Closing Date have been prepared on a basis consistent with that of the Financial Statements, and (ii) financial projections delivered to the Purchasers prior to the Closing Date have been prepared on a cash basis and, in each case, presents fairly in all material respects the financial position and results of operations of the Company and its consolidated Subsidiaries as of the respective dates and for the respective periods indicated. All other financial, statistical and market and industry data delivered to the Purchasers prior to the Closing Date are based on or derived from sources that the Company believes to be reliable and accurate or represent the Company's good faith estimates that are made on the basis of data derived from such sources. No person who has been suspended or barred from being associated with a registered public accounting firm, or who has failed to comply with any sanction pursuant to Rule 5300 promulgated by the PCAOB, has participated in or otherwise aided the preparation of, or audited, the Financial Statements or other financial data, included in or filed with the SEC and delivered to the Purchasers prior to the Closing Date.

(b) *No Material Adverse Change*. Since the end of the period covered by the Financial Statements, except as disclosed in writing by the Company to the Purchasers prior to the Closing Date, (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the financial condition, operations, assets or business, whether or not arising from transactions in the ordinary course of business, of the Company and its Subsidiaries, considered as one entity (any such change is called a "Material Adverse Change"); (ii) the Company and its Subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business, other than the transactions contemplated pursuant to this Agreement; and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other Subsidiaries, any of its Subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its Subsidiaries of any class of capital stock.

(c) *Rating Agencies.* No "nationally recognized statistical rating organization" (as defined in Rule 436(g)(2) under the Securities Act) has assigned any rating to the Company or any of its Subsidiaries or to any securities of the Company or any of its Subsidiaries.

(d) *Subsidiaries*. Each corporation, partnership or other entity in which the Company, directly or indirectly through any of its subsidiaries, owns more than fifty percent (50%) of any class of equity securities or interests is listed on Schedule II attached hereto (the "Subsidiaries"). Each Subsidiary listed on Schedule II is one hundred percent (100%) owned by the Company. Each Subsidiary that is a Foreign Restricted Subsidiary has an asterisk ("*") next to its name on such schedule.

(e) *Incorporation and Good Standing of the Company and its Subsidiaries.* Each of the Company and its Subsidiaries has been duly incorporated or organized, as the case may be, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and has the corporate, partnership or limited liability company power, as applicable, and authority (corporate or other) to own, lease and operate its properties and to conduct its business as currently conducted as of the Closing Date and, in the case of the Company, to enter into and perform its obligations under this Agreement, except where the failure to be in good standing would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. Each of the Company and each Subsidiary is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so qualified or in good standing would not reasonably be expected to result in a Material Adverse Change.

(f) *Capitalization*. All of the issued and outstanding shares of the Company and each Subsidiary have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with federal and state securities laws. None of the outstanding shares of the Company or any Subsidiary were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company or any such Subsidiary. Other than stock awards that have been issued or reserved for issuance under the Company's equity incentive plan which are listed as exhibits to the Company's Annual Report on Form 10-K for the year ended December 31, 2014, there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its Subsidiaries.

(g) *Legal Power and Authority.* The Issuer and each Guarantor has all necessary corporate, partnership or limited liability company power, as applicable, and authority to execute, deliver and perform its respective obligations under the Documents to which it is a party and to consummate the Transactions.

(h) *This Agreement, Indenture and the other Documents*. This Agreement has been duly authorized, executed and delivered by the Issuer and the Guarantors. Each of the Indenture and the other Documents has been duly authorized by the Issuer and the Guarantors. Each of the Indenture and the other Documents, when executed and delivered by the Issuer and the Guarantors, assuming due authorization, execution and delivery by the Trustee and Collateral Agent, will constitute a legal, valid and binding obligation the Issuer and the Guarantors, enforceable against the Issuer and the Guarantors in accordance with its terms, except that the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought.

(i) *Notes.* The Notes have each been duly authorized by the Issuer and, when issued and delivered to and paid for by the Purchasers in accordance with the terms of this Agreement and the Indenture, will have been duly executed, authenticated, issued and delivered and, assuming due authentication of the Notes by the Trustee, will constitute legal, valid and binding obligations of the Issuer, entitled to the benefit of the Indenture and the Collateral Documents, and enforceable against the Issuer in accordance with their terms, except that the enforcement thereof may be subject to (i) bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance, fraudulent transfer or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (whether applied by a court of law or equity) and the discretion of the court before which any proceeding therefor may be brought. When executed, authenticated, issued and delivered, the Notes will be in the form contemplated by the Indenture.

(j) *Collateral.*

(i) Upon:

(1) in the case of such portion of the Collateral constituting investment property represented or evidenced by certificates or other instruments, delivery to the Collateral Agent of such certificates or instruments in accordance with the Collateral Documents, and in the case of all other investment property, the filing of financing statements or other applicable filings in the appropriate filing office, registry or other public office, together with the payment of the requisite filing or recordation fees related thereto;

(2) in the case of such portion of the Collateral constituting securities accounts, delivery to the Collateral Agent of securities account control agreements and such other agreements or instruments, in each case reasonably satisfactory in form and substance to the Collateral Agent and duly executed by the applicable securities intermediary, as may be necessary or, in the opinion of the Collateral Agent, desirable to establish and maintain control of such securities accounts from time to time;

(3) in the case of such portion of the Collateral constituting deposit accounts, delivery to the Collateral Agent of deposit account control agreements and such other agreements or instruments, in each case reasonably satisfactory in form and substance to the Collateral Agent and duly executed by the applicable depositary bank, as may be necessary or, in the opinion of the Collateral Agent, desirable to establish and maintain control of such deposit accounts from time to time;

(4) in the case of such portion of the Collateral constituting registered patents, trademarks and copyrights, the filing by the Collateral Agent of (A) initial financing statements with the appropriate filing offices, (B) any filings required with the United States Patent and Trademark Office, (C) any filings required with the United States Copyright Office and (D) the other Collateral Documents with the appropriate filing office, registry or other public office, together with the payment of the requisite filing or recordation fees related thereto;

(5) in the case of such portion of the Collateral constituting motor vehicles and other assets where compliance can only be perfected through compliance with applicable certificate of title statutes, compliance with such statutes; and

(6) in the case of any other Collateral a Lien in which may be perfected by filing of an initial financing statement or other applicable document in the appropriate filing office, registry or other public office, the filing of financing statements or other applicable document in such filing office, registry or other public office, together with the payment of the requisite filing or recordation fees related thereto, and in the case of any other Collateral a Lien in which is perfected by possession or control, when the Collateral Agent obtains possession or control thereof,

the Collateral Agent will obtain a valid and perfected first-priority security interest in the Collateral, subject to any Permitted Liens or other encumbrances permitted under the Indenture or the Collateral Documents, to the extent that a security interest in such Collateral may be perfected by such delivery, compliance and filings.

(ii) As of the Closing Date, there will be no currently effective financing statement, security agreement, chattel mortgage, real estate mortgage or other document filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present Lien on any assets or property of the Issuer, the Guarantors or any Subsidiary or any rights thereunder, except for Permitted Liens.

(iii) All information certified by an officer of the Company in the Perfection Certificate dated as of the Closing Date and delivered by such officer on behalf of the Company is true and correct in all material respects as of the date thereof.

(iv) The representations and warranties of the Issuer and the Guarantors in the Collateral Documents are true and correct in all material respects, other than those representations and warranties that are already qualified by materiality, which are true and correct (after giving effect to such qualification therein).

(k) *Compliance with Existing Instruments.* Neither the Company nor any of its Subsidiaries is in violation of its charter or by-laws, partnership agreement or operating agreement or similar organizational document, as applicable, or is in default (or, with the giving of notice or lapse of time, would be in default) ("Default") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company or any of its Subsidiaries is a party or by which it or any of them may be bound (including, without limitation, any credit agreement, indenture, pledge agreement, security agreement or other instrument or agreement evidencing, guaranteeing, securing or relating to indebtedness of the Company or any of its Subsidiaries), or to which any of the property or assets of the Company or any of its Subsidiaries is subject (each, an "Existing Instrument"), except for such Defaults (i) arising under the Existing Secured Notes Indenture or the agreements and documents related thereto solely as a result of the execution and performance of this Agreement and the other Documents or (ii) as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. The Company's execution, delivery and performance of this Agreement, consummation of the transactions contemplated hereby and by the other Documents and the issuance and sale of the Securities (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws, partnership agreement or operating agreement or similar organizational document of the Company or any Subsidiary, as applicable, (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien (other than Permitted Liens), charge or encumbrance upon any property or assets of the Company or any of its Subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except for such (i) breaches, Defaults or Debt Repayment Triggering Events arising under the Existing Secured Notes Indenture or the agreements and documents related thereto solely as a result of the execution and performance of this Agreement and the other Documents or (ii) breaches, Defaults or results, or failure to obtain such consent, as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any Subsidiary (the "Applicable Laws"), except for such violations as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change. As used herein, a "Debt Repayment Triggering Event" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Subsidiaries.

(l) *No Consents*. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the issuance and initial sale of the Notes to the Purchasers or the Company's execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the other Documents, except (i) such as have been obtained or made by the Company and are in full force and effect, (ii) as may be required under the Securities Act, applicable state and non-U.S. securities or blue sky laws and from the Financial Industry Regulatory Authority ("FINRA") and (iii) those contemplated by the Collateral Documents.

(m) *No Material Applicable Laws or Proceedings*. Except as disclosed in writing by the Company to the Purchasers prior to the Closing Date, there are no legal or governmental actions, suits or proceedings pending or, to the best of the Company's knowledge, threatened (i) against or directly affecting the Company or any of its Subsidiaries, (ii) which have as the subject thereof any officer or director (in their capacity as such) of, or property owned or leased by, the Company or any of its Subsidiaries or (iii) relating to environmental or discrimination matters, where in any such case (A) to the Company's knowledge, there is a substantial likelihood that such action, suit or proceeding will be determined adversely to the Company, such Subsidiary or such officer or director, (B) any such action, suit or proceeding, if so determined adversely, would reasonably be expected to result in a Material Adverse Change or adversely affect the consummation of the Transactions or (C) any such action, suit or proceeding is or would be material in the context of the sale of the Securities.

(n) *All Necessary Permits*. The Company and each Subsidiary possess such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses, and neither the Company nor any Subsidiary has received, or has any reason to believe that it will receive, any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to result in a Material Adverse Change.

(o) *Title to Properties*. The Company and each of its Subsidiaries has good and marketable title to all of the real and personal property and other assets owned by it (including, without limitation, all Intellectual Property Rights), in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, adverse claims and other defects, except as disclosed in writing by the Company to the Purchasers prior to the Closing Date or as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company or such Subsidiary. To the Company's knowledge, the real property, improvements, equipment and personal property held under lease by the Company or any Subsidiary are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such Subsidiary.

(p) *Tax Law Compliance*. The Company and its consolidated Subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns or have properly requested extensions thereof and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. The Company has made adequate charges, accruals and reserves in the applicable Financial Statements in respect of all federal, state and foreign income and franchise taxes for all periods as to which the tax liability of the Company or any of its consolidated Subsidiaries has not been finally determined.

(q) *Intellectual Property Rights*. The Company and its Subsidiaries own or possess, or can acquire or license on reasonable terms, sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct their businesses as now conducted, except as such failure to own, possess, license, or acquire such rights would not reasonably be expected to result in a Material Adverse Change; and the expected expiration of any of such Intellectual Property Rights would not reasonably be expected to result in a Material Adverse Change. Except as would not reasonably be expected to result in a Material Adverse Change, neither the Company nor any of its Subsidiaries has received, or has any reason to believe that it will receive, any notice of infringement or conflict with asserted Intellectual Property Rights of others. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change, (A) to the Company's knowledge, there is no infringement, misappropriation or violation by third parties of any of the Intellectual Property Rights owned by the Company; (B) there is no pending or, to the knowledge of the Company and its Subsidiaries, threatened action, suit, proceeding or claim by others challenging the rights of the Company and its Subsidiaries in or to any such Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim, that would individually, or in the aggregate, together with any other claims in this subsection (q), reasonably be expected to result in a Material Adverse Change; (C) the Intellectual Property Rights owned by the Company and its Subsidiaries and, to the Company's knowledge, the Intellectual Property Rights licensed to the Company and its Subsidiaries have not been adjudged by a court of competent jurisdiction invalid or unenforceable, in whole or in part, and there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property Rights, and the Company is unaware of any facts which would form a reasonable basis for any such claim that would individually, or in the aggregate, together with any other claims in this subsection (q), reasonably be expected to result in a Material Adverse Change; (D) there is no pending or, to the Company's knowledge, threatened action, suit, proceeding or claim by others that the Company or its Subsidiaries infringe, misappropriate or otherwise violate any Intellectual Property Rights or other proprietary rights of others, the Company and its Subsidiaries have not received any written notice of such claim and the Company is unaware of any other facts which would form a reasonable basis for any such claim that would individually, or in the aggregate, together with any other claims in this subsection (q) reasonably be expected to result in a Material Adverse Change; (E) the Company is not aware of any prior art that could reasonably be expected to render any patent held by or licensed to the Company or any Subsidiary invalid or any U.S. patent application held by or licensed to the Company or any Subsidiary unpatentable which prior art was required to be disclosed to the U.S. Patent and Trademark Office during the prosecution of the applicable patent application and which was not so disclosed to the U.S. Patent and Trademark Office, the failure of which to so disclose would individually, or in the aggregate, reasonably be expected to result in a Material Adverse Change; (F) to the Company's knowledge, all prior art references relevant to the patentability of any pending claim of any patent applications comprising or that have resulted in Intellectual Property Rights known to the Company, applicable inventor(s) or licensors, or any of their counsel during the prosecution of such patent applications that were required to be disclosed to the relevant patent authority were so disclosed by the required time, except where the failure to so disclose would not individually, or in the aggregate, reasonably be expected to result in a Material Adverse Change, and, to the best of the Company's knowledge, neither the Company nor any such inventor, licensor or counsel made any misrepresentation to, or omitted any material fact from, the relevant patent authority during such prosecution, which would individually, or in the aggregate, reasonably be expected to result in a Material Adverse Change; and (G) to the Company's knowledge, no employee of the Company or a Subsidiary of the Company is in or has ever been in violation in any material respect of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company or a Subsidiary of the Company, or actions undertaken by the employee while employed with the Company or a Subsidiary of the Company and would reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change. To the Company's knowledge, all material technical information developed by and belonging to the Company and its Subsidiaries for which they have not sought, and do not intend to seek to patent or otherwise protect pursuant to applicable intellectual property laws has been kept confidential or has been disclosed only under obligations of confidentiality. The Company is not a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity other than those options, licenses or agreements disclosed in writing or made available for review by the Company to the Purchasers prior to the Closing Date. None of the technology employed by the Company or any of its Subsidiaries has been obtained or is being used by the Company or any of its Subsidiaries in violation of any contractual obligation binding on the Company or any of its Subsidiaries or, to the Company's knowledge, any of its or its Subsidiaries' officers, directors or employees or otherwise in violation of the rights of any persons, except in each case for such violations that would not reasonably be expected to result in a Material Adverse Change. All license agreements and other material agreements, in each case, with respect to the Specified Drugs are in full force and effect and no defaults currently exist thereunder.

(r) *ERISA Matters*. The Company and its Subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA")) established or maintained by the Company, its Subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "ERISA Affiliate" means, with respect to the Company or a Subsidiary, any member of any group of organizations described in Sections 414(b),(c),(m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "Code") of which the Company or such Subsidiary is a member. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, its Subsidiaries or any of their ERISA Affiliates. No "employee benefit plan" subject to Title IV of ERISA established or maintained by the Company, its Subsidiaries or any of their ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA). Neither the Company, its Subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan." Each "employee benefit plan" established or maintained by the Company, its Subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification.

(s) *Labor Matters*. (i) Neither the Company nor any of its Subsidiaries is party to any collective bargaining agreement with any labor organization; and (ii) no labor dispute with the employees of the Company or the Guarantors exists or, to the knowledge of the Company or the Guarantors, is imminent that would have a Material Adverse Effect.

(t) *Compliance with Environmental Laws*. Except as disclosed in writing by the Company to the Purchasers prior to the Closing Date and except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (i) neither the Company nor any of its Subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws"), (ii) the Company and its Subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements, (iii) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigation or proceedings relating to any Environmental Law against the Company or any of its Subsidiaries and (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its Subsidiaries relating to Hazardous Materials or any Environmental Laws.

(u) *Insurance*. Each of the Company and its Subsidiaries is insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering business interruption, real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and policies covering the Company and its Subsidiaries for product liability claims and clinical trial liability claims. The Company has no reason to believe that it or any Subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not reasonably be expected to result in a Material Adverse Change. During the past three years, neither the Company nor any Subsidiary has been denied any insurance coverage which it has sought or for which it has applied.

(v) *Accounting System*. The Company and each of its Subsidiaries make and keep accurate books and records and maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There has not been and is no material weakness or significant deficiency in the Company's internal control over financial reporting (whether or not remediated) and since December 31, 2014, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(w) *Use of Proceeds; Solvency; Going Concern*. All indebtedness represented by the Securities is being incurred for the purposes of (i) refinancing the Existing Secured Notes, (ii) paying the fees, costs and expenses incurred in connection with the issuance of the Notes and the related transactions and (iii) providing for the ongoing working capital requirements of the Company and its Subsidiaries and for general corporate purposes. On the Closing Date, after giving pro forma effect to the Offering and the use of proceeds therefrom described above, the Issuer and each Guarantor will be Solvent (as hereinafter defined). As used in this paragraph, the term "Solvent" means, with respect to a particular date, that on such date (i) the present fair market value (or present fair saleable value) of the assets of the Issuer and each Guarantor is not less than the total amount required to pay the liabilities of such Issuer or Guarantor on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured; (ii) the Issuer and each Guarantor is able to pay its debts and other liabilities, contingent obligations and commitments as they mature; (iii) assuming consummation of the issuance of the Securities as contemplated by this Agreement and the other Documents, the Issuer and each Guarantor is not incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature; and (iv) neither the Issuer nor any of the Guarantors is engaged in any business or transaction, and does not propose to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Issuer or Guarantor are engaged.

(x) *No Registration Required Under the Securities Act or Qualification Under the TIA*. Without limiting any provision herein, no registration under the Securities Act and no qualification of the Indenture under the TIA is required for the offer or sale of the Securities to the Purchasers as contemplated hereby.

(y) *No Integration.* No securities of the Issuer of the same class as the Securities have been offered, issued or sold by the Issuer or any of its respective Affiliates within the six-month period immediately prior to the date hereof; and the Issuer has no intention of making, and will not make, an offer or sale of such securities of the Issuer of the same class as the Securities, for a period of six months after the date of this Agreement, except for the offering of the Securities as contemplated by this Agreement. As used in this paragraph, the terms "offer" and "sale" have the meanings specified in Section 2(a)(3) of the Securities Act.

(z) *Margin Requirements*. None of the Transactions or the application of the proceeds of the Securities will violate or result in a violation of Regulation T (12 C.F.R. Part 220), Regulation U (12 C.F.R. Part 221) or Regulation X (12 C.F.R. Part 224) of the Board of Governors of the Federal Reserve System.

(aa) *Investment Company Act*. The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "Investment Company Act"). The Company is not, and will not be, either after receipt of payment for the Securities or after the application of the proceeds therefrom as described in clause (w) above, an "investment company" within the meaning of the Investment Company Act and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

(bb) *No Brokers*. There is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any Transactions (other than commissions or fees to the Purchasers and the Collateral Agent).

(cc) *No Restrictions on Payments of Dividends*. No Subsidiary of the Company is prohibited or restricted, directly or indirectly, from paying dividends to the Company, or from making any other distribution with respect to such Subsidiary's equity securities or from repaying to the Company or any other Subsidiary of the Company any amounts that may from time to time become due under any loans or advances to such Subsidiary from the Company or from transferring any property or assets to the Company or to any other Subsidiary.

(dd) *Foreign Corrupt Practices Act*. None of the Company, any Subsidiary or, to the Company's knowledge, any director, officer, employee or any agent, or other person acting on behalf of the Company or any Subsidiary, is aware of or has taken any action, directly or indirectly, that has resulted or would result in a violation of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company and its Subsidiaries and, to the Company's knowledge, the Company's affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(ee) *Money Laundering*. The operations of the Company and its Subsidiaries are, and have been conducted at all times, in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ff) *OFAC.* Neither the Company nor any of its Subsidiaries nor, to the Company's knowledge, any director, officer, agent, employee, affiliate or person acting on behalf of the Company or any of its Subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"); and the Company will not directly or, to the Company's knowledge, indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC. The Company and each of its Subsidiaries is in compliance with the Currency and Foreign Transactions Reporting Act (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001.

(gg) *Stamp Taxes.* There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges required to be paid in connection with the execution and delivery of this Agreement or the issuance or sale of the Securities.

(hh) *Indebtedness to be Refinanced.* Set forth on Schedule III hereto is a list of all Indebtedness that is to be paid in full using the proceeds of the Offering. Set forth on Schedule III opposite the description of each such Indebtedness is the aggregate principal amount of Indebtedness outstanding thereunder, the aggregate amount of all interest and premiums due and payable with respect to such Indebtedness if such Indebtedness were to remain outstanding for thirty (30) days after the Closing Date and all other amounts then due and payable. Other than as set forth on Schedule III, there are no other amounts due and payable with respect to such Indebtedness to repay such Indebtedness in full.

(ii) *Clinical Trials*. The studies, tests and preclinical and clinical trials conducted by or on behalf of the Company and its Subsidiaries were and, if still pending, are being conducted in compliance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards and all applicable laws and authorizations, including, without limitation, the Federal Food, Drug and Cosmetic Act and the rules and regulations promulgated thereunder, except where the failure to be in compliance has not resulted and would not reasonably be expected to result in a Material Adverse Change; the descriptions of the results of such studies, tests and trials disclosed by the Company in its filings with the SEC prior to the Closing Date are accurate and complete in all material respects and fairly present the data derived from such studies, tests and trials; the Company is not aware of any studies, tests or trials, the results of which the Company believes reasonably call into question the study, test, or trial results disclosed by the Company in its filings with the SEC prior to the Closing Date when viewed in the context in which such results are described and the clinical state of development; and the Company and its Subsidiaries have not received any notices or correspondence from any applicable governmental authority requiring the termination, suspension or material modification of any studies, tests or preclinical or clinical trials conducted by or on behalf of the Company or its Subsidiaries.

(jj) *Compliance with Laws*. The Company has not been advised, and has no reason to believe, that it and each of its Subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, except where failure to be so in compliance would not reasonably be expected to result in a Material Adverse Change. The Company has not received any FDA Form 483, notice of adverse finding, warning letter, untitled letter or other correspondence or notice from the U.S. Food and Drug Administration or any other governmental authority alleging or asserting noncompliance with any laws applicable to the Company.

(kk) *Disclosure Controls and Procedures; Deficiencies in or Changes to Internal Control Over Financial Reporting*. The Company has established and maintains disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), which (i) are designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared; (ii) have been evaluated by management of the Company for effectiveness as of the end of the Company's most recent fiscal quarter; and (iii) are effective in all material respects to perform the functions for which they were established. Based on the most recent evaluation of its internal control over financial reporting, the Company is not aware of (i) any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting. The Company is not aware of any change in its internal control over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

5. **Covenants of the Issuer and the Guarantors**. Each of the Issuer and the Guarantors jointly and severally agrees:

(a) *Payment of Expenses*. To pay (i) all fees and expenses of the counsel, accountants and any other experts or advisors retained by the Issuer or the Guarantors, (ii) all reasonable documented out-of-pocket fees and expenses (including reasonable fees and expenses of counsel) of the Trustee, the Collateral Agent and all other collateral agents, (iii) all costs and expenses in connection with the creation and perfection of the security interest to be created and perfected pursuant to the Collateral Documents (including without limitation, filing and recording fees, search fees, taxes and costs of title policies) (iv) all costs and expenses incurred in connection with the enforcement of the Trustee's, Collateral Agent's and the Purchasers' rights and remedies under this Agreement, the Indenture and the other Documents and (v) all other fees, disbursements and out-of-pocket expenses incurred by Purchasers in connection with this Agreement and the other Documents including, without limitation, the reasonable fees and disbursements of Schulte Roth & Zabel LLP; provided, that in the case of clauses (ii), (iii) and (v) above, on the Closing Date, the Issuer and the Guarantor shall (i) pay the first $500,000 of such expenses and (ii) with respect to such expenses in excess of $500,000, only be required to pay 50% of every $1 in excess of $500,000.

(b) *Use of Proceeds*. To use the proceeds of the Offering in the manner described in Section 4(w) above.

(c) *Integration*. Not to, and to ensure that no Affiliate of the Issuer will, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any "security" (as defined in the Securities Act) that would be integrated with the sale of the Securities in a manner that would require the registration under the Securities Act of the sale to the Purchasers.

(d) *Furnish Trustee and Noteholder Reports*. For so long as any of the Securities remain outstanding, to furnish to the Purchasers and/or Collateral Agent upon request copies of all reports and other communications (financial or otherwise) furnished by the Issuer to the Trustee, to the holders of the Securities or Collateral Agent (as applicable) and, upon request, copies of any reports or financial statements furnished to or filed by the Issuer with the SEC or any national securities exchange on which any class of securities of the Issuer may be listed.

(e) *Additional Offering Materials*. Not to, and not to authorize or permit any person acting on its behalf to, (i) solicit any offer to buy or offer to sell the Securities by means of any form of general solicitation or general advertising (including, without limitation, as such terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act, or (ii) engage in any directed selling efforts within the meaning of Regulation S, and all such persons will comply with the offering restrictions requirement of Regulation S.

(f) *Stamp Taxes*. To pay all stamp or other issuance or transfer taxes or duties other similar fees or charges which may be imposed by any governmental or regulatory authority in connection with the execution and delivery of this Agreement or the issuance or sale of the Securities.

(g) *Investment Company.* The Company and its Subsidiaries will conduct their businesses in a manner so as to not be required to register under the Investment Company Act.

6. Representations and Warranties of the Purchasers. Each Purchaser, severally and not jointly, represents and warrants that:

(a) *Purchaser's Status, Resale Terms*. It is an accredited investor within the meaning of Regulation D under the Securities Act.

(b) *Sale of Restricted Exchange Securities*. Each Purchaser severally acknowledges that the Offered Securities have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except in accordance with Rule 144A or Regulation S or pursuant to another exemption from the registration requirements of the Securities Act.

7. **Conditions**. The obligations of the Purchasers to purchase the Securities under this Agreement are subject to the performance by the Issuer and the Guarantors of their respective covenants and obligations hereunder and the satisfaction of each of the following conditions:

(a) *Representations, Warranties and Agreements; No Default or Event of Default*. All the representations and warranties of the Issuer and the Guarantors contained in this Agreement shall be true and correct in all material respects, other than those representations and warranties that are already qualified by materiality, which shall be true and correct (after giving effect to such qualification therein), with the same force and effect as though expressly made at and as of the Closing Date. On or prior to the Closing Date, the Issuer, the Guarantors and each other party to the Documents (other than the Purchasers) shall have performed or complied with all of the agreements and satisfied all conditions on their respective parts to be performed, complied with or satisfied pursuant to the Documents in all material respects (other than conditions to be satisfied by such other parties, which the failure to so satisfy would not, individually or in the aggregate, have a Material Adverse Effect). Other than in respect of the Existing Secured Notes solely as a result of the execution and performance of this Agreement and the other Documents, no Default or Event of Default shall have occurred and be continuing on the Closing Date or would result from this Agreement or the other Documents becoming effective in accordance with its or their respective terms.

(b) *Closing Deliverables.* The Purchasers shall have received on the Closing Date:

(i) *Officers' Certificate.* A certificate dated the Closing Date, signed by (1) the Chief Executive Officer, President or any Vice President and (2) the principal financial or accounting officer of the Issuer and the Guarantors, on behalf of the Issuer and the Guarantors, to the effect that to the best of their knowledge after reasonable investigation: (a) the representations and warranties set forth in Section 4 hereof are true and correct in all material respects, other than those representations and warranties that are already qualified by materiality, which are true and correct (after giving effect to such qualification therein), with the same force and effect as though expressly made at and as of the Closing Date, (b) the Issuer and the Guarantors have performed and complied with all agreements and satisfied all conditions in all material respects on its part to be performed or satisfied at or prior to the Closing Date, (c) at the Closing Date, since the date of the Financial Statements, no event or events have occurred, no information has become known nor does any condition exist that, individually or in the aggregate, would result in a Material Adverse Change, (d) since the date of the Financial Statements, other than as disclosed in writing by the Company to the Purchasers prior to the Closing Date or contemplated hereby, neither the Issuer, the Guarantors nor any other Subsidiary has incurred any liabilities or obligations, direct or contingent, not in the ordinary course of business, that are material to the Company and its Subsidiaries, taken as a whole, or entered into any transactions not in the ordinary course of business that are material to the business, condition (financial or otherwise) or results of operations or prospects of the Company and its Subsidiaries, taken as a whole, and there has not been any change in the capital stock or long-term indebtedness of the Issuer, the Guarantors or any other Subsidiary of the Company that is material to the business, condition (financial or otherwise) or results of operations or prospects of the Company and its Subsidiaries, taken as a whole, and (e) the sale of the Securities has not been enjoined (temporarily or permanently).

(ii) *Secretary's Certificate.* A certificate, dated the Closing Date, executed by the Secretary of the Issuer and the Guarantors, which shall include the following documents with respect to the Issuer and the Guarantors: (i) certificates of incorporation or organization, (ii) by-laws or comparable organizational documents, (iii) resolutions of the Board of Directors of each entity or comparable documents and (iv) an incumbency schedule.

(iii) *Good Standing Certificates.* (A) A certificate evidencing (i) the good standing of each of the Issuer and the Guarantors in their respective jurisdictions of organization and (ii) qualification by such entity as a foreign corporation in good standing, each as issued by the Secretaries of State (or comparable office) of each of the jurisdictions in which each of the Company and its Subsidiaries operates as of a date within five days prior to the Closing Date and (B) customary "bring down" certificates or confirmations, dated the Closing Date, reaffirming such good standing or qualification, as the case may be.

(iv) *Solvency Certificate.* A certificate of solvency, dated the Closing Date, executed by the principal financial or accounting officer of the Company in the form of Exhibit C attached hereto.

(v) *Company Counsel Opinion.* The corporate and collateral opinion of Sidley Austin LLP, counsel to the Issuer and the Guarantors, dated the Closing Date and in form and substance reasonably satisfactory to the Collateral Agent.

(vi) *Insurance*. Collateral Agent shall have received a certificate from Company's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to the Documents is in full force and effect, together with endorsements on such certificates naming Collateral Agent, for the benefit of the Purchasers, as additional insured and loss payee thereunder, in each case, in form and substance reasonably satisfactory to Collateral Agent; provided, that the long-form endorsements may be delivered after the Closing Date as set forth in the Collateral Documents.

(vii) *General Counsel Opinion*. The opinion of Gil M. Labrucherie, Senior Vice President and General Counsel of the Issuer, dated the Closing Date and in form and substance reasonably satisfactory to the Collateral Agent.

(c) *Executed Documents.* The Purchasers shall have received fully executed originals of each Document (each of which shall be in full force and effect on terms reasonably satisfactory to the Purchasers, which may be executed in counterparts), and each opinion, certificate, letter and other document to be delivered in connection with the Offering or any other Transaction.

(d) *Collateral.*

(A) The Collateral Agent shall have received on the Closing Date the following, each in form and substance reasonably satisfactory to the Purchasers:

(i) appropriately completed copies of Uniform Commercial Code financing statements naming the Issuer and Guarantors as debtors and the Collateral Agent as the secured party, or other similar instruments or documents to be filed under the Uniform Commercial Code of all jurisdictions as may be necessary or, in the reasonable opinion of the Collateral Agent and its counsel, desirable to perfect the security interests of the Collateral Agent pursuant to the Collateral Documents;

(ii) appropriately completed copies of Uniform Commercial Code Form UCC 3 termination statements, if any, necessary to release all Liens (other than Permitted Liens) of any person in any collateral described in any Collateral Document previously granted by any person;

(iii) certified copies of Uniform Commercial Code Requests for Information or Copies (Form UCC 11), or a similar search report certified by a party acceptable to the Collateral Agent, dated a date reasonably near to the Closing Date, listing all effective financing statements which name the Issuer or any Guarantor as the debtor, together with copies of such financing statements (none of which shall cover any collateral described in any Collateral Document, other than such financing statements that evidence Permitted Liens);

(iv) a Control Agreement with respect to the Deposit Account in which the Reserved Funds are to be deposited on the Closing Date; and

(v) a grant of security interest in all Collateral consisting of Intellectual Property Rights of the Issuer or any Guarantor.

(B) The Collateral Agent and its counsel shall be satisfied that (a) the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent, the Trustee and the Holders (collectively, the "Secured Parties") in the collateral described above is of the priority described herein and (b) no Lien exists on any of the collateral described above, other than the Lien created in favor of the Collateral Agent, for the benefit of the Secured Parties pursuant to a Collateral Document in each case subject to the Permitted Liens;

(C) All Uniform Commercial Code financing statements or other similar financing statements and Uniform Commercial Code Form UCC-3 termination statements required pursuant to clause (d)(A)(i) and (d)(A)(ii) above (collectively, the "UCC Statements") shall have been delivered to National Corporate Research, Ltd. or another similar filing service company acceptable to the Collateral Agent (the "Filing Agent").

(e) *Payoff*. On the Closing Date, the Company shall have (i) repaid and/or redeemed in full all Indebtedness and other obligations outstanding under the Existing Secured Notes and (ii) subject to the terms of the Indenture, delivered to the Collateral Agent all documents or instruments, in form and substance satisfactory to the Collateral Agent, necessary to release all Liens securing such Indebtedness or other obligations of the Issuer or any Guarantor thereunder being repaid on the Closing Date.

(f) *No Material Adverse Change*. Since December 31, 2014, there shall not have been any Material Adverse Change that could, in the sole good faith judgment of the Purchasers be expected to (i) make it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the terms and in the manner contemplated by this Agreement and the Documents, or (ii) materially impair the investment quality of any of the Securities.

(g) *Corporate Proceedings*. All corporate proceedings and other legal matters incident to the authorization, form and validity of the Documents and the Transactions and all other legal matters relating of the offering, issuance and sale of the Securities and the Transactions shall be reasonably satisfactory in all material respects to counsel to the Purchasers; and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(h) *Organizational and Capital Structure*. The organizational structure and capital structure of the Issuer and the Guarantors shall be satisfactory to the Collateral Agent.

(i) *Fees*. Company shall have paid to the Collateral Agent the fees payable on the Closing Date referred to in the Fee Letter and all other fees and expenses payable pursuant to the Documents on the Closing Date, including, without limitation, all fees and expenses due and payable to the Trustee on the Closing Date. The Company shall have executed and delivered to the Collateral Agent a flow of funds agreement, in form and substance reasonably satisfactory to the Collateral Agent, setting forth the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Closing Date.

(j) *Bank Regulations*. To the extent requested at least 3 days in advance of the Closing Date, Collateral Agent shall have received all documentation and other information reasonably requested that is required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) of 2001, and all such documentation and other information shall be in form and substance reasonably satisfactory to the Collateral Agent.

8. Indemnification.

(a) EACH OF THE ISSUER AND THE GUARANTORS JOINTLY AND SEVERALLY AGREES TO DEFEND (SUBJECT TO INDEMNITEES' SELECTION OF COUNSEL), INDEMNIFY, PAY AND HOLD HARMLESS, EACH PURCHASER, THEIR AFFILIATES AND THEIR RESPECTIVE OFFICERS, PARTNERS, DIRECTORS, TRUSTEES, EMPLOYEES AND AGENTS (EACH, AN "INDEMNITEE"), FROM AND AGAINST ANY AND ALL INDEMNIFIED LIABILITIES, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; PROVIDED, NEITHER THE ISSUER NOR ANY GUARANTOR SHALL HAVE ANY OBLIGATION TO ANY INDEMNITEE HEREUNDER WITH RESPECT TO ANY INDEMNIFIED LIABILITIES TO THE EXTENT SUCH INDEMNIFIED LIABILITIES ARISE FROM THE GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT, AS DETERMINED BY A COURT OF COMPETENT JURISDICTION IN A FINAL, NON-APPEALABLE ORDER, OF THAT INDEMNITEE. TO THE EXTENT THAT THE UNDERTAKINGS TO DEFEND, INDEMNIFY, PAY AND HOLD HARMLESS SET FORTH IN THIS SECTION 8 MAY BE UNENFORCEABLE IN WHOLE OR IN PART BECAUSE THEY ARE VIOLATIVE OF ANY LAW OR PUBLIC POLICY, THE APPLICABLE ISSUER OR GUARANTOR SHALL CONTRIBUTE THE MAXIMUM PORTION THAT IT IS PERMITTED TO PAY AND SATISFY UNDER APPLICABLE LAW TO THE PAYMENT AND SATISFACTION OF ALL INDEMNIFIED LIABILITIES INCURRED BY INDEMNITEES OR ANY OF THEM.

"Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (a) this Agreement or the other Documents or the transactions contemplated hereby or thereby (including any enforcement of any of the Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of any Collateral Document)); or (b) any environmental claim relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of the Issuer or any Guarantor or any of their respective Subsidiaries.

(b) To the extent permitted by applicable law, no party hereto shall assert, and each such party hereby waives, any claim on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Notes or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each such party hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

9. **Termination**. The Purchasers may terminate this Agreement at any time prior to the Closing Date by written notice to the Company if (i) any of the events described in Section 7(f) (No Material Adverse Change) shall have occurred or (ii) if the Closing Date has not occurred on or prior to the date that is thirty-five (35) days after the date hereof. If the Closing Date has not occurred on or prior to the date that is 90 days after the date hereof, this Agreement shall automatically terminate. Any termination pursuant to this Section shall be without liability on the part of (a) the Issuer or the Guarantors to the Purchasers, except that the Issuer and the Guarantors shall be obligated to reimburse the expenses of the Purchasers pursuant to Section 5(a) hereof or (b) the Purchasers to the Issuer or the Guarantors, except, in the case of each of clauses (a) and (b), that the provisions of Sections 9 and 10 hereof shall at all times be effective and shall survive such termination.

10. **Survival.** The representations and warranties, covenants, indemnities and contribution and expense reimbursement provisions and other agreements of the Issuer and the Guarantors set forth in or made pursuant to this Agreement shall remain operative and in full force and effect, and will survive, regardless of (i) any investigation, or statement as to the results thereof, made by or on behalf of the Purchasers, (ii) the acceptance of the Securities, and payment for them hereunder, and (iii) any termination of this Agreement.

11. **Miscellaneous.**

(a) *Notices*. Notices given pursuant to any provision of this Agreement shall be addressed as follows: (i) if to the Issuer, to:

Nektar Therapeutics
455 Mission Bay Boulevard South
San Francisco, California 94158
Attention: Gil Labrucherie, Esq.

with a copy to:

Sidley Austin LLP
2001 Ross Avenue
Suite 3600
Dallas, Texas 75201
Attention: Christopher Gleason

and (ii) if to the Purchasers, to:

TC Lending, LLC
301 Commerce Street, Suite 3300
Fort Worth, TX 76102
Attention: Legal and Compliance Department

with a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attention: Frederic L. Ragucci

(or in any case to such other address as the person to be notified may have requested in writing).

(b) *Beneficiaries.* This Agreement has been and is made solely for the benefit of and shall be binding upon the Issuer, the Guarantors, the Purchasers and their respective heirs, executors, administrators, successors and assigns, all as and to the extent provided in this Agreement, and no other person shall acquire or have any right under or by virtue of this Agreement.

(c) *Governing Law; Jurisdiction; Waiver of Jury Trial; Venue*. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The Issuer and the Guarantors hereby expressly and irrevocably (i) submits to the non-exclusive jurisdiction of the federal and state courts sitting in the Borough of Manhattan in the City of New York in any suit or proceeding arising out of or relating to this Agreement or the Transactions, and (ii) waives (a) its right to a trial by jury in any legal action or proceeding relating to this Agreement, the Transactions or any course of conduct, course of dealing, statements (whether verbal or written) or actions of the Purchasers and for any counterclaim related to any of the foregoing and (b) any obligation which it may have or hereafter may have to the laying of venue of any such litigation brought in any such court referred to above and any claim that any such litigation has been brought in an inconvenient forum.

(d) *Entire Agreement; Counterparts*. This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

(e) *Headings*. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(f) *Separability*. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(g) *Amendment*. This Agreement may be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may be given, provided that the same are in writing and signed by all of the signatories hereto.

[SIGNATURE PAGE FOLLOWS]

Please confirm that the foregoing correctly sets forth the agreement between the Issuer, the Guarantors and the Purchasers.

Very truly yours,

NEKTAR THERAPEUTICS

By: _____
Name: John Nicholson
Title: Senior Vice President and Chief Financial Officer

Accepted and Agreed to:

TC LENDING, LLC

By: _____
Name:
Title:

TAO FUND, LLC

By: _____
Name:
Title:

SCHEDULE I

PURCHASERS

Purchasers		**Principal Amount**
TC Lending, LLC	$	97,500,000
TAO Fund, LLC	$	152,500,000
Total	$	250,000,000

SCHEDULE II

LIST OF SUBSIDIARIES

Entity Name	**Jurisdiction of Formation**
Nektar Therapeutics UK, Ltd.*	United Kingdom
Nektar Therapeutics (India) Pvt. Ltd.*	India

"*****" indicates a "Foreign Restricted Subsidiary" as defined in the Indenture.

SCHEDULE III

Indebtedness	Amount Due
12.000% Senior Secured Notes due 2017	$125,000,000
Redemption premium (9% of principal)	$11,250,000
Accrued interest due as of October 5, 2015	$3,333,333
Additional 30 days interest	$1,250,000

EXHIBIT A

FORM OF INDENTURE

EXHIBIT B

FORM OF PLEDGE AND SECURITY AGREEMENT

EXHIBIT C

FORM OF SOLVENCY CERTIFICATE

The undersigned, John Nicholson, Chief Financial Officer of Nektar Therapeutics, a Delaware corporation (the "Company"), solely in his capacity as Chief Financial Officer of the Company and not in any individual capacity, does herby certify pursuant to Section 7(b)(iv) of the purchase agreement (the "Purchase Agreement") dated as of September 30, 2015, by and among the Company, the Guarantors and the Purchasers, as follows:

Both immediately before and immediately after the consummation of the transactions to occur on the Closing Date and after giving effect to the use of proceeds described in the Purchase Agreement:

1. The present fair market value (or present fair saleable value) of the assets of the Issuer and each Guarantor is not less than the total amount required to pay the liabilities of such Issuer or Guarantor on its total existing debts and liabilities (including contingent liabilities) as they become absolute and matured;

2. The Issuer and each Guarantor will be able to pay its debts and other liabilities, contingent obligations and commitments as they mature;

3. Neither the Issuer nor any Guarantor is incurring debts or liabilities beyond its ability to pay as such debts and liabilities mature;

4. Neither the Issuer nor any Guarantor is engaged in any business or transaction, and does not propose to engage in any business or transaction, for which its property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Issuer or Guarantor are engaged;

5. Neither the Issuer nor any of the Guarantors has incurred (by way of assumption or otherwise) any obligation or liability (contingent or otherwise) under the Documents with actual intent to hinder, delay or defraud either present or future creditors of such Issuer or Guarantor or any of its affiliates, as case may be;

6. Neither the Issuer nor any of the Guarantors has incurred (by way of assumption or otherwise) any obligation or liability (contingent or otherwise) under the Documents with actual intent to hinder, delay or defraud either present or future creditors of such Issuer or Guarantor or any of its affiliates, as case may be;

7. In reaching the conclusions set forth in this Certificate, the undersigned has considered such facts, circumstances and matters as the undersigned has deemed appropriate and has made such investigations and inquiries as the undersigned has deemed appropriate, having taken into account the nature of the particular business anticipated to be conducted by the Issuer and the Guarantors after consummation of the transactions.

Unless otherwise defined herein, terms defined in the Purchase Agreement and used herein shall have the meanings given to them in the Purchase Agreement.

The undersigned understands that the Purchasers are relying on the truth and accuracy of contents of this Certificate in connection with its entering into the Purchase Agreement.

NEKTAR THERAPEUTICS

By: _____
Name: John Nicholson
Title: Chief Financial Officer

Exhibit 10.2

EXECUTION VERSION

NEKTAR THERAPEUTICS

7.75% SENIOR SECURED NOTES DUE 2020

INDENTURE

Dated as of October 5, 2015

Wilmington Trust, National Association,

as Trustee

TC Lending, LLC,

as Collateral Agent

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	*Indenture Section*
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	12.03
(c)	12.03
313(a)	7.06
(b)(1)	10.03
(b)(2)	7.06; 7.07
(c)	7.06; 10.03;12.02
(d)	7.06
314(a)	4.03;12.02; 12.05
(b)	N.A.
(c)(1)	12.04
(c)(2)	12.04
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
(f)	N.A.
315(a)	7.01
(b)	7.05; 12.02
(c)	7.01
(d)	7.01
(e)	6.11
316(a) (last sentence)	2.09
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.12
317(a)(1)	6.08
(a)(2)	6.09
(b)	2.04
318(a)	12.01
(b)	N.A.
(c)	12.01

N.A. means not applicable.
* This Cross Reference Table is not part of this Indenture.

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INDENTURE dated as of October 5, 2015 between Nektar Therapeutics, a Delaware corporation, and Wilmington Trust, National Association, as trustee (together with its successors and assigns, in such capacity, the "*Trustee*") and TC Lending, LLC, as collateral agent (together with its successors and assigns, in such capacity, the "*Collateral Agent*").

The Company (as hereinafter defined), the Trustee and the Collateral Agent agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined below) of the 7.75% Senior Secured Notes due 2020 (the "*Notes*"):

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

"144A Global Note" means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"*Acquired Debt*" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Restricted Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control solely for purposes of Section 4.11. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Agent" means any Registrar, co-registrar, Paying Agent or additional paying agent.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer or exchange.

"*Applicable Transaction*" means (1) any incurrence of Indebtedness as part of a Collaboration Transaction or Royalty Transaction in connection with which cash proceeds are generated and (2) the receipt of any cash payments by the Company or any Restricted Subsidiary of the Company as part of a Collaboration Transaction other than (x) net royalty payments, (y) payments for bona fide services provided by the Company or any Restricted Subsidiary and (z) payments for manufacturing and supply activities and (3) any incurrence of Permitted Convertible Notes, in each case, arising from transactions occurring after the date of this Indenture but excluding amendments, restatements, modifications, renewals, supplements or replacements of agreements entered into prior to the date of this Indenture.

"*Asset Sale*" means:

(1) the sale, lease, conveyance or other disposition of any assets or property; *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by Section 4.15 and/or Section 5.01 and not by the provisions of Section 4.10; and

(2) the issuance of Equity Interests in any of the Company's Restricted Subsidiaries or the sale of Equity Interests in any of its Restricted Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions (other than a Royalty Transaction) that involves assets having a Fair Market Value of less than $1.0 million;

(2) a transfer of assets between or among the Company and the Guarantors;

(3) an issuance of Equity Interests by a Restricted Subsidiary of the Company to the Company or to a Restricted Subsidiary of the Company;

(4) the sale or lease of products, services or accounts receivable in the ordinary course of business, any sale or other disposition of damaged, worn-out or obsolete assets in the ordinary course of business and the abandonment or other disposition of intellectual property (other than a Royalty Transaction) that in the Company's good faith judgment are not useful in a Permitted Business or otherwise of any material value;

(5) the sale or other disposition of cash or Cash Equivalents;

(6) a Restricted Payment that does not violate Section 4.07 or a Permitted Investment;

(7) the licensing or sublicensing of patents, trademarks, know-how or other intellectual property or general intangibles related thereto (in each case, other than a Royalty Transaction) in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries (*provided* that any exclusive license of patents that effectively constitutes a transfer of the related patent shall be deemed to be an Asset Sale);

(8) the lease, assignment or sublease of any real or personal property (other than a Royalty Transaction) in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(9) the sale of any property in a Sale/Leaseback Transaction within six months of the acquisition of such property;

(10) the sale or other disposition of the Equity Interests of any Royalty Transaction Subsidiary pursuant to the foreclosure of a pledge of such Equity Interests in connection with the related Royalty Transaction; and

(11) any Collaboration Transaction, to the extent involving any sale, lease, conveyance or other disposition of property or assets.

For the avoidance of doubt, (i) any Royalty Transaction shall constitute an Asset Sale and (ii) no Specified Drug shall be permitted to be sold, disposed or otherwise transferred other than pursuant to a Royalty Transaction.

"Bankruptcy Law" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"Business Day" means any day other than a Legal Holiday.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation in a Person that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"*Cash Equivalents*" means:

(1) United States dollars;

(2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (*provided* that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition;

(3) certificates of deposit and eurodollar time deposits with maturities of two years or less from the date of acquisition, bankers' acceptances with maturities not exceeding two years and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of $500.0 million and a Thomson Bank Watch Rating of "B" or better;

(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within two years after the date of acquisition;

(6) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) in each case with maturities not exceeding two years from the date of acquisition;

(7) Indebtedness issued by Persons (other than the Company or any of its Affiliates) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's in each case with maturities not exceeding two years from the date of acquisition; and

(8) investment funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (7) of this definition.

"*Change of Control*" means the occurrence of any of the following:

(1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than (x) by way of merger or consolidation or (y) pursuant to a Royalty Transaction), in one or a series of related transactions, of (i) all or substantially all of the properties or assets of the Company and its Subsidiaries taken as a whole to any Person other than the Company or a Guarantor; or (ii) assets of the Company or any Subsidiary of the Company to a Person other than the Company or a Guarantor for a purchase price equal to more than 50% of the consolidated total assets of the Company (based upon the Company's most recent audited balance sheet);

(2) the adoption of a plan relating to, or the occurrence of, the liquidation, dissolution or winding up of the Company;

(3) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any "person" or "group" (each as defined above) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares;

(4) the Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Company, or the Company consummates an exchange of shares, recapitalization, reorganization, business combination or other similar event, in any such event pursuant to a transaction following which the holders of Voting Stock immediately preceding such consolidation, merger, exchange, recapitalization, reorganization, business combination or similar event either (a) no longer hold a majority of the Voting Stock of the Company or (b) no longer have the ability elect a majority of the board of directors of the Company; or

(5) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors.

"*Clearstream*" means Clearstream Banking, S.A.

"*Collaboration Agreement*" means any agreement entered into in connection with a Collaboration Transaction.

"*Collaboration Transaction*" means any transaction pursuant to which the Company or any Restricted Subsidiary (a) provides a license or sublicense of its intellectual property, or transfers, contributes or assigns intellectual property owned or controlled by the Company or any Restricted Subsidiary and/or provides a right of reference regulatory filings and applications with governmental health authorities, and/or provides rights with respect to pre-clinical and clinical data, in each case to one or more third parties in connection with the (b) research, clinical development, regulatory activities, manufacturing, commercialization and/or marketing of one or more of the Company's or any Restricted Subsidiary's drugs or drug candidates, or similar agreements or arrangements.

"*Collateral*" has the meaning assigned to it in the Collateral Documents.

"*Collateral Agent*" shall have the meaning set forth in the preamble.

"*Collateral Documents*" means the Security Agreement, the other security agreements, pledge agreements, Mortgages, collateral assignments, Control Agreements and related agreements (including, without limitation, financing statements under the Uniform Commercial Code of the relevant states), each as amended, supplemented, restated, renewed, replaced or otherwise modified from time to time, to secure any Obligations under the Indenture Documents or under which rights or remedies with respect to any such Lien are governed.

"*Company*" means Nektar Therapeutics, and any and all successors thereto.

"*Competitor*" means an entity engaged primarily in substantially the same business as the Company, which is the business of discovery, development, manufacturing, selling, licensing and/or other commercialization of pharmaceutical products. For the avoidance of doubt, "Competitor" shall not include any financial services institution, investment fund or lender.

"*Consolidated Cash Flow*" means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period, adjusted as follows (without duplication):

(1) *plus* provision for taxes based on income, profits or capital, including state, franchise and similar taxes, of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was taken into account in computing such Consolidated Net Income;

(2) *plus* the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income;

(3) *plus* depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income;

(4) *minus* non-cash items increasing such Consolidated Net Income for such period other than the recognition of deferred revenue from transactions for which cash was received after the date of this Indenture, the accrual of revenue in the ordinary course of business and any items which represent the reversal of any accrual of, or cash reserve for, anticipated cash charges in any prior period and any items for which cash was received in a prior period;

in each case, on a consolidated basis and determined in accordance with GAAP.

"*Consolidated Net Income*" means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

(1) any extraordinary, nonrecurring or unusual gains or losses or income, expenses or charges, including, without limitation, any non-cash royalty revenue and any associated non-cash royalty expense, any severance expenses, any fees, expenses or charges related to any equity offering, Permitted Investment, acquisition or Indebtedness permitted to be incurred by this Indenture (in each case, whether or not successful), in each case, shall be excluded;

(2) the Net Income (but not loss) of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in cash (or to the extent converted into cash) to the specified Person or a Restricted Subsidiary of the Person;

(3) solely for the purpose of determining the amount available for Restricted Payments under clause (iii)(a) of Section 4.07(a), the Net Income of any Restricted Subsidiary (other than a Note Guarantor) will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders unless any applicable restrictions have been legally waived;

(4) the cumulative effect of a change in accounting principles will be excluded;

(5) the Net Income of any Royalty Transaction Subsidiary will be included solely to the extent distributed to the specified Person or one of its Subsidiaries;

(6) any increase in amortization or depreciation or any one-time non-cash charges or reductions in Net Income, in each case resulting from purchase accounting in connection with any acquisition that is consummated after the date of this Indenture shall be excluded;

(7) any impairment charges or asset write-offs and amortization of intangibles in each case arising pursuant to the application of GAAP shall be excluded;

(8) any non-cash expense realized or resulting from employee benefit plans or post-employment benefit plans, grants of stock appreciation or similar rights, stock options or other rights to officers, directors and employees of such Person or any of its Restricted Subsidiaries, any severance or relocation costs or expenses, one-time non-cash compensation charges, in each case of such Person or any of its Restricted Subsidiaries, shall be excluded;

(9) any currency translation gains and losses related to currency remeasurements of indebtedness, and any net loss or gain resulting from hedging transactions for currency exchange risk, shall be excluded;

(10) non-cash charges for deferred tax asset valuation allowances shall be excluded; and

(11) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (a) not denied by the applicable carrier in writing within 180 days and (b) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to casualty events or business interruption, net of any reimbursement to the extent already taken into account in computing Consolidated Net Income, shall be excluded.

"*Continuing Directors*" means, as of any date of determination, any member of the Board of Directors of the Company who:

(1) was a member of such Board of Directors on the date of this Indenture; or

(2) was nominated for election or elected to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election.

"Control Agreement" means a control agreement, in form and substance satisfactory to Collateral Agent, executed and delivered by the Company or one of its Subsidiaries, Collateral Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"*Corporate Trust Office of the Trustee"* will be at the address of the Trustee specified in Section 13.01 hereof or such other address as to which the Trustee may give notice to the Company.

"*Custodian"* means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"*Definitive Note"* means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A hereto except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"*Deposit Account*" means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Designated Preferred Stock*" means Preferred Stock of the Company (other than Disqualified Stock), that is issued for cash (other than to the Company or any of its Subsidiaries or an employee stock ownership plan or trust established by the Company or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on the issuance date thereof.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Company may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.07. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Company and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"*Domestic Restricted Subsidiary*" means any Restricted Subsidiary of the Company that was formed under the laws of the United States or any state of the United States or the District of Columbia or that guarantees or otherwise provides direct credit support for any Indebtedness of the Company.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"Euroclear" means Euroclear Bank, S.A./N.V., as operator of the Euroclear system.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Account" means (i) Deposit Accounts and Securities Accounts the balance of which consists exclusively of (a) withheld income taxes and federal, state or local employment taxes in such amounts as are required to be paid to the Internal Revenue Service or state or local government agencies within the following two months with respect to employees of the Company or any of its Restricted Subsidiaries, and (b) any payroll accounts, health care reimbursement accounts and employee benefits accounts, including any accounts containing amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of the Company or any of its Restricted Subsidiaries, (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) tax accounts, fiduciary accounts and trust accounts and (iii) any Deposit Accounts and Securities Accounts, amounts on deposit in which do not exceed $50,000 individually or $250,000 in the aggregate at any one time.

"*Existing Indebtedness*" means Indebtedness of the Company and its Subsidiaries in existence on the date of this Indenture (other than the Indebtedness under the Existing Secured Notes), until such amounts are repaid.

"*Existing Secured Notes*" means the 12.00% Senior Secured Notes due 2017 of the Company issued under the Existing Secured Notes Indenture.

"*Existing Secured Notes Indenture*" means the Indenture, dated as of July 11, 2012, between the Company and Wells Fargo Bank, National Association, as trustee and collateral agent.

"*Fair Market Value*" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, as determined in good faith by the Company (and in the case of determinations of Fair Market Value in excess of $5.0 million, by the Board of Directors of the Company).

"*Fee Letter*" means the letter agreement dated October 5, 2015 between the Collateral Agent and the Company, as amended, amended and restated, supplemented or otherwise modified from time to time.

"*Fixed Charge Coverage Ratio*" means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "*Calculation Date*"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Calculation Date (each, for purposes of this definition, a "*pro forma event*") shall be calculated on a pro forma basis assuming that all such Investments, acquisitions, dispositions, mergers, consolidations and discontinued operations (and the change of any associated fixed charge obligations and the change in Consolidated Cash Flow resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such period shall have made any Investment, acquisition, disposition, merger, consolidation or discontinued operation, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect thereto for such period as if such Investment, acquisition, disposition, discontinued operation, merger or consolidation had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever pro forma effect is to be given to any pro forma event, the pro forma calculations shall be made in good faith by a responsible financial or accounting officer of the Company and determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act and as interpreted by the staff of the SEC. Any such pro forma calculation may include adjustments appropriate, in the reasonable good faith determination of the Company as set forth in an Officer's Certificate, to reflect operating expense reductions and other operating improvements or synergies reasonably expected to result within twelve months following the applicable pro forma event so long as such adjustments are determined on a basis consistent with Article 11 of Regulation S-X promulgated under the Securities Act and as interpreted by the staff of the SEC.

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of twelve months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of original issue discount, non-cash interest payments, the interest component of all payments associated with Capital Lease Obligations, excluding the amortization of deferred financing fees and expensing of any bridge or other financing fees, and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates;

(2) *plus* the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period;

(3) *plus* all cash dividends (excluding items eliminated in consolidation) on any series of preferred stock of such Person or any of its Restricted Subsidiaries,

(4) *minus* interest income for such period,

in each case, determined on a consolidated basis in accordance with GAAP; *provided* that non-cash interest expense in respect of long-term liabilities incurred in connection with Royalty Transactions that do not constitute Indebtedness for borrowed money shall not be included in Fixed Charges.

"*Foreign Subsidiary*" means a Subsidiary that is organized under the laws of a jurisdiction other than the United States, any state or territory thereof or the District of Columbia and does not guarantee or otherwise provide direct credit support for any Indebtedness of the Company.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the date of this Indenture.

"Global Note Legend" means the legend set forth in Section 2.06(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"Global Notes" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and registered in the name of the Depositary or its nominee, substantially in the form of Exhibit A hereto and that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, issued in accordance with Section 2.01, 2.06(b)(3), 2.06(b)(4) or 2.06(d)(2) hereof.

"*Government Securities*" means securities that are: (1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged, or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"*Guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"*Guarantor*" means any Domestic Restricted Subsidiary of the Company that executes a Note Guarantee in accordance with the provisions of this Indenture and its successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture.

"*Hedging Obligations*" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

"*Holder*" means a Person in whose name a Note is registered on the books of the Registrar.

"*IAI Global Note*" means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"*Indebtedness*" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses, deferred or prepaid revenue, trade payables and Guarantees incurred in the ordinary course of business and not in respect of borrowed money), whether or not contingent:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments;

(3) all Obligations for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction;

(4) representing Capital Lease Obligations;

(5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business).

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

"*Indenture Documents*" means this Indenture, the Notes, the Note Guarantees, the Fee Letter and the Collateral Documents.

"*Indirect Participant*" means a Person who holds a beneficial interest in a Global Note through a Participant.

"*Investments*" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of the Company, the Company will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Company's Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.07. The acquisition by the Company or any Subsidiary of the Company of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Company or such Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in Section 4.07 Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value. Any payments (including payments under the existing intercompany agreement between the Company and Nektar Therapeutics (India) Private Limited) made to a foreign Restricted Subsidiary of the Company by the Company or a domestic Restricted Subsidiary of the Company to the extent reflected as operating expenses of the Company or such domestic Restricted Subsidiary in the financial statements of the Company shall be deemed to not constitute an Investment in such foreign Restricted Subsidiary.

"*Institutional Accredited Investor*" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

"LTM Royalty Revenue" means for the purpose of this Indenture, at any date of determination, the lesser of (i) the actual last twelve months of royalty revenue received by the Company and its Restricted Subsidiaries and (ii) the actual last twelve months of royalty revenue received by the Company and its Restricted Subsidiaries calculated as if the Company and its Restricted Subsidiaries had received all such royalty revenue in the prior calendar year and subject to any annual royalty tiers applicable in the prior calendar year. For the avoidance of doubt, any royalties applied to this definition do not include (i) milestones or other one-time payments or (ii) any royalties associated with any license agreement or permit with respect to any Specified Drug if such license or permit has been lost, suspended, revoked or not renewed.

"*Material Adverse Effect*" means a material adverse effect on the financial condition, operations, assets, or business of the Company and its Subsidiaries, taken as a whole.

"*Make-Whole Premium*" means an amount equal to (A) the difference between (1) the aggregate amount of interest (including, without limitation, interest payable in cash, in kind or deferred) which would have otherwise been payable on the amount of the redemption from the date of redemption until the twenty-four month anniversary of the date of this Indenture, minus (2) the aggregate amount of interest Holders would earn if the redeemed amount were reinvested for the period from the date of redemption until the twenty-four month anniversary of the date of this Indenture at the Treasury Rate plus (B) an amount equal to the Prepayment Premium that would otherwise be payable as if such redemption had occurred on the day after the twenty-four month anniversary of the date of this Indenture. The Company shall deliver a certificate to the Trustee containing the calculation of the Make-Whole Premium and certifying that such calculation was done in accordance with the Indenture.

"*Moody's*" means Moody's Investors Service, Inc.

"*Mortgages*" means a collective reference to each mortgage, deed of trust, deed to secure debt and any other document or instrument under which any Lien on the Premises or any other Collateral secured by and described in such mortgages, deeds of trust, deeds to secure debt or other documents or instruments is granted to secure any Obligations of the Company or a Guarantor under any of the Indenture Documents or under which rights or remedies with respect to any such Liens are governed.

"*Net Income*" means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however, any gain (or loss), together with any related provision for taxes on such gain (or loss), realized in connection with: (a) any Asset Sale; or (b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries.

"*Net Proceeds*" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale, Royalty Transaction or Applicable Transaction (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale, Royalty Transaction or Applicable Transaction, but only as and when received), net of the direct costs relating to such Asset Sale, Royalty Transaction or Applicable Transaction, including, without limitation, legal, accounting and investment banking fees, and sales or brokerage commissions, and any relocation expenses incurred as a result of the Asset Sale, Royalty Transaction or Applicable Transaction, taxes paid or payable as a result of the Asset Sale, Royalty Transaction or Applicable Transaction, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and amounts (including premiums and fees) required to be applied to the repayment of Indebtedness required to be repaid as a result of such Asset Sale, Royalty Transaction or Applicable Transaction and any reserve for adjustment in respect of the sale price of such asset or assets, or any retained liabilities or indemnities with respect to such Asset Sale, Royalty Transaction or Applicable Transaction, established in accordance with GAAP; *provided, however,* that the amount of Net Proceeds received with respect to an issuance of Permitted Convertible Notes shall be deemed to be 35% of the amount that would otherwise be determined pursuant to the foregoing definition.

"*Non-Recourse Debt*" means Indebtedness:

(1) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (other than undertakings, including in respect of 'make-whole interest,' that are customary in Royalty Transactions), (b) is directly or indirectly liable as a guarantor or otherwise, or (c) constitutes the lender;

(2) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against a Royalty Transaction Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of the Company or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(3) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Company or any of its Restricted Subsidiaries.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Note Guarantee*" means the Guarantee by each Guarantor of the Company's obligations under this Indenture and the Notes, executed pursuant to the provisions of this Indenture.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture.

"*Obligations*" means any principal, interest, penalties, fees, premiums, expenses (including, without limitation, reasonable attorneys', agents' and professional advisors' fees and expenses), indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"*Officer*" means the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Company.

"*Officer's Certificate*" means a certificate signed on behalf of the Company by an Officer of the Company that meets the requirements set forth in this Indenture.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee or the Collateral Agent, as applicable, that meets the requirements of Section 13.04 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"*Participant*" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

"*Permitted Business*" means businesses which are the same, similar, ancillary or reasonably related to the businesses in which the Company and its Restricted Subsidiaries are engaged on the date of this Indenture.

"*Permitted Investments*" means:

(1) any Investment in the Company or in a Restricted Subsidiary of the Company that is a Guarantor;

(2) any Investment in Cash Equivalents;

(3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of the Company and a Guarantor; or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company and a Guarantor;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.10;

(5) any acquisition of assets or Capital Stock solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Company;

(6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;

(7) Investments represented by Hedging Obligations;

(8) loans or advances to employees made in the ordinary course of business of the Company or any Restricted Subsidiary of the Company in an aggregate principal amount not to exceed $5.0 million at any one time outstanding;

(9) repurchases of the Notes;

(10) Collaboration Transactions and Royalty Transactions, to the extent involving an Investment;

(11) guarantees not prohibited by Section 4.09 and guarantees required by Section 4.17;

(12) Investments in joint ventures of the Company or any of its Restricted Subsidiaries not to exceed $15.0 million at any one time outstanding;

(13) Investments in Foreign Subsidiaries not to exceed $15.0 million at any one time outstanding; and

(14) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (14) that are at the time outstanding, not to exceed $20.0 million.

For the avoidance of doubt, any Investment (other than a Royalty Transaction) with respect to, or related to, any Specified Drugs (other than as set forth in the following proviso) shall not constitute a Permitted Investment; provided that any Investment in a Specified Drug otherwise permitted under this Indenture shall constitute a Permitted Investment.

"*Permitted Liens*" means:

(1) Liens in favor of the Trustee or the Collateral Agent created pursuant to this Indenture and the Collateral Documents with respect to the Note and Note Guarantees;

(2) Liens in favor of the Company or the Guarantors;

(3) Liens on property of a Person existing at the time such Person is merged with or into or consolidated with the Company or any Subsidiary of the Company; *provided* that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Company or the Subsidiary;

(4) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Company or any Subsidiary of the Company; *provided* that such Liens were in existence prior to, such acquisition, and not incurred in contemplation of, such acquisition;

(5) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business;

(6) Liens to secure Permitted Debt (including Capital Lease Obligations) described in clause (4) of the definition thereof covering only the assets acquired with or financed by such Indebtedness;

(7) Liens existing on the date of this Indenture; provided, that, in the case of the Lien securing the Existing Secured Notes under the Existing Secured Notes Indenture and the Collateral Documents (as defined in the Existing Secured Notes Indenture), such Lien shall only be permitted prior to the date that is 90 days after the date of this Indenture;

(8) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(9) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics' Liens, in each case, incurred in the ordinary course of business, which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted;

(10) all Liens of record identified in any existing title policies, all survey exceptions, all easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other utility or other similar purposes, all local and other Laws, including building and zoning laws, regulations or ordinances, now or hereafter in effect relating to or affecting any real property, and other Liens or imperfections of title to or on real or personal property that are not material in amount or do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(11) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Indenture; *provided*, *however*, that:

(a) the new Lien shall be limited to all or part of the same property and assets that are subject to or, under the written agreements pursuant to which the original Lien arose, could be subject to the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Permitted Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge; and

(12) Liens on assets of a Restricted Subsidiary that is not a Note Guarantor, securing Indebtedness of such Restricted Subsidiary permitted to incurred pursuant to Section 4.09;

(13) Collaboration Transactions and Royalty Transactions, to the extent involving the incurrence of a Lien;

(14) grants of intellectual property licenses or sublicenses in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(15) judgment and attachment Liens not giving rise to an Event of Default;

(16) any encumbrance or restriction (including put and call arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(17) leases and subleases of real property in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Restricted Subsidiaries;

(18) Liens arising by virtue of any statutory or common law provisions relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution; and

(19) Liens incurred in the ordinary course of business of the Company or any Subsidiary of the Company with respect to obligations that do not exceed $5.0 million at any one time outstanding.

Notwithstanding the foregoing, Liens on Specified Drugs (other than Liens on Specified Drugs in favor of the Collateral Agent) shall not constitute Permitted Liens; provided, that any restrictions set forth in any Collaboration Agreement with respect to such Specified Drugs shall be permitted.

"*Permitted Refinancing Indebtedness*" means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(3) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to, the Notes on terms at least as favorable to the holders of Notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; and

(4) such Indebtedness is incurred either by the Company or by the Restricted Subsidiary who is the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"*Preferred Stock*" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

"*Private Placement Legend"* means the legend set forth in Section 2.06(f)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*QIB"* means a "qualified institutional buyer" as defined in Rule 144A.

"*Regulation S"* means Regulation S promulgated under the Securities Act.

"*Regulation S Global Note"* means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903 of Regulation S.

"*Responsible Officer,"* when used with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject, and shall, in each case, have direct responsibility for the administration of this Indenture.

"*Restricted Definitive Note"* means a Definitive Note bearing the Private Placement Legend.

"*Restricted Global Note"* means a Global Note bearing the Private Placement Legend.

"*Restricted Investment*" means an Investment other than a Permitted Investment.

"*Restricted Subsidiary*" of a Person means any Subsidiary of the referent Person that is not a Royalty Transaction Subsidiary.

"*Royalty Transaction*" means any royalty monetization transaction with respect to licenses or sublicenses of the intellectual property owned or controlled by the Company or any Restricted Subsidiary, including but not limited to sales of royalty streams, royalty bonds and other royalty financings, synthetic royalty and revenue interest transactions and hybrid monetization transactions.

"*Royalty Transaction Subsidiary*" means any Subsidiary of the Company that is designated by the Board of Directors of the Company as a Royalty Transaction Subsidiary pursuant to a resolution of the Board of Directors, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) has no assets other than assets that are the subject of a Royalty Transaction and is not engaged in any activities other than those related or incidental to a Royalty Transaction;

(3) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results, in each case other than pursuant to the terms of Non-Recourse Debt; and

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries.

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A promulgated under the Securities Act.

"Rule 903" means Rule 903 promulgated under the Securities Act.

"Rule 904" means Rule 904 promulgated under the Securities Act.

"*Sale/Leaseback Transaction*" means an arrangement relating to property now owned or hereafter acquired by the Company or a Restricted Subsidiary whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or such Restricted Subsidiary leases it from such Person, other than leases between the Company and a Restricted Subsidiary of the Company or between Restricted Subsidiaries of the Company.

"*S&P*" means Standard & Poor's Ratings Group.

"SEC" means the Securities and Exchange Commission.

"*Securities Account*" means a securities account (as defined in the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction).

"Securities Act" means the Securities Act of 1933, as amended.

"*Security Agreement*" means the Pledge and Security Agreement, dated as of the date of this Indenture, entered into by the Company and the Guarantors in favor of the Collateral Agent, as amended, supplemented or otherwise modified from time to time.

"*Significant Subsidiary*" means any Restricted Subsidiary (i) the total assets of which constitute more than 5% of the consolidated total assets of the Company and its Restricted Subsidiaries and (ii) the total revenues of which constitute more than 5% of the consolidated revenues of the Company and its Restricted Subsidiaries.

"*Specified Drugs*" means, collectively, each of the following and all of the Intellectual Property related thereto (each individually, a "Specified Drug"):

(i) Any product falling within the definition of "Licensed Product" as defined in Section 1.101 of the License Agreement by and between Astrazeneca AB and Nektar Therapeutics, dated September 20, 2009, as amended (the "Movantik Agreement"), and any other product that provides a basis for the payment of royalties, milestones and/or other payments to the Company or an Affiliate of the Company thereunder (this clause (i), collectively, "Movantik");

(ii) Any product falling within the definition of "Commercial Product" as defined in Section 1.13 and "Potential Product" as defined in Section 1.62 of the Exclusive Research, Development, License and Manufacturing and Supply Agreement, between Nektar Therapeutics AL, Corporation and Baxter Healthcare SA and Baxter Healthcare Corporation, dated September 26, 2005, as amended (the "BAX-855 Agreement"), and any other product that provides a basis for the payment of royalties, milestones and/or other payments to the Company or an Affiliate of the Company thereunder;

(iii) Any product falling within the definition of "Product" as defined in Section 1.57 of the License, Manufacturing and Supply Agreement between Nektar Therapeutics AL, Corporation and (OSI) Eyetech, Inc., dated September 30, 2006, as amended (the "Fovista Agreement"), and any other product that provides a basis for the payment of royalties, milestones and/or other payments to the Company or an Affiliate of the Company thereunder;

(iv) Any product falling within the definition of "Product" as defined in Section 1.98 of the Co-Development, License and Co-Promotion Agreement between Nektar Therapeutics, Aerogen, Inc., and Bayer Healthcare LLC, dated August 1, 2007 as amended (the "Amikacin Agreement"), and any other product that provides a basis for the payment of royalties, milestones and/or other payments to the Company or an Affiliate of the Company thereunder;

(v) Any product falling within the definition of "Product" as defined in Section 1.69 of the Collaborative Development and License Agreement between Nektar Therapeutics and Bayer Healthcare AG, dated November 30, 2004, as amended (the "CIPRO Agreement"), and any other product that provides a basis for the payment of royalties, milestones and/or other payments to the Company or an Affiliate of the Company thereunder; and

(vi) Any product falling within the definition of "Selected Product" as defined in Section 1.56 of the License Agreement between Nektar Therapeutics AL, Corporation and Halozyme, Inc., dated December 22, 2006, as amended (the "PEG2H2O Agreement"), and any other product that provides a basis for the payment of royalties, milestones and/or other payments to the Company or an Affiliate of the Company thereunder.

"*Specified Entity*" means any Person listed on Schedule 1 attached to the Fee Letter.

"*Specified Revenue Amount*" means, as of any date, the amount set forth opposite such date below:

Date	Amount
On or prior to December 31, 2016	$30,000,000
January 1, 2017 to and including December 31, 2017	$45,000,000
January 1, 2018 to and including December 31, 2018	$60,000,000
January 1, 2019 to and including December 31, 2019	$95,000,000
January 1, 2020 and all times thereafter	$140,000,000

; provided that the above amounts will be reduced on a proportionate basis at the time of any repayment (in accordance with the terms of this Indenture) of the principal amount of Notes.

"*Stated Maturity*" means, with respect to any installment of principal on any series of Indebtedness, the date on which the payment of principal was scheduled to be paid in the documentation governing such Indebtedness as of the date of this Indenture, and will not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"TIA" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb).

"*Treasury Rate*" means, as of any redemption date, a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) determined by the Collateral Agent on the date three (3) Business Days prior to the date of redemption, to be the yield expressed as a rate listed in The Wall Street Journal for United States Treasury securities having a term of not greater than twenty-four (24) months.

"Trustee" means Wilmington Trust, National Association, in its capacity as trustee, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"Unrestricted Definitive Note" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"Unrestricted Global Note" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"U.S. Person" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"*Voting Stock*" of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; *by*

(2) the then outstanding principal amount of such Indebtedness.

Section 1.02 *Other Definitions.*

Term	Defined in Section
"Affiliate Transaction"	4.11
"Asset Sale Offer"	3.10
"Authentication Order"	2.02
"Change of Control Offer"	4.15
"Change of Control Payment"	4.15
"Change of Control Payment Date"	4.15
"Covenant Defeasance"	8.03
"DTC"	2.03
"Event of Default"	6.01
"Excess Proceeds"	4.10
"Excess Royalty Proceeds"	4.16
"incur"	4.09
"Legal Defeasance"	8.02
"Lenders' Policies"	4.20
"Offer Amount"	3.10
"Offer Period"	3.10
"Paying Agent"	2.03
"Permitted Debt"	4.09
"Payment Default"	6.01
"Permitted Convertible Notes"	4.09
"Premises"	4.20
"Prepayment Premium"	3.07
"Prepayment Restricted Indebtedness"	4.07
"Purchase Date"	3.10
"Registrar"	2.03
"Repurchase Date"	4.16
"Restricted Payments"	4.07
"Royalty Transactions Repurchase Offer"	4.16
"Royalty Transactions Repurchase Offer Amount"	4.16
"Royalty Transactions Repurchase Offer Period"	4.16

Section 1.03 *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Notes;

"indenture security Holder" means a Holder of a Note;

"*indenture to be qualified*" means this Indenture;

"*indenture Trustee*" or "*institutional Trustee*" means the Trustee; and

"*obligor*" on the Notes and the Note Guarantees means the Company and the Guarantors, respectively, and any successor obligor upon the Notes and the Note Guarantees, respectively.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

Section 1.04 *Rules of Construction.*

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time.

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating.*

(a) *General*. The Notes will be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note will be dated the date of its authentication. The Notes shall be in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of this Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Notes*. Notes issued in global form will be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form will be substantially in the form of Exhibit A hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

Section 2.02 *Execution and Authentication.*

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by two Officers (an "*Authentication Order*"), authenticate Notes for original issue that may be validly issued under this Indenture. The aggregate principal amount of Notes outstanding at any time may not exceed $250,000,000, except as provided in Section 2.07 hereof.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

Section 2.03 *Registrar and Paying Agent.*

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar will keep a register of the Notes and of their transfer and exchange. The Company may appoint one or more co-registrars. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Trustee shall be the Paying Agent. The Company will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Registrar.

The Company initially appoints The Depository Trust Company (*"DTC"*) to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust.*

The Company will require each Paying Agent to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will notify the Trustee, in writing, of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent will have no further liability for the money. At all times, the Trustee will serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists.*

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar, the Company will furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Company shall otherwise comply with TIA § 312(a).

Section 2.06 *Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes*. A Global Note may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes will be exchanged by the Company for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 120 days after the date of such notice from the Depositary;

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers an Authentication Order to such effect, along with an Officer's Certificate, to the Trustee; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes and a request for such exchange has been made by DTC.

Upon the occurrence of either of the preceding events in (1), (2) or (3) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Definitive Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c) or (d) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer of Beneficial Interests in the Same Global Note*. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in (1) above.

Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(g) hereof.

(3) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(2) above and:

(A) the Registrar receives the following:

(i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(ii) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Company or Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Company or Registrar stating that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (A) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to subparagraph (A) above. Notwithstanding anything to the contrary contained herein, the Company hereby agrees that, after the expiration of the six-month holding period under Rule 144 and upon receipt by the Registrar of the certification set forth in item (1)(a) of Exhibit C hereto or item (4) of Exhibit B hereto, as applicable, but without any requirement to deliver an Opinion of Counsel, it shall issue one or more Unrestricted Global Notes, an Authentication Order and provide the Trustee with such other documentation as reasonably requested by the Trustee (including the Officer's Certificate and Opinion of Counsel set forth in Section 13.03 hereof) to exchange a beneficial interest in a Restricted Global Note into a beneficial interest in an Unrestricted Global Note or to transfer a beneficial interest in a Restricted Global Note to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) *Transfer or Exchange of Beneficial Interests for Definitive Notes.*

(1) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes.* If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such beneficial interest is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company shall execute and the Trustee shall authenticate, upon receipt of an Authentication Order, and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) *[Reserved]*

(3) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.* A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(A) the Registrar receives the following:

(i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(ii) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Company or Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Company or Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(4) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes.* If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company will execute and the Trustee will, upon receipt of an Authentication Order, authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(4) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(4)will not bear the Private Placement Legend.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests.*

(1) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such Restricted Definitive Note is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI Global Note.

(2) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) the Registrar receives the following:

(i) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(ii) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Company or Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Company or Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(3) *Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(A) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e).

(1) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(2) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) the Registrar receives the following:

(i) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(ii) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Company or Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Company or Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(3) *Unrestricted Definitive Notes to Unrestricted Definitive Notes.* A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) *Legends.* The following legends will appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) *Private Placement Legend.*

(A) Except as permitted by subparagraph (B) below, each Restricted Global Note and each Restricted Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS A NON-U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT AND IN ACCORDANCE WITH THE LAWS APPLICABLE TO SUCH PURCHASER IN THE JURISDICTION IN WHICH SUCH PURCHASE IS MADE OR (C) IT IS AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 (a)(1), (2), (3) or (7)UNDER THE SECURITIES ACT AND (2) AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE EXPIRATION OF THE 6 MONTH HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT, ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, (C) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT AND IN ACCORDANCE WITH THE LAWS APPLICABLE TO IT IN THE JURISDICTION IN WHICH SUCH PURCHASE IS MADE, (D) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 (a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR, FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (E) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY'S AND THE TRUSTEE'S, OR REGISTRAR'S, AS APPLICABLE, RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (C), (D) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE OR REGISTRAR. THIS LEGEND MAY BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE 6 MONTH HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraphs (b)(4), (c)(3), (d)(2), (d)(3), (e)(2) or (e)(3) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.

(2) *Global Note Legend*. Each Global Note will bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF [_____] OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO [_____] OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, [_____], HAS AN INTEREST HEREIN."

(g) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges.*

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 4.10 and 4.15 hereof).

(3) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(4) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the mailing of a notice of redemption under Section 3.03 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(5) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(6) The Trustee will, upon receipt of an Authentication Order, authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(7) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar, Trustee or Company pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(8) Trustee and the Registrar shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(9) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

(10) The Trustee shall have no responsibility or obligation to any Participant or Indirect Participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant or Indirect Participant or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the Applicable Procedures. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants or Indirect Participants.

(11) So long as no Event of Default has occurred and is continuing, no Holder shall, without the prior written consent of the Company, transfer any Note to any Competitor or Specified Entity. In connection with any such transfer, the transferee shall deliver to the Trustee a certificate in the form of Exhibit D.

Section 2.07 *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee will, upon receipt of an Authentication Order, authenticate a replacement Note if the Trustee's requirements are met. An indemnity bond must be supplied by the Holder that is sufficient in the judgment of each of the Trustee and the Company to protect the Company or the Trustee, as applicable, and any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note; however, Notes held by the Company or a Subsidiary of the Company shall not be deemed to be outstanding for purposes of Section 3.07(a) hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 *Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any Guarantor, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Guarantor, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee actually knows are so owned will be so disregarded. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons, and the Trustee shall be entitled to accept and rely upon such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any determination.

Section 2.10 *Temporary Notes.*

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, will authenticate temporary Notes. Temporary Notes will be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary Notes and as may be reasonably acceptable to the Trustee. Without unreasonable delay, the Company will prepare and the Trustee will, upon receipt of an Authentication Order, authenticate definitive Notes in exchange for temporary Notes.

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation.*

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Evidence of the cancellation of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest.*

If the Company defaults in a payment of interest on the Notes, it will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Company will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company will mail or cause to be mailed (in the case of Notes held in book entry form, by electronic transmission) to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Section 2.13 *Global Notes.*

Notwithstanding anything to the contrary in this Indenture, no Global Notes shall be issued without the prior written consent of the Collateral Agent.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 45 days (or such shorter period as the Trustee may agree) but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Notes are to be redeemed at any time, the Trustee will select Notes for redemption on a *pro rata* basis to the extent practicable, subject to the applicable procedures of the Depositary unless otherwise required by law or applicable stock exchange requirements.

In the event of partial redemption or purchase, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in minimum amounts of $2,000 or whole multiples of $1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase. No Notes of $2,000 or less can be redeemed in part.

Section 3.03 *Notice of Redemption.*

Subject to the provisions of Section 3.10 hereof, at least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed, by first class mail (in the case of Global Notes, by electronic transmission), a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 12 hereof.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(6) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company has delivered to the Trustee, at least 45 days (or such shorter notice period as may be agreed to by the Trustee) prior to the redemption date, an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 *Effect of Notice of Redemption.*

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

Section 3.05 *Deposit of Redemption or Purchase Price.*

Prior to 10:00 a.m. (New York City Time) on the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed or purchased on that date. Promptly following the redemption or purchase date, the Trustee or the Paying Agent will return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part.*

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption.*

(a) At any time prior to October 5, 2017, upon the redemption of all or a part of the Notes for any reason (including, but not limited to, any redemption after the occurrence of an Event of Default or after acceleration of the Notes including in connection with the commencement of any proceeding pursuant to any Bankruptcy Law), the Company shall pay a redemption price equal to 100% of the principal amount of Notes redeemed plus the Make-Whole Premium as of, and accrued and unpaid interest, if any, to the date of redemption, subject to the rights of holders of Notes on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the redemption date.

(b) Any redemption of Notes at the option of the Company shall be upon not less than 30 nor more than 60 days' prior notice.

(c) On or after October 5, 2017, upon the redemption of all or a part of the Notes for any reason (including, but not limited to, any redemption after the occurrence of an Event of Default or after acceleration of the Notes including in connection with the commencement of any proceeding pursuant to any Bankruptcy Law), the Company shall pay the redemption prices (expressed as percentages of principal amount) set forth below (the "*Prepayment Premium*") plus accrued and unpaid interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on October 5 of the years indicated below, subject to the rights of holders of Notes on the relevant record date to receive interest on the relevant interest payment date occurring on or prior to the redemption date:

Year	Percentage
2017	104%
2018	102%
2019	100%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(d) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

(e) Without limiting the generality of the foregoing, it is understood and agreed that if the Obligations are accelerated for any reason, including because of an Event of Default, the sale, disposition or encumbrance (including that by operation of law or otherwise) as a result of an Event of Default or the commencement of any proceeding pursuant to any Bankruptcy Law, the Make-Whole Premium, if any, and Prepayment Premium, if any, determined as of the date of acceleration will also be due and payable as though said Indebtedness was voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Holder's lost profits as a result thereof. Any Make-Whole Premium and Prepayment Premium payable in accordance with the immediately preceding sentence shall be presumed to be the liquidated damages sustained by each Holder as the result of the early redemption and the Company agrees that it is reasonable under the circumstances currently existing. The Make-Whole Premium, if any, and Prepayment Premium, if any, shall also be payable (i) in the event the Obligations (and/or this Indenture or the Notes evidencing the Obligations) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means and/or (ii) upon the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations (and/or this Indenture or the Notes evidencing the Obligations) in any proceeding pursuant to any Bankruptcy Law, foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means or the making of a distribution of any kind in any proceeding pursuant to any Bankruptcy Law to the Collateral Agent, for the account of the Holders, in full or partial satisfaction of the Obligations. THE COMPANY EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING MAKE-WHOLE PREMIUM AND PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION INCLUDING IN CONNECTION WITH ANY VOLUNTARY OR INVOLUNTARY ACCELERATION OF THE OBLIGATIONS PURSUANT TO ANY PROCEEDING PURSUANT TO ANY BANKRUPTCY LAW OR PURSUANT TO A PLAN OF REORGANIZATION. The Company expressly agrees that: (A) the Make-Whole Premium and Prepayment Premium are reasonable and are the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Make-Whole Premium and Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Holders and the Company giving specific consideration in this transaction for such agreement to pay the Make-Whole Premium and Prepayment Premium; and (D) the Company shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Company expressly acknowledges that its agreement to pay the Make-Whole Premium and Prepayment Premium to the Holders as herein described is a material inducement to Holders to purchase the Notes.

Section 3.08 *Mandatory Redemption.*

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09 *[Reserved]*

Section 3.10 *Offer to Purchase by Application of Excess Proceeds.*

In the event that, pursuant to Section 4.10 hereof, the Company is required to commence an offer to all Holders to purchase Notes (an "*Asset Sale Offer*"), it will follow the procedures specified below.

The Asset Sale Offer shall be made to all Holders. The Asset Sale Offer will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "*Offer Period*"). No later than three Business Days after the termination of the Offer Period (the "*Purchase Date*"), the Company will apply all Excess Proceeds (the "*Offer Amount*") to the purchase of Notes or, if less than the Offer Amount has been tendered, all Notes and other Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

Upon the commencement of an Asset Sale Offer, the Company will send, by first class mail, a notice to the Trustee and each of the Holders. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The notice, which will govern the terms of the Asset Sale Offer, will state:

(1) that the Asset Sale Offer is being made pursuant to this Section 3.10 and Section 4.10 hereof and the length of time the Asset Sale Offer will remain open;

(2) the Offer Amount, the purchase price and the Purchase Date;

(3) that any Note not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer will cease to accrue interest on and after the Purchase Date;

(5) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in minimum denominations of $2,000 or an integral multiple of $1,000 in excess thereof;

(6) that Holders electing to have Notes purchased pursuant to any Asset Sale Offer will be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” attached to the Notes completed, or transfer by book-entry transfer, to the Company, a Depositary, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(7) that Holders will be entitled to withdraw their election if the Company, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(8) that, if the aggregate principal amount of Notes surrendered by holders thereof exceeds the Offer Amount, the Company will select the Notes to be purchased on a *pro rata* basis based on the principal amount of Notes surrendered (with such adjustments as may be deemed appropriate by the Company so that only Notes in minimum denominations of $2,000, or integral multiples of $1,000 in excess thereof, will be purchased); and

(9) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Purchase Date, the Company will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary and in the manner described in clause (8) above, the Offer Amount of Notes or portions thereof tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.10. The Company, the Depositary or the Paying Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon written request from the Company in the form of an Authentication Order, will authenticate and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company will publicly announce the results of the Asset Sale Offer on the Purchase Date.

Other than as specifically provided in this Section 3.10, any purchase pursuant to this Section 3.10 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 3.10 hereof, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 3.10 by virtue of such compliance

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes.*

The Company will pay or cause to be paid the principal of and interest and premium, if any, on, the Notes on the dates and in the manner provided in the Notes. Principal, interest and premium, if any, will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, interest and premium, if any, then due.

The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 2% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02 *Maintenance of Office or Agency.*

The Company will maintain an office or agency (which may, in the case of clause (i) below, be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where (i) Notes may be surrendered for registration of transfer or for exchange and (ii) where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations and surrenders may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

Section 4.03 *Reports.*

(a) Whether or not required by the rules and regulations of the SEC, so long as any Notes are outstanding, the Company will furnish to the Holders of Notes, within the time periods specified in the SEC's rules and regulations:

(1) all quarterly and annual reports that would be required to be filed with the SEC on Forms 10-Q and 10-K if the Company were required to file such reports; and

(2) all current reports that would be required to be filed with the SEC on Form 8-K if the Company were required to file such reports.

(b) If the Company has designated any of its Subsidiaries as Royalty Transaction Subsidiaries, then at the time of the quarterly and annual reports referred to in Section 4.03(a)(1), the Company shall make available to the Holders (separately from such reports, if the Company so elects) a reasonably detailed presentation of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Royalty Transaction Subsidiaries of the Company.

(c) All such reports will be prepared in all material respects in accordance with all of the rules and regulations applicable to such reports. Each annual report on Form 10-K will include a report on the Company's consolidated financial statements by the Company's certified independent accountants. In addition, the Company will file a copy of each of the reports referred to in clauses (a)(1) and (a)(2) above with the SEC for public availability within the time periods specified in the rules and regulations applicable to such reports (unless the SEC will not accept such filing) and will post the reports on its website within those time periods. The availability of the foregoing materials on the SEC's EDGAR service (or any successor thereto) shall be deemed to satisfy the Company's delivery obligation, it being understood that the Trustee shall have no obligation whatsoever to determine if such information has been posted.

(d) If, at any time, the Company is no longer subject to the periodic reporting requirements of the Exchange Act for any reason, the Company will nevertheless continue filing the reports specified in the preceding paragraphs of this covenant with the SEC within the time periods specified above unless the SEC will not accept such filings. The Company will not take any action for the purpose of causing the SEC not to accept any such filings. If, notwithstanding the foregoing, the SEC will not accept the Company's filings for any reason, the Company will post the reports referred to in the preceding paragraphs on its website within the time periods that would apply if the Company were required to file those reports with the SEC.

(e) Furthermore, the Company agrees that, for so long as any Notes remain outstanding, it will furnish to the holders of Notes, beneficial owners of the Notes, bona fide prospective investors, securities analysts and market makers, upon their request, the reports described above and any other information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(f) Without limiting any other obligations of the Company hereunder, with a view to making available to the holders of Notes the benefits of Rule 144 promulgated under the Securities Act or any other similar rule or regulation of the SEC that may at any time permit the holders to sell securities of the Company to the public without registration, until the first anniversary of the date of issuance of the Notes the Company shall:

(1) make and keep public information available, as those terms are understood and defined in Rule 144;

(2) file with the SEC all reports and other documents specified in applicable provisions of Rule 144 that are required of the Company under the Securities Act and the Exchange Act within the time periods specified in the SEC's rules and regulations; and

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

(g) At the time of the quarterly reports referred to in Section 4.03(a)(1), the Company shall make available to the Holders (separately from such reports, if the Company so elects) a reasonably detailed presentation of the royalty revenue of the Company and its Restricted Subsidiaries for such preceding quarter.

(h) At the time of the quarterly reports referred to in Section 4.03(a)(1), the Company shall, to the extent permitted to do so under the underlying license agreement, make available to the Holders copies of each report of royalty revenue delivered to the Company or any of its Subsidiaries by each licensee of any intellectual property owned by the Company or any of its Subsidiaries relating to any Specified Drug (whether pursuant to a Royalty Transaction or otherwise).

(i) Promptly, but in any event within 5 Business Days, after the end of each fiscal month of the Company, the Company shall promptly make available to the Holders a report of the current cash and Cash Equivalent balances of the Company and the Guarantors, which report shall identify unrestricted and restricted cash and Cash Equivalents; provided, that at any time the current cash and Cash Equivalent balances of the Company and the Guarantors is less than $120,000,000, the Collateral Agent may request at any time, and the Company shall promptly provide, a report of at least 95% of the current cash and Cash Equivalent balances of the Company and the Guarantors, which report shall identify unrestricted and restricted cash and Cash Equivalents (or, if greater, all cash and Cash Equivalent balances required to satisfy the minimum cash balance covenant set forth in Section 4.21).

(j) Delivery of any such reports, information and documents to the Trustee pursuant to this Section 4.03 is for informational purposes only, and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

Section 4.04 *Compliance Certificate.*

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year, commencing with the fiscal year ending December 31, 2015, an Officer's Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture and the other Indenture Documents, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and the other Indenture Documents and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture or the other Indenture Documents (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee and the Collateral Agent, within 30 days of any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto. The Company shall provide the Collateral Agent prompt notice of any acceleration of the Notes.

Section 4.05 *Taxes.*

The Company will pay, and will cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06 *Stay, Extension and Usury Laws.*

The Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Restricted Payments.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Company (it being understood for the avoidance of doubt that any right to purchase Equity Interests at a discount pursuant to an implementation of the Company's existing shelf shareholder rights plan shall be deemed to be a distribution payable solely in Equity Interests) and other than dividends or distributions payable to the Company or a Restricted Subsidiary of the Company);

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company) any Equity Interests of the Company or any direct or indirect parent of the Company;

(3) (x) make any principal payment on, or purchase, redeem, defease or otherwise acquire or retire for value (i) any Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries), (ii) the Permitted Convertible Notes or (iii) any other Indebtedness of the Company except those incurred pursuant to clauses (2), (3), (4), (6) (to the extent the Indebtedness under such clause (6) is owed to the Company or a Guarantor), (8), (10), (11), (13), (15) and (16) of Section 4.09(b) hereof (such Indebtedness described in the preceding clauses (i), (ii) and (iii) collectively, "*Prepayment Restricted Indebtedness*"), in each case prior to the Stated Maturity thereof, or (y) make any interest payment on any Prepayment Restricted Indebtedness, other than regularly scheduled interest; or

(4) make any Restricted Investment

(all such payments and other actions set forth in these clauses (1) through (4) above being collectively referred to as "*Restricted Payments*"),

unless, at the time of and after giving effect to such Restricted Payment:

(1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(2) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof;

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries since the date of this Indenture (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6) and (9) of paragraph (b) of this Section 4.07), is less than the sum, without duplication, of

(A) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from October 1, 2015 to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); plus

(B) 100% of the aggregate net cash proceeds received by the Company since the date of this Indenture as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Company (other than Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Company that have been converted into or exchanged for such Equity Interests (other than Equity Interests (or Disqualified Stock or debt securities) sold to a Subsidiary of the Company); plus

(C) to the extent that any Restricted Investment that was made after the date of this Indenture is sold for cash or otherwise liquidated or repaid for cash, the lesser of (i) the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any) and (ii) the initial amount of such Restricted Investment; and

(4) the Company and the Guarantors would, at the time of such Restricted Payment and after giving effect thereto, have unrestricted cash and Cash Equivalents in an aggregate amount greater than or equal to $90.0 million.

Notwithstanding the foregoing, the Company may not make any Restricted Payments of the type described in clause (3) of paragraph (a) of this Section 4.07 except pursuant to clauses (3) and (10) of paragraph (b) of this Section 4.07.

(b) The provisions of Section 4.07(a) hereof will not prohibit:

(1) the payment of any dividend or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Indenture;

(2) [Reserved];

(3) the repayment, repurchase, redemption, defeasance or other acquisition or retirement for value of Prepayment Restricted Indebtedness with the net cash proceeds from, or in exchange for, a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(4) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Company to the holders of its Equity Interests on a pro rata basis;

(5) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options;

(6) the declaration and payment of customary regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of the Company or any Restricted Subsidiary of the Company issued on or after the date hereof in compliance with Section 4.09;

(7) so long as no Default has occurred and is continuing or would be caused thereby, the declaration and payment of customary regularly scheduled or accrued dividends to holders of any class or series of Designated Preferred Stock (other than Disqualified Stock) issued after the date hereof; *provided*, *however*, that (A) for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of issuance of such Designated Preferred Stock, after giving effect to such issuance (and the payment of dividends or distributions) on a pro forma basis (including a pro forma application of the net proceeds therefrom), the Company would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00 and (B) the aggregate amount of dividends declared and paid pursuant to this clause (7) does not exceed the net cash proceeds actually received by the Company from any such sale of Designated Preferred Stock (other than Disqualified Stock) issued after the date hereof;

(8) the payment of dividends on the Company's common stock of up to 6% per annum of the net proceeds received by the Company from a public offering of common stock of the Company consummated concurrently with payment of such dividend;

(9) Restricted Payments by the Company or any Restricted Subsidiary to allow the payment in good faith of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock of any such Person;

(10) the repurchase, redemption or other acquisition or retirement for value of any convertible notes in connection with a Change of Control pursuant to change of control provisions customary for convertible notes; *provided* that a Change of Control Offer has been made with respect to such Change of Control and all Notes tendered by Holders of the Notes in connection with such Change of Control Offer have been repurchased; and

(11) so long as no Default has occurred and is continuing or would be caused thereby, other Restricted Payments in an aggregate amount not to exceed $5.0 million since the date hereof.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. Notwithstanding the foregoing, (x) the aggregate amount of Restricted Payments made by the Company (other than if made pursuant to clauses (3), (4), (5), (7), (8), (9) or (10) of paragraph (b) of this Section 4.07) shall not exceed $50.0 million, whether made pursuant to Section 4.07(a) or 4.07(b) and (y) no Restricted Payments shall be made pursuant to clauses (1), (6) or (11) of paragraph (b) of this Section 4.07 unless the Company and the Guarantors have, at the time of such Restricted Payment and after giving effect thereto, unrestricted cash and Cash Equivalents in an aggregate amount greater than or equal to $90.0 million.

Section 4.08 *Dividend and Other Payment Restrictions Affecting Subsidiaries.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries;

(2) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

(b) The restrictions in Section 4.08(a) hereof will not apply to encumbrances or restrictions existing under or by reason of:

(1) agreements governing Existing Indebtedness as in effect on the date of this Indenture;

(2) the Indenture Documents;

(3) agreements or instruments governing Indebtedness, Disqualified Stock or Preferred Stock incurred in compliance with Section 4.09 hereof; *provided* that the encumbrances or restrictions contained therein, taken as a whole, are not materially more restrictive than those contained in the Indenture Documents, in each case, as then in effect;

(4) applicable law, rule, regulation or order, or pursuant to any agreement relating to a judgment, settlement, or compromise of any litigation, arbitration or other dispute;

(5) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(6) customary non-assignment provisions in contracts and licenses entered into in the ordinary course of business;

(7) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in Section 4.08(a)(3) hereof;

(8) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(9) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(10) Liens permitted to be incurred under the provisions of Section 4.12 hereof that limit the right of the debtor to dispose of the assets subject to such Liens;

(11) provisions limiting the disposition or distribution of assets or property in agreements governing Collaboration Transactions, agreements governing Royalty Transactions, intellectual property licenses, joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements, and other similar agreements entered into with the approval of the Company's Board of Directors, which limitation is applicable only to the assets that are the subject of such agreements;

(12) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; and

(13) any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of any agreements specified in the preceding clauses (1) through (12); *provided* that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in the applicable original agreement.

(c) For purposes of determining compliance with this Section 4.08, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Company or a Restricted Subsidiary of the Company to other Indebtedness incurred by the Company or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

Section 4.09 *Incurrence of Indebtedness and Issuance of Preferred Stock.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Company will not issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; *provided* that the Company may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and the Guarantors may incur Indebtedness (including Acquired Debt) or issue preferred stock, if the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued, as the case may be, would have been at least 2.00 to 1.00, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The provisions of Section 4.09(a) hereof will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "*Permitted Debt*"):

(1) the incurrence by the Company or any Guarantor of Indebtedness that is expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Company, or the Note Guarantee, in the case of a Guarantor, in an aggregate principal amount at any one time outstanding under this clause (1) not to exceed $35.0 million; *provided* that such subordinated Indebtedness has a final maturity date that is no earlier than one year after the date on which the Notes mature;

(2) the incurrence by the Company and its Restricted Subsidiaries of Existing Indebtedness;

(3) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes and the related Note Guarantees to be issued on the date hereof;

(4) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness, Disqualified Stock and Preferred Stock of Restricted Subsidiaries of the Company (including Capitalized Lease Obligations) to finance (whether prior to or within 270 days after) the purchase, lease, construction or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets (but no other material assets)), including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (4), in an aggregate principal amount not to exceed $5.0 million at any time outstanding;

(5) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred under Section 4.09(a) or clauses (2), (3), (4), (5), (14) and (17) of this Section 4.09(b);

(6) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries; *provided*, *however*, that:

(a) if the Company or any Guarantor is the obligor on such Indebtedness and the payee is not the Company or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Company, or the Note Guarantee, in the case of a Guarantor; and

(b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary of the Company,

will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (6);

(7) the issuance by any of the Company's Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of shares of preferred stock; *provided*, *however*, that:

(a) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Company or a Restricted Subsidiary of the Company; and

(b) any sale or other transfer of any such preferred stock to a Person that is not either the Company or a Restricted Subsidiary of the Company,

will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this clause (7);

(8) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business and not for speculative purposes;

(9) the guarantee by the Company or any of the Guarantors of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be incurred by another provision of this Section 4.09; *provided* that if the Indebtedness being guaranteed is subordinated to the Notes, then the Guarantee shall be subordinated to the same extent as the Indebtedness guaranteed;

(10) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance and surety bonds in the ordinary course of business;

(11) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five business days;

(12) [Reserved];

(13) Collaboration Transactions and Royalty Transactions, to the extent involving an incurrence of Indebtedness;

(14) the incurrence by the Company or any of its Restricted Subsidiaries of Acquired Debt that is not incurred in connection with, or in contemplation of, the related acquisition; provided, however, that after giving effect to the related acquisition and the Incurrence of such Indebtedness either: (x) the Company would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of this covenant; or (y) the Fixed Charge Coverage Ratio would be greater than immediately prior to such acquisition;

(15) Indebtedness of Foreign Subsidiaries in an aggregate principal amount at any time outstanding not to exceed $2.5 million;

(16) Indebtedness of the Company or any of its Restricted Subsidiaries arising from agreements for adjustment of purchase price, earn-outs, contingent milestone payments or similar obligations in each case incurred in connection with (a) any disposition or acquisition of any business, asset, property or Subsidiary of the Company, to the extent the related disposition or acquisition is permitted under this Indenture, (b) any license arrangement pursuant to which the Company or any of its Restricted Subsidiaries acquires intellectual property or other rights useful in a Permitted Business; and

(17) the incurrence by the Company or any of the Guarantors of additional Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries of the Company in an aggregate principal amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (17), not to exceed $10.0 million.

Notwithstanding anything to the contrary in the foregoing, other than (x) Indebtedness incurred pursuant to clauses (2), (3), (4), (6) (to the extent the Indebtedness under such clause (6) is owed to the Company or a Guarantor), (8), (10), (11), (13), (15) and (16) of paragraph (b) of this Section 4.09 and (y) Indebtedness (i) that constitutes an issuance of convertible notes at a rate of interest no higher than 6.0% per annum, (ii) with an aggregate principal amount at any time outstanding not exceeding $100.0 million, (iii) with no amortization prior to Stated Maturity other than pursuant to customary change of control provisions, (iv) with a Stated Maturity that is no earlier than 91 days after the date on which the Notes mature and (v) the Net Proceeds of which are applied in accordance with Section 4.10 (the "*Permitted Convertible Notes*"), all Indebtedness incurred pursuant to this covenant shall be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, will not provide for amortization prior to Stated Maturity and have a Stated Maturity that is no earlier than 91 days after the date on which the Notes mature.

The Company will not incur, and will not permit any Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Company or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Note Guarantee on substantially identical terms.

For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness (or portion thereof) meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (17) above or is entitled to be incurred pursuant to Section 4.09(a) hereof, the Company will be permitted to classify such item of Indebtedness (or portion thereof) on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness (or portion thereof), in any manner that complies with this Section 4.09. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 4.09; *provided*, in each such case, that the amount of any such accrual, accretion or payment is included in Fixed Charges of the Company as accrued. Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that the Company or any Restricted Subsidiary may incur pursuant to this Section 4.09 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(A) the Fair Market Value of such assets at the date of determination; and

(B) the amount of the Indebtedness of the other Person.

Section 4.10 *Asset Sales.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of;

(2) (i) in the case of Asset Sales other than those constituting Royalty Transactions, at least 75% of the consideration received in the Asset Sale by the Company or such Restricted Subsidiary is in the form of cash or Cash Equivalents and (ii) in the case of Asset Sales constituting Royalty Transactions, 100% of the consideration received in the Asset Sale by the Company or such Restricted Subsidiary is in the form of cash or Cash Equivalents;

(3) if the Asset Sale would constitute a Change of Control, the Company shall have complied with all of its obligations under Section 4.15 hereof; *provided* that with respect to such Asset Sale, the Company shall not be required to make an Asset Sale Offer if a Change of Control Offer has been made;

(4) in the case of Asset Sales constituting Royalty Transactions, (i) at the time of such proposed Royalty Transaction (or any other time of determination in accordance herewith) and after giving effect thereto, the aggregate unencumbered LTM Royalty Revenue of the Company and its Restricted Subsidiaries actually received from the Specified Drugs for the immediately preceding twelve-month period is greater than the Specified Revenue Amount; provided that for the avoidance of doubt, any LTM Royalty Revenue of the Company and its Restricted Subsidiaries that was disposed of in a prior Royalty Transaction cannot be used to achieve compliance with this Section 4.10(4)(i) and (ii) for any Royalty Transaction involving a Specified Drug where only a portion of the LTM Royalty Revenue of the Company and its Restricted Subsidiaries for such Specified Drug is required to achieve satisfaction of this Section 4.10(4)(i) above, only the Pro Rata Percentage (defined as the percentage achieved by dividing (x) the LTM Royalty Revenue of the Company and its Restricted Subsidiaries for such Specified Drug not required to achieve satisfaction in accordance with this Section 4.10(4)(i) by (y) the total LTM Royalty Revenue of the Company and its Restricted Subsidiaries for such Specified Drug) of the future royalty stream of such Specified Drug can be sold as part of the Royalty Transaction, with such Pro Rata Percentage being applied equally to all royalty tiers. For purposes of this Indenture, when determining whether or not if the LTM Royalty Revenue of the Company and its Restricted Subsidiaries actually received from the Specified Drugs for the immediately preceding twelve-month period is greater than the Specified Revenue Amount, (i) first, such calculation shall include only the LTM Royalty Revenue of the Company and its Restricted Subsidiaries actually received from Movantik for the immediately preceding twelve-month period, and (ii) second, if necessary to comply with the provisions of this Section 4.10(4), such calculation may include the LTM Royalty Revenue of the Company and its Restricted Subsidiaries actually received from the Specified Drugs (other than Movantik) for the immediately preceding twelve-month period; and

(5) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Asset Sale.

For purposes of this provision, each of the following shall be deemed to be cash:

(a) any liabilities, as shown on the Company's most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to a customary novation or assumption agreement that releases the Company or such Restricted Subsidiary from further liability or that are otherwise cancelled or terminated in connection with the transaction with such transferee;

(b) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash within 90 days of the receipt thereof, to the extent of the cash received in that conversion; and

(c) any stock or assets of the kind referred to in clause (1) or (3) of the next paragraph of this Section 4.10.

Within (i) 360 days after the receipt of any Net Proceeds (other than Net Proceeds of any Royalty Transaction which is subject to Section 4.16) from an Asset Sale or Applicable Transaction described in clause (1) of the definition of Applicable Transactions or (ii) 540 days after receipt of any Net Proceeds from an Applicable Transaction described in clause (2) of the definition of Applicable Transaction, the Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds:

(1) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Company;

(2) to make a capital expenditure in a Permitted Business;

(3) to license or acquire intellectual property and other rights in respect of technologies, drug candidates, drugs and assets related or incidental thereto; or

(4) to make research and development expenditures that in the Company's good faith judgment are useful with respect to a Permitted Business.

Pending the final application of any Net Proceeds, the Company may invest the Net Proceeds in any manner that is not prohibited by this Indenture; provided that Net Proceeds attributable to an Asset Sale of assets, rights or Equity Interests that constitute Collateral may only be invested in Cash Equivalents that shall be held in an account in which the Collateral Agent has a first priority perfected security interest, subject to Permitted Liens, for its benefit, the benefit of the Trustee and the benefit of the Holders of the Notes in accordance with this Indenture and the Collateral Documents; *provided* further that a binding commitment to apply Net Proceeds as set forth in clause (1) or (3) above or a statement in an Officer's Certificate that Net Proceeds will be applied as set forth in clause (4) above shall be treated as a permitted application of the Net Proceeds from the date of such commitment or statement so long as the Company or such Restricted Subsidiary enters into such commitment or makes such statement with the good faith expectation that such Net Proceeds will be applied in a manner consistent with such commitment or statement within 180 days of such commitment or statement and, in the event such commitment is later cancelled or terminated, or such statement withdrawn, for any reason before the Net Proceeds are applied in connection therewith, then such Net Proceeds shall constitute Excess Proceeds.

Any Net Proceeds (other than Net Proceeds of any Royalty Transaction which is subject to Section 4.16) from Asset Sales or Applicable Transactions that are not applied or invested as provided in the second paragraph of this Section 4.10 will constitute "*Excess Proceeds*" (it being understood that Net Proceeds from an Applicable Transaction described in clause (3) of the definition of Applicable Transactions shall constitute Excess Proceeds immediately upon receipt). Within five Business Days after the aggregate amount of Excess Proceeds exceeds $2.5 million, the Company will make an Asset Sale Offer to all Holders of Notes to purchase the maximum principal amount of Notes that may be purchased with the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest, if any, to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee will select the Notes to be purchased on a *pro rata* basis to the extent practicable, subject to the applicable procedures of the Depositary. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.10 hereof or this Section 4.10, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 3.10 hereof or this Section 4.10 by virtue of such compliance.

Section 4.11 *Transactions with Affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each, an "*Affiliate Transaction*"), unless:

(1) the Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(2) the Company delivers to the Trustee:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $5.0 million, a resolution of the Board of Directors of the Company set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (1) of this Section 4.11(a) and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of the Company; and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10.0 million, an opinion as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing, which opinion shall be conclusive evidence that the standard set forth in clause (1) of this Section 4.11(a) has been satisfied (whether or not such Affiliate Transaction or series of related Affiliate Transactions involve aggregate consideration in excess of $10.0 million).

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a) hereof:

(1) any employment agreement, employee benefit plan, officer or director indemnification agreement or any similar arrangement entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;

(2) transactions between or among the Company and/or its Restricted Subsidiaries and transactions between or among the Company and/or Restricted Subsidiaries on the one hand and a Royalty Transaction Subsidiary on the other hand in connection with a Royalty Transaction;

(3) payment of reasonable directors' fees to Persons who are not otherwise Affiliates of the Company;

(4) any issuance or sale of Equity Interests (other than Disqualified Stock) of the Company to Affiliates of the Company;

(5) Restricted Payments that do not violate the provisions of Section 4.07 hereof;

(6) pledges of Equity Interests of Royalty Transaction Subsidiaries; and

(7) loans or advances to employees in the ordinary course of business not to exceed $2.5 million in the aggregate at any one time outstanding.

Section 4.12 *Liens.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

Section 4.13 *Business Activities.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Company and its Restricted Subsidiaries taken as a whole.

Section 4.14 *Corporate Existence.*

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary; and

(2) the rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries; *provided*, *however,* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.15 *Offer to Repurchase Upon Change of Control.*

(a) The Company shall not consummate any Change of Control unless, no later than substantially concurrently with such consummation, each Holder will have the right to require the Company to repurchase all or any part of that Holder's Notes pursuant to a Change of Control Offer.

(b) At least 30 days prior to a Change of Control, the Company will make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date occurring prior to the Change of Control Payment Date (the "*Change of Control Payment*").

(c) At least 30 days prior to a Change of Control, the Company will send a notice to each Holder (with a copy to the Trustee) describing the transaction or transactions that constitute the Change of Control and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.15 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 15 days prior to and no later than the date on which such Change of Control is consummated; *provided* that if the Change of Control Payment Date is the date of consummation of the Change of Control, the payment for the repurchase of Notes will be made at a time no later than substantially concurrently with the consummation of such Change of Control (the "*Change of Control Payment Date*");

(3) that any Note not tendered will continue to accrue interest;

(4) that, unless the Company defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $2,000 in principal amount or an integral multiple of $1,000 in excess thereof.

(d) A Change of Control Offer may be conditioned upon the occurrence of the related Change of Control.

(e) On the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

The Paying Agent will promptly mail to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that any such new Notes will be in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(f) Notwithstanding anything to the contrary in this Section 4.15, the Company will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.15 and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption for all of the Notes has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price.

(g) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.15 hereof, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.15 by virtue of such compliance.

Section 4.16 *Royalty Transactions Repurchase Offer.*

Within five Business Days of the receipt of any Net Proceeds of any Royalty Transaction newly entered into by the Company or any of its Restricted Subsidiaries following the date hereof, the Company shall send a notice to the Holders describing the applicable Royalty Transaction and offering to repurchase Notes (such offer, a "*Royalty Transactions Repurchase Offer*") in an amount of not less than 50% of such Net Proceeds, at a price of 101% of the principal amount, plus accrued and unpaid interest, if any, to the Repurchase Date (subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the Repurchase Date).

The Royalty Transactions Repurchase Offer shall be made to all Holders and will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "*Royalty Transactions Repurchase Offer Period*"). No later than three Business Days after the termination of the Royalty Transactions Repurchase Offer Period (the "*Repurchase Date*"), the Company will apply not less than 50% of the Net Proceeds of the Royalty Transaction (the "*Royalty Transactions Repurchase Offer Amount*") to the purchase of Notes or, if less than the Royalty Transactions Repurchase Offer Amount has been tendered, all Notes tendered in response to the Royalty Transactions Repurchase Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made.

If the Repurchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Royalty Transactions Repurchase Offer.

Upon the commencement of a Royalty Transactions Repurchase Offer, the Company will send, by first class mail, a notice to the Trustee and each of the Holders. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Royalty Transactions Repurchase Offer. The notice, which will govern the terms of the Royalty Transactions Repurchase Offer, will state:

(1) that the Royalty Transactions Repurchase Offer is being made pursuant to this Section 4.16 and the length of time the Royalty Transactions Repurchase Offer will remain open;

(2) the Royalty Transactions Repurchase Offer Amount, the purchase price and the Repurchase Date;

(3) that any Note not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Royalty Transactions Repurchase Offer will cease to accrue interest after the Repurchase Date;

(5) that Holders electing to have a Note purchased pursuant to a Royalty Transactions Repurchase Offer may elect to have Notes purchased in denominations of $2,000, or integral multiples of $1,000 in excess thereof;

(6) that Holders electing to have Notes purchased pursuant to any Royalty Transactions Repurchase Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Company, a Depositary, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Repurchase Date;

(7) that Holders will be entitled to withdraw their election if the Company, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Royalty Transactions Repurchase Offer Period, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(8) that, if the aggregate principal amount of Notes surrendered by holders thereof exceeds the Royalty Transactions Repurchase Offer Amount, the Trustee will select the Notes to be purchased on a *pro rata* basis, subject to applicable procedures of the Depositary (with such adjustments as may be deemed appropriate by the Company so that only Notes in minimum denominations of $2,000, or integral multiples of $1,000 in excess thereof, will be purchased); and

(9) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Repurchase Date, the Company will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary (with such adjustments as may be deemed appropriate by the Company so that only Notes in minimum denominations of $2000 or integral multiples of $1000 in excess thereof will be purchased), the Royalty Transactions Repurchase Offer Amount of Notes or portions thereof tendered pursuant to the Royalty Transactions Repurchase Offer, or if less than the Royalty Transactions Repurchase Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 4.16. The Company, the Depositary or the Paying Agent, as the case may be, will promptly (but in any case not later than five days after the Repurchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon written request from the Company in the form of an Authentication Order, will authenticate and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company will publicly announce the results of the Royalty Transactions Repurchase Offer on the Repurchase Date.

Within 360 days after the receipt of any Net Proceeds of any Royalty Transaction that are not applied pursuant to a Royalty Transactions Repurchase Offer as set forth above, the Company (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds:

(1) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Company;

(2) to make a capital expenditure in a Permitted Business;

(3) to license or acquire intellectual property and other rights in respect of technologies, drug candidates, drugs and assets related or incidental thereto; or

(4) to make research and development expenditures that in the Company's good faith judgment are useful with respect to a Permitted Business.

Pending the final application of any such Net Proceeds of any Royalty Transaction that are not applied pursuant to a Royalty Transactions Repurchase Offer, the Company may invest such Net Proceeds of any Royalty Transaction that are not applied pursuant to a Royalty Transactions Repurchase Offer in any manner that is not prohibited by this Indenture; provided that such Net Proceeds may only be invested in Cash Equivalents that shall be held in an account in which the Collateral Agent has a first priority perfected security interest, subject to Permitted Liens, for its benefit, the benefit of the Trustee and the benefit of the Holders of the Notes in accordance with this Indenture and the Collateral Documents; *provided* further that a binding commitment to apply such Net Proceeds as set forth in clause (1) or (3) above or a statement in an Officer's Certificate that such Net Proceeds will be applied as set forth in clause (4) above shall be treated as a permitted application of the Net Proceeds from the date of such commitment or statement so long as the Company or such Restricted Subsidiary enters into such commitment or makes such statement with the good faith expectation that such Net Proceeds will be applied in a manner consistent with such commitment or statement within 180 days of such commitment or statement and, in the event such commitment is later cancelled or terminated, or such statement withdrawn, for any reason before the Net Proceeds are applied in connection therewith, then such Net Proceeds shall constitute Excess Royalty Proceeds.

Any Net Proceeds of any Royalty Transaction that are not applied or invested as provided in the preceding paragraphs of this Section 4.16 will constitute "*Excess Royalty Proceeds*". Within five Business Days after the end of the reinvestment period set forth in this Section 4.16, the Company will make a Royalty Transactions Repurchase Offer to all Holders of Notes to purchase the maximum principal amount of Notes that may be purchased with the Excess Royalty Proceeds. The offer price in such Royalty Transactions Repurchase Offer will be equal to 101% of the principal amount plus accrued and unpaid interest, if any, to the date of purchase, and will be payable in cash pursuant to the procedures set forth above in this Section 4.16. If any Excess Royalty Proceeds remain after consummation of an Royalty Transaction Repurchase Offer, the Company may use those Excess Royalty Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes tendered into such Royalty Transaction Repurchase Offer exceeds the amount of Excess Royalty Proceeds, the Trustee will select the Notes to be purchased on a pro rata basis, subject to the applicable procedures of the depository. Upon completion of each Royalty Transaction Repurchase Offer, the amount of Excess Royalty Proceeds will be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to a Royalty Transactions Repurchase Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the Section 4.16, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 4.16 hereof by virtue of such compliance.

Section 4.17 *Additional Note Guarantees.*

If the Company or any of its Domestic Restricted Subsidiaries acquires or creates another Domestic Restricted Subsidiary after the date hereof, then such newly acquired or created Domestic Restricted Subsidiary will within 10 Business Days of the date on which it was acquired or created (i) execute and deliver to the Trustee a supplemental indenture substantially in the form attached hereto as Exhibit E pursuant to which such Domestic Restricted Subsidiary will Guarantee the Notes, (ii) execute and deliver to the Collateral Agent joinder agreements or other similar agreements with respect the applicable Collateral Documents and (iii) deliver to the Trustee and the Collateral Agent an Opinion of Counsel stating that such supplemental indenture and other documents required to be delivered pursuant to clause (ii) above have been duly authorized, executed and delivered and constitute legally valid and binding and enforceable obligations (subject to customary qualifications and exceptions).

Section 4.18 *Designation of Royalty Transaction Subsidiaries.*

The Board of Directors of the Company may designate any newly-formed Subsidiary to be a Royalty Transaction Subsidiary in connection with, or in contemplation of, a Royalty Transaction.

Any designation of a Subsidiary of the Company as a Royalty Transaction Subsidiary will be evidenced to the Trustee by filing with the Trustee a certified copy of a resolution of the Board of Directors giving effect to such designation and an Officer's Certificate certifying that such designation complied with the requirements specified in the definition of "Royalty Transaction Subsidiary." If, at any time, any Royalty Transaction Subsidiary would fail to meet the requirements of a Royalty Transaction Subsidiary, it will thereafter cease to be a Royalty Transaction Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Company as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09 hereof, the Company will be in default of such Section.

Section 4.19 *Maintenance of Property and Insurance.*

The Company will, and will cause each of its Restricted Subsidiaries to, keep all property material to the operation of the business of the Company and its Restricted Subsidiaries, taken as a whole, in good working order and condition in all material respects, ordinary wear and tear and casualty loss excepted; *provided* that the Company shall not be obligated to comply with the foregoing provisions of this Section 4.19 to the extent that the failure to do so is not adverse in any material respect to the Holders of the Notes.

The Company will, and will cause each of its Restricted Subsidiaries to, (i) maintain with one or more insurance companies of national standing insurance on all property material to the operation of the business of the Company and its Restricted Subsidiaries, taken as a whole, in at least such amounts and against at least such risks as are determined by the Company in good faith to be reasonable and prudent, taking into account the risks that are usually insured against in the same general area by companies engaged in the same or similar businesses (in each case, after giving effect to any self-insurance determined by the Company to be reasonable and prudent, taking into account the practices of similarly situated Persons engaged in the same or similar businesses), and (ii) deliver copies of all such insurance policies to the Collateral Agent with an endorsement naming the Collateral Agent as a loss payee or additional insured, as appropriate.

Section 4.20 *Real Estate Mortgages and Filings.*

With respect to any real property owned in fee simple by the Company or any Guarantor, where such owned real property has a Fair Market Value in excess of $5.0 million and is located in the United States (the "*Premises*"), the Company or such Guarantor shall, within 90 days (or such later date as determined by the Collateral Agent in its reasonable discretion) of the later of (x) the date hereof and (y) the acquisition thereof, deliver to the Collateral Agent:

(1) as mortgagee, for its benefit, the benefit of the Trustee and the benefit of the Holders of the Notes, fully executed counterparts of Mortgages, duly executed by the Company or the applicable Guarantor, as the case may be, and corresponding UCC fixture filings, together with evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgages and corresponding UCC fixture filings as may be necessary to create a valid, perfected Lien, subject to Permitted Liens, against the Premises purported to be covered thereby;

(2) lenders' or mortgagee's title insurance policies ("*Lenders' Policies*") issued to the Collateral Agent in an amount equal to 100% of the Fair Market Value of the Premises purported to be covered by the related Mortgages, insuring Collateral Agent's interest as mortgagee in such property, which interests are created by the Mortgages and are free and clear of all Liens, defects and encumbrances other than Permitted Liens, and such policies shall also include, to the extent commercially available and issued at reasonable and ordinary rates, customary endorsements and shall be accompanied by evidence of the payment in full (or satisfactory arrangements for the payment in full) of all premiums thereon; in furtherance of satisfaction of the delivery obligations in this clause (2), Company shall deliver to the title insurer issuing the Lenders' Policies such customary affidavits, certificates, instruments of indemnification and other items (including a so-called "gap" indemnification) as shall be reasonably required of the title insurer to issue the Lenders' Policies and endorsements referenced herein with respect to each of the Premises;

(3) (i) updated surveys of such Premises, or (ii) the most recent surveys of such Premises, together with either (a) an updated survey certification in favor of the Collateral Agent from the a licensed surveyor stating that, based on a visual inspection of the applicable real property and the actual knowledge of the surveyor, there appear to have been no change in the facts depicted in the survey or (b) an affidavit and/or indemnity from the Company or the applicable Guarantor, as the case may be, stating that, to its actual knowledge, it has not caused or permitted any change in the facts depicted in the survey, other than, in each case, changes that do not materially adversely affect the use by the Company or such Guarantor, as applicable, of such Premises for the Company or such Guarantor's business as so conducted, or intended to be conducted, at such Premises; and in each case, in form and substance as may be reasonably requested by the title insurer issuing the Lenders' Policies so that it may remove the standard survey and survey-related exceptions from such policies and issue the survey, survey-related, and other endorsements required pursuant to clause (2) above to such policy;

(4) Opinions of Counsel in the jurisdictions where such Premises are located, in each case that such Mortgage (i) has been duly authorized, executed and delivered by the Company or such Guarantor, (ii) constitutes a legal, valid and binding obligation of the Company or such Guarantor, enforceable against the applicable mortgagor in accordance with its terms, and (iii) creates a valid, perfected Lien on the Premises purported to be covered thereby; and

(5) In the event any such Premises is located in a special flood hazard area, evidence of flood insurance, in form and substance satisfactory to the Collateral Agent, that satisfies the Federal Emergency Management Agency's private flood insurance criteria.

Section 4.21 *Minimum Cash Balance.*

The Company will not permit the aggregate amount of unrestricted cash and Cash Equivalents of the Company and the Guarantors at any time to be less than $60,000,000.

Section 4.22 *Control Agreements.*

Subject to Section 4(q) of the Security Agreement, neither the Company nor any of its Restricted Subsidiaries shall establish or maintain a Deposit Account or a Securities Account (other than an Excluded Account) that is not subject to a Control Agreement.

Section 4.23 *Access to Management.*

(1) The Company will, upon the request of the Collateral Agent, participate in a meeting with the Collateral Agent and one (1) designated representative of each Holder once during each fiscal year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Collateral Agent) at such time as may be agreed to by Company and Collateral Agent; and

(2) Upon the request of the Collateral Agent, within ten (10) days of delivery of financial statements and other information required to be delivered pursuant to Section 4.03(a)(1), the Company shall cause its chief financial officer or another Responsible Officer reasonably acceptable to the Collateral Agent to participate in a conference call with the Collateral Agent and one (1) designated representative of each Holder held at a mutually agreeable time with the Collateral Agent during which conference call the chief financial officer or such other Responsible Officer shall review the financial condition of the Company and its Subsidiaries and such other matters as the Collateral Agent may reasonably request.

Section 4.24 *Amendments.*

Neither the Company nor any of its Restricted Subsidiaries shall amend or permit any amendments to, or terminate or waive any provision of, (i) any Specified Drug related license agreement or any other Specified Drug related agreement or (ii) any other material license agreement or any other material agreement, in each case, relating to, or resulting in, royalty streams or other payments from the licensing or sublicensing of intellectual property of the Company or any of its Subsidiaries if such amendment, termination, or waiver would be materially adverse to the Trustee, the Collateral Agent or the Holders.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets.*

The Company will not, directly or indirectly: (a) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation); or (b) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions (other than any Royalty Transaction), to another Person, unless:

(1) the Company is the surviving corporation or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Company under the Indenture and the other Indenture Documents pursuant to a supplemental indenture delivered to the Trustee, substantially in the form of Exhibit E hereto;

(2) immediately after such transaction, no Default or Event of Default exists;

(3) the Company or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made would, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof, or after so giving pro forma effect, the Fixed Charge Coverage Ratio would be greater than immediately prior to so giving pro forma effect;

(4) if the applicable transaction would constitute a Change of Control, the Company shall have complied with all of its obligations under Section 4.15; and

(5) the Company delivers to the Trustee an Officer's Certificate and Opinion of Counsel, both of which certify that the transactions noted in this Section are authorized and permitted by this Indenture and all conditions precedent, including this Section, under the Indenture have been satisfied.

In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties and assets of it and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.

Clauses (2) and (3) of the prior paragraph will not apply to:

(i) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction; or

(ii) any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among the Company and the Guarantors.

Section 5.02 *Successor Corporation Substituted.*

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; *provided, however*, that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

Each of the following is an "*Event of Default*":

(1) default for 5 days in the payment when due of interest on the Notes;

(2) default in the payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes;

(3) (i) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Sections 2.06(b)(4), 3.10, 4.10, 4.15, 4.16, 4.22, 4.24 or 5.01 hereof or Section 4(q) of the Security Agreement, (ii) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Sections 4.07, 4.08, 4.09, 4.12 or 4.21 hereof and such default continues for a period of 5 Business Days after the earlier of the date an Executive Officer (as defined in the Securities Act) of the Company has knowledge of such failure and the date written notice of such default has been given by the Trustee or the Collateral Agent to the Company; provided, that no such grace period shall be applicable to a failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Section 4.12 as a result of a breach of the proviso of clause (7) of the definition of "Permitted Liens" or (iii) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Section 4.03(f), 4.03(g), 4.03(h) or 4.03(i) hereof and such default continues for a period of 20 days;

(4) failure by the Company or any of its Restricted Subsidiaries for 60 days after notice to the Company by the Trustee, the Collateral Agent or the holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in the Indenture Documents;

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness (other than Indebtedness owed to the Company or any Restricted Subsidiary of the Company) for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), whether such Indebtedness or Guarantee now exists, or is created after the date of this Indenture, if that default:

(A) is caused by a failure to pay such Indebtedness at final maturity prior to the expiration of the grace period provided in such Indebtedness (a "*Payment Default*");

(B) results in the acceleration of such Indebtedness prior to its express maturity; or

(C) permits the acceleration of such Indebtedness prior to its express maturity and has continued without cure or waiver for a period of 30 days from the date on which such acceleration was first permitted,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates $15.0 million or more;

(6) failure by the Company or any of its Restricted Subsidiaries to pay final judgments entered by a court or courts of competent jurisdiction aggregating in excess of $15.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed within a period of 60 days of the entry thereof;

(7) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law (*provided* that such events with respect to a Restricted Subsidiary that is not a Significant Subsidiary shall nonetheless constitute an Event of Default to the extent such events have had or would reasonably be expected to result in a Material Adverse Effect):

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due;

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (*provided* that such events with respect to a Restricted Subsidiary that is not a Significant Subsidiary shall nonetheless constitute an Event of Default to the extent such events have had or would reasonably be expected to result in a Material Adverse Effect):

(A) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days; or

(9) except as permitted by this Indenture and the Collateral Documents, with respect to any assets or property having a Fair Market Value in excess of $2.5 million, individually or in the aggregate, that constitutes or, under this Indenture or the Collateral Documents is required to constitute, Collateral, (a) any of the Collateral Documents shall for any reason cease to be in full force and effect in all material respects, or the Company or a Guarantor shall so assert, or (b) any security interest created, or purported to be created, by any of the Collateral Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby, except in each case solely as a result of the Collateral Agent taking or refraining from taking any action in its sole control;

(10) except as permitted by this Indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee;

(11) any order, judgment or decree shall be entered against the Company or any of its Restricted Subsidiaries decreeing the dissolution or split up of the Company or such Restricted Subsidiary and such order shall remain undischarged or unstayed for a period in excess of thirty days;

(12) (x) the loss, suspension or revocation of, or failure to renew, any material license (it being understood that any licenses under the applicable Collaboration Agreements for any Specified Drugs shall not constitute material licenses for purposes of this Section 6.01(12)(x) unless the loss, suspension or revocation of, or failure to renew, any licenses under the applicable Collaboration Agreements for any Specified Drugs results from a breach by the Company or any of its Restricted Subsidiaries under such agreements) or material permit with respect to any Specified Drug now held or hereafter acquired by the Company or any of its Restricted Subsidiaries or (y) the loss, suspension or revocation of, or failure to renew, any material license or material permit other than with respect to any Specified Drug now held or hereafter acquired by the Company or any of its Restricted Subsidiaries, if, in the case of this clause (y), such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect; and

(13) the indictment of the Company or any of its Restricted Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against the Company or any of its Restricted Subsidiaries pursuant to which statute or proceedings the penalties actually sought include forfeiture to any governmental authority of any material portion of the property of the Company and its Restricted Subsidiaries, taken as a whole, constituting Collateral.

Section 6.02 *Acceleration.*

In the case of an Event of Default specified in clause (7) or (8) of Section 6.01 hereof, with respect to the Company, any Restricted Subsidiary of the Company that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes by written notice to the Company (and the Trustee if by the Holders) may declare all the Notes to be due and payable immediately.

Upon any such declaration, the Notes shall become due and payable immediately.

The Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies.*

If an Event of Default occurs and is continuing, the Collateral Agent may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Collateral Agent may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Collateral Agent or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

If an Event of Default occurs and is continuing, the Holders of at least 50.1% in aggregate principal amount of the Notes at the time outstanding (not including Notes held by the Issuer or any of its Affiliates), may provide directions directly to the Collateral Agent to cause the foreclosure on any or all of the Collateral and/or proceed to enforce the remedies available to the Collateral Agent pursuant to the terms of the Collateral Documents or otherwise as a matter of law, in each case, in accordance with and as contemplated by the Collateral Documents.

Section 6.04 *Waiver of Past Defaults.*

Holders of not less than at least 50.1% in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided, however*, that the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 *Control by Majority.*

Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on the Trustee under this Indenture or the Collateral Agent under the Collateral Documents. However, the Trustee or the Collateral Agent may refuse to follow any direction that conflicts with law or this Indenture, that the Trustee or Collateral Agent determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee or the Collateral Agent in personal liability.

Section 6.06 *Limitation on Suits.*

A Holder may pursue a remedy with respect to this Indenture or the Notes only if:

(1) such Holder gives to the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer and, if requested, provide to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and

(5) during such 60-day period, Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 *Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Priorities.*

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money in the following order:

First: to the Trustee and the Collateral Agent, their agents and attorneys for amounts due under this Indenture and the Collateral Documents, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the Collateral Agent and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, indemnities, if any, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any and interest, respectively; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee will be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(4) No provision of this Indenture shall require the Trustee to risk its own funds or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it shall be entitled to receive an Officer's Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care, and the Trustee shall not be responsible for the supervision of officers and employees of such agents or attorneys or the application of any money by any Agent other than the Trustee.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(f) The rights, privileges, protections, immunities and benefits given to the Trustee, including, its right to be compensated, reimbursed, and indemnified, and its right to resign, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder or in any Indenture Document or Collateral Document, including but not limited to its capacities as Paying Agent and Registrar, and to each agent, custodian and other Person employed to act hereunder or in any Indenture Document or Collateral Document.

(g) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(h) The Trustee need not investigate any fact or matter stated in any document delivered to it, but the Trustee, in its discretion or if directed to do so, may make such further inquiry or investigation into such facts or matters, and, if the Trustee shall determine in good faith or if directed to do so to make such further inquiry or investigation, it shall be entitled upon reasonable notice during normal business hours to examine the books, records and premises of the Company and the Guarantors, personally or by agent or attorney at the sole cost of the Company and the Guarantors and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(i) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by a Responsible Officer of the Trustee, and such notice references the Notes and this Indenture and such notice states that it is a "notice of default".

(j) Any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

(k) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(k) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss or profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) The Company shall provide prompt written notice to the Trustee of any change to its fiscal year.

(m) The Trustee shall not be responsible for the actions or inactions of the Collateral Agent. The Collateral Agent shall not be responsible for the actions or inactions of the Trustee.

Section 7.03 *Individual Rights of Trustee and Collateral Agent.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee (if this Indenture has been qualified under the TIA) or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof. The Collateral Agent in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not the Collateral Agent.

Section 7.04 *Trustee's and Collateral Agent's Disclaimer.*

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Collateral Documents or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication. The Collateral Agent will not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Collateral Documents or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it will not be responsible for the use or application of any money received by any Paying Agent, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture.

Section 7.05 *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is actually known to the Trustee, the Trustee will mail to Holders of Notes a notice of the Default or Event of Default within 90 days after it occurs or, if later, 30 days after obtaining knowledge thereof. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on, any Note, the Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 *Reports by Trustee to Holders of the Notes.*

(a) Within 60 days after each January 15th beginning with the January 15th following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee will mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA § 313(b)(2). The Trustee will also transmit by mail all reports as required by TIA § 313(c).

(b) A copy of each report at the time of its mailing to the Holders of Notes will be mailed by the Trustee to the Company and filed by the Trustee with the SEC and each stock exchange or market, if any, on which the Notes are listed or quoted in accordance with TIA § 313(d). The Company will promptly notify the Trustee in writing if the Notes become listed or quoted on any stock exchange or market or any delisting thereof.

Section 7.07 *Compensation and Indemnity.*

(a) The Company will pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as agreed to in writing. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel. The Company will reimburse the Collateral Agent promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Collateral Agent's agents and counsel.

(b) The Company and the Guarantors will jointly and severally indemnify the Trustee against any and all losses, liabilities or expenses (including reasonable attorney's expenses and fees) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company and the Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Company, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense is attributable to its negligence or willful misconduct as determined by a court of competent jurisdiction. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company or any of the Guarantors of their obligations hereunder. The Company or such Guarantor will defend such claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. Neither the Company nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld. The Company and the Guarantors will jointly and severally indemnify the Collateral Agent against any and all losses, liabilities or expenses (including reasonable attorney's expenses and fees) incurred by it arising out of or in connection with the acceptance or administration of its duties under the Indenture Documents, including the costs and expenses of enforcing this Indenture against the Company and the Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Company, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense is attributable to its negligence, bad faith or willful misconduct as determined by a court of competent jurisdiction. The Collateral Agent will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Collateral Agent to so notify the Company will not relieve the Company or any of the Guarantors of their obligations hereunder. The Company or such Guarantor will defend such claim and the Collateral Agent will cooperate in the defense. The Collateral Agent may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. Neither the Company nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld

(c) The obligations of the Company and the Guarantors under this Section 7.07 will survive the satisfaction and discharge of this Indenture or earlier resignation or removal of the Trustee or the Collateral Agent.

(d) To secure the Company's and the Guarantors' payment obligations in this Section 7.07, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture or earlier resignation or removal of the Trustee. To secure the Company's and the Guarantors' payment obligations in this Section 7.07, the Collateral Agent will have a Lien prior to the Notes on all money or property held or collected by the Collateral Agent, except that held in trust to pay principal and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture or earlier resignation or removal of the Collateral Agent.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(9) or (10) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law. When the Collateral Agent incurs expenses or renders services after an Event of Default specified in Section 6.01(9) or (10) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) The Trustee will comply with the provisions of TIA § 313(b)(2) to the extent applicable.

Section 7.08 *Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of 50.1% in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company will, with the consent of the Collateral Agent, promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee.

Section 7.09 *Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Trustee. If the Collateral Agent consolidates, merges or converts into, or transfers all or substantially all of its business to, another corporation, the successor corporation without any further act will be the successor Collateral Agent.

Section 7.10 *Eligibility; Disqualification.*

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

Section 7.11 *Preferential Collection of Claims Against Company.*

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

Section 7.12 *Trustee as Paying Agent.*

References to the Trustee in Sections 7.02, 7.03, 7.04, 7.07, 7.08 and 7.09 shall include the Trustee in its role as Paying Agent and as Registrar.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Note Guarantees and their obligations under Article 10 hereof) on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company and the Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute instruments as reasonably requested by the Company acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's and the Guarantors' obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.03, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21 and 4.22 hereof and clause (4) of Section 5.01 hereof and Article 10 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Company and the Guarantors may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) through 6.01(5) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm, or firm of independent public accountants, to pay the principal of, premium, if any, and interest on, the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that:

(A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or

(B) since the date of this Indenture, there has been a change in the applicable federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any agreement or instrument (other than this Indenture) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(6) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of Notes over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to Company.*

Subject to applicable law, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on, any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's and the Guarantors' obligations under this Indenture and the Notes and the Note Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided, however*, that, if the Company makes any payment of principal of, premium, if any, or interest on, any Note following the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Indenture, the Company, the Guarantors, if any, the Collateral Agent and the Trustee may amend or supplement the Indenture Documents without the consent of any Holder of Note:

(1) to cure any ambiguity, defect or inconsistency that does not adversely affect the holders of the Notes in any material respect;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide for the assumption of the Company's or a Guarantor's obligations to the Holders of the Notes and Note Guarantees by a successor to the Company or such Guarantor pursuant to Article 5 hereof;

(4) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights hereunder of any Holder; or

(5) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes or to release a Guarantor from its Note Guarantee in accordance with the terms of this Indenture.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 13.03 hereof, the Trustee will join with the Company and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties, liabilities or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, the Company, the Guarantors, if any, the Trustee, and the Collateral Agent may amend or supplement the Indenture Documents with the consent of the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of the Indenture Documents may be waived with the consent of the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Section 2.08 hereof shall determine which Notes are considered to be "outstanding" for purposes of this Section 9.02.

Upon the written request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture or waiver, and upon the filing with the Trustee and the Collateral Agent of evidence of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee and the Collateral Agent of the documents described in Section 13.03 hereof, the Trustee and the Collateral Agent will join with the Company and the Guarantors in the execution of such amended or supplemental indenture or waiver unless such amended or supplemental indenture or waiver affects the Trustee's and the Collateral Agent's own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Trustee or the Collateral Agent, as applicable, may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture or waiver.

It is not necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will send to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to send such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of at least 50.1% in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of the Indenture Documents. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed;

(3) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, the Notes (except a rescission of acceleration of the Notes by the holders of at least 50.1% in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium, if any, on, the Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Sections 4.10, 4.15 and 4.16 hereof);

(8) release any Guarantor from any of its obligations under its Note Guarantee or this Indenture, except in accordance with the terms of this Indenture;

(9) expressly subordinate the Notes or any Note Guarantees in right of payment, or expressly subordinate the Lien securing the Notes and the Note Guarantees;

(10) make any change in the preceding amendment and waiver provisions; or

(11) release all or substantially all of the Collateral from the Liens securing the Notes.

Section 9.03 *Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.04 *Notation on or Exchange of Notes.*

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05 *Trustee to Sign Amendments, Waivers, etc.*

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee will receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 13.03 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Company and any Guarantors party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions of this Indenture.

ARTICLE 10
COLLATERAL AND SECURITY

Section 10.01 *Grant of Security Interest; Collateral Documents.*

The due and punctual payment of the principal of and interest, if any, on the Notes when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest (to the extent permitted by law), if any, on the Notes and performance of all other obligations of the Company to the Holders of Notes or the Trustee under the Indenture Documents, according to the terms hereunder or thereunder, are secured as provided in the Collateral Documents which the Company has entered into simultaneously with the execution of this Indenture. Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of the Collateral Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral) as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs the Collateral Agent to enter into the Collateral Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. The Company will deliver to the Trustee copies of all documents delivered to the Collateral Agent pursuant to the Collateral Documents, and will do or cause to be done all such acts and things as may be required by the provisions of the Collateral Documents, to assure and confirm to the Trustee and the Collateral Agent the security interest in the Collateral contemplated hereby, by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. The Company will take, and will cause its Subsidiaries to take, upon request of the Collateral Agent, any and all actions reasonably required to cause the Collateral Documents to create and maintain, as security for the Obligations of the Company hereunder, a valid and enforceable perfected first priority Lien in and on all the Collateral, in favor of the Collateral Agent for its benefit, the benefit of the Trustee and for the benefit of the Holders, superior to and prior to the rights of all third Persons and subject to no other Liens than Permitted Liens. For the avoidance of doubt, neither the Trustee nor the Collateral Agent shall be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the security interest in any of the Collateral.

Section 10.02 *Recording and Opinions.*

(a) The Company will furnish to the Trustee and the Collateral Agent for their records simultaneously with the execution and delivery of this Indenture an Opinion of Counsel with respect to the Collateral Documents and the Lien created by the Collateral Documents in a form acceptable to the initial purchasers of the Notes and their counsel.

(b) The Company will furnish to the Collateral Agent and the Trustee, within 60 days after each January 15th, beginning with the January 15th following the date of this Indenture, an Opinion of Counsel, dated as of such date, either:

(1) (A) stating that, in the opinion of such counsel, action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of all supplemental indentures, financing statements, continuation statements or other instruments of further assurance as is necessary to maintain the Lien of the Collateral Documents and reciting with respect to the security interests in the Collateral the details of such action or referring to prior Opinions of Counsel in which such details are given, and (B) stating that, in the opinion of such counsel, based on relevant laws as in effect on the date of such Opinion of Counsel, all financing statements and continuation statements have been executed and filed that are necessary as of such date and during the succeeding 12 months fully to preserve and protect, to the extent such protection and preservation are possible by filing, the rights of the Holders of Notes and the Collateral Agent and the Trustee hereunder and under the Collateral Documents with respect to the security interests in the Collateral; or

(2) stating that, in the opinion of such counsel, no such action is necessary to maintain such Lien and assignment.

Section 10.03 *Release of Collateral.*

(a) The Collateral Agent shall not at any time release Collateral from the security interests created by the Collateral Documents unless such release is in accordance with the provisions of this Indenture and the applicable Collateral Documents.

(b) The Collateral Agent shall be entitled to request and rely upon an Officer's Certificate and/or an Opinion of Counsel in connection with any release of Collateral from the Lien and security interest created by the Collateral Documents.

(c) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Notes has been accelerated (whether by declaration or otherwise) and the Trustee has delivered a notice of acceleration to the Collateral Agent, no release of Collateral pursuant to the provisions of the Collateral Documents will be effective as against the Holders of Notes.

Section 10.04 *[Reserved].*

Section 10.05 *[Reserved].*

Section 10.06 *Authorization of Actions to Be Taken by the Trustee Under the Collateral Documents.*

Upon the occurrence and during the continuance of an Event of Default and acceleration of the Notes, subject to the provisions of Section 7.01 and 7.02 hereof, the Trustee shall at the direction of a majority of the Holders of Notes, direct, on behalf of the Holders of Notes, the Collateral Agent to, take all actions necessary or appropriate in order to:

(1) enforce any of the terms of the Collateral Documents; and

(2) collect and receive any and all amounts payable in respect of the Obligations of the Company hereunder.

The Collateral Agent will have power to institute and maintain such suits and proceedings as directed to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Collateral Documents or this Indenture, and such suits and proceedings as the Collateral Agent may be directed to preserve or protect its interests and the interests of the Holders of Notes in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders of Notes or of the Collateral Agent).

Section 10.07 *Authorization of Receipt of Funds by the Trustee Under the Collateral Documents.*

The Trustee is authorized to receive any funds for the benefit of the Holders of Notes distributed under the Collateral Documents, and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture.

Section 10.08 *Termination of Security Interest.*

Upon the payment in full of all Obligations of the Company under this Indenture and the Notes, or upon Legal Defeasance, the Trustee will, at the written request of the Company, deliver a certificate to the Collateral Agent stating that such Obligations have been paid in full, and instruct the Collateral Agent to release the Liens pursuant to this Indenture and the Collateral Documents.

ARTICLE 11
NOTE GUARANTEES

Section 11.01 *Guarantee.*

(a) Subject to this Article 11, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on, the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Indenture Documents.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

Section 11.02 *Limitation on Guarantor Liability.*

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 11, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 11.03 *Execution and Delivery of Note Guarantee.*

Each Guarantor hereby agrees that its execution and delivery of this Indenture or any supplemental indenture in the form of Exhibit E hereto on behalf of such Guarantor by an Officer thereof in accordance with Section 4.17 hereof shall evidence its Note Guarantee set forth in this Article 11 without the need for any further notation on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note guaranteed by any Guarantor under its Note Guarantee, the Note Guarantee will be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

In the event that the Company or any of its Domestic Restricted Subsidiaries creates or acquires any Domestic Restricted Subsidiary after the date of this Indenture, if required by Section 4.17 hereof, the Company will cause such Domestic Restricted Subsidiary to comply with the provisions of Section 4.17 hereof and this Article 11, to the extent applicable.

Section 11.04 *Guarantors May Consolidate, etc., on Certain Terms.*

Except as otherwise provided in Section 11.05 hereof, no Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company or another Guarantor, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(2) such sale or other disposition (which for the avoidance of doubt shall constitute an Asset Sale or, if applicable, a Change of Control) does not violate Section 4.10 hereof or, if such sale or disposition constitutes a Change of Control, Section 4.15 hereof.

Except as set forth in Articles 4 and 5 hereof, and notwithstanding clause 2 above, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

Section 11.05 *Releases.*

(a) In the event of any sale or other disposition of all or substantially all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all of the Capital Stock of any Guarantor, in each case to a Person that is not (either before or after giving effect to such transactions) the Company or a Restricted Subsidiary of the Company, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the Capital Stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Note Guarantee; *provided* that the sale or other disposition (which for the avoidance of doubt shall constitute an Asset Sale or, if applicable, a Change of Control) does not violate Section 4.10 hereof or Section 4.16 hereof or, if such sale or disposition constitutes a Change of Control, Section 4.15 hereof. Upon delivery by the Company to the Trustee of an Officer's Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, including without limitation Section 4.10 hereof or Section 4.16 hereof or, if such sale or disposition constitutes a Change of Control, Section 4.15 hereof, the Trustee will execute any documents reasonably requested by the Company in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

(b) Upon the liquidation or dissolution of such Guarantor where the assets of such Guarantor are conveyed to the Company or a Restricted Subsidiary; *provided* that no Default or Event of Default shall occur as a result thereof or has occurred and is continuing, each Guarantor will be released and relieved of any obligations under its Note Guarantee.

(c) Upon Covenant Defeasance or Legal Defeasance in accordance with Article 8 hereof or satisfaction and discharge of this Indenture in accordance with Article 12 hereof, each Guarantor will be released and relieved of any obligations under its Note Guarantee.

Any Guarantor not released from its obligations under its Note Guarantee as provided in this Section 11.05 will remain liable for the full amount of principal of and interest and premium, if any, on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 11.

ARTICLE 12
SATISFACTION AND DISCHARGE

Section 12.01 *Satisfaction and Discharge.*

This Indenture (including the obligations under Article 10 hereof) will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the sending of a notice of redemption, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense of, the Company, or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in U.S. dollars and non-callable Government Securities, in amounts as will be sufficient as determined by the Company (with an Opinion of Counsel delivered to the Trustee), without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(3) the Company or any Guarantor has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 12.01, the provisions of Sections 12.02 and 8.06 hereof will survive. In addition, nothing in this Section 12.01 will be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02 *Application of Trust Money.*

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 12.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on, any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13
MISCELLANEOUS

Section 13.01 *Notice*

Any notice or communication by the Company, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), electronic transmission (whether facsimile or .pdf format) or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company and/or any Guarantor:

Nektar Therapeutics
455 Mission Bay Boulevard South
San Francisco, CA 94158
Attention: Gil Labrucherie, Esq

With a copy to:

Sidley Austin LLP
2001 Ross Avenue
Suite 3600
Dallas, Texas 75201
Attention: Christopher Gleason, Esq.

If to the Trustee:

Wilmington Trust, National Association
50 South Sixth St, Suite 1290
Minneapolis, MN 55402
Attention: Nektar Therapeutics Administrator

With a copy to:

Alston & Bird LLP
101 South Tryon St, Suite 4000
Charlotte, NC 28280
Attention: Adam Smith, Esq.

If to the Collateral Agent:

TC Lending, LLC
301 Commerce Street, Suite 3300
Fort Worth, Texas 76102
Attention: Legal Compliance Department

With a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attention: Frederic L. Ragucci, Esq.

The Company, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted electronically; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee) pursuant to the standing instructions from such Depositary.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Section 13.02 *Communication by Holders of Notes with Other Holders of Notes.*

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 13.03 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.04 hereof) stating that, in the opinion of such Officer, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.04 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.04 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) must comply with the provisions of TIA § 314(e) and must include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 13.05 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.06 *Force Majeure*

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 13.07 *No Personal Liability of Directors, Officers, Employees and Stockholders*.

No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the Indenture Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 13.08 *Governing Law; Waiver of Jury Trial.*

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE DOCUMENTS WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 13.09 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.10 *Successors.*

All agreements of the Company in the Indenture Documents will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in the Indenture Documents will bind its successors, except as otherwise provided in Section 11.05 hereof.

Section 13.11 *Severability.*

In case any provision in any of the Indenture Documents is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 13.12 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signature of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 13.13 *Table of Contents, Headings, etc.*

The Table of Contents and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

Section 13.14 *U.S.A. Patriot Act.*

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

[Remainder of page intentionally left blank]

SIGNATURES

Dated as of October 5, 2015

NEKTAR THERAPEUTICS

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

TC LENDING, LLC, as Collateral Agent

By: _____
Name:
Title:

EXHIBIT A

[Face of Note]

CUSIP _____

7.750% Senior Secured Notes due 2020

No. ___ $_____

[or such other principal amount as shall be set forth in the Schedule of Exchanges of Interests in the Global Note attached hereto][1]

NEKTAR THERAPEUTICS

promises to pay to [_] or registered assigns, the principal sum of _____ DOLLARS [or such other principal amount as shall be set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto][2] on October 5, 2020.

Interest Payment Dates: January 15, April 15, July 15 and October 15, commencing October 15, 2015

Record Dates: October 5, 2015; thereafter, January 1, April 1, July 1 and October 1

[1] *Insert in Global Notes.*

[2] *Insert in Global Notes.*

NEKTAR THERAPEUTICS

By: _____

Name:

Title:

This is one of the Notes referred to in the within-mentioned Indenture:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Dated:_____

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *Interest*. Nektar Therapeutics, a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 7.750% per annum from October 5, 2015 until maturity. The Company will pay interest, quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided further* that the first Interest Payment Date shall be October 15, 2015. The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 2% per annum in excess of the rate then in effect to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year for the actual number of days elapsed.

(2) *Method of Payment*. The Company will pay interest on the Notes (except defaulted interest) to the Paying Agent on behalf of the Persons who are registered Holders of Notes at the close of business on the January 1, April 1, July 1 or October 1 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, and interest at the office or agency of the Company maintained for such purpose within or without the City and State of New York, or, at the option of the Company, payment of interest may be made by check mailed to the Trustee, for the benefit of the Holders, at the Trustee's address set forth in the Indenture; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium on, all Global Notes and all other Notes for which wire transfer instructions have been provided by the Trustee to the Company or the Paying Agent. Such payment will be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *Paying Agent and Registrar.* Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change any Registrar without notice to any Holder. The Company or any of its Subsidiaries may act as Registrar.

(4) *Indenture*. The Company issued the Notes under an Indenture dated as of October 5, 2015 (the "*Indenture*") among the Company, the Trustee and the Collateral Agent. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the TIA. The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are secured obligations of the Company.

(5) *Optional Redemption.*

(a) At any time prior to October 5, 2017, upon the redemption of all or a part of the Notes for any reason (including, but not limited to, any redemption after the occurrence of an Event of Default or after acceleration of the Notes including in connection with the commencement of any proceeding pursuant to any Bankruptcy Law), the Company shall pay a redemption price equal to 100% of the principal amount of Notes redeemed plus the Make-Whole Premium as of, and accrued and unpaid interest, if any, to the date of redemption, subject to the rights of holders of Notes on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the redemption date.

(b) Any redemption of Notes at the option of the Company shall be upon note less than 30 nor more than 60 days' prior notice.

(c) On or after October 5, 2017, upon the redemption of all or a part of the Notes for any reason (including, but not limited to, any redemption after the occurrence of an Event of Default or after acceleration of the Notes including in connection with the commencement of any proceeding pursuant to any Bankruptcy Law), the Company shall pay the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest, if any, on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month period beginning on October 5 of the years indicated below, subject to the rights of holders of Notes on the relevant record date to receive interest on the relevant interest payment date occurring on or prior to the redemption date:

Year	Percentage
2017	104%
2018	102%
2019	100%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

Without limiting the generality of the foregoing, it is understood and agreed that if the Obligations are accelerated for any reason, including because of an Event of Default, the sale, disposition or encumbrance (including that by operation of law or otherwise) as a result of an Event of Default or the commencement of any proceeding pursuant to any Bankruptcy Law, the Make-Whole Premium, if any, and Prepayment Premium, if any, determined as of the date of acceleration will also be due and payable as though said Indebtedness was voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Holder's lost profits as a result thereof. Any Make-Whole Premium and Prepayment Premium payable in accordance with the immediately preceding sentence shall be presumed to be the liquidated damages sustained by each Holder as the result of the early redemption and the Company agrees that it is reasonable under the circumstances currently existing. The Make-Whole Premium, if any, and Prepayment Premium, if any, shall also be payable (i) in the event the Obligations (and/or the Indenture or the Notes evidencing the Obligations) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means and/or (ii) upon the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations (and/or the Indenture or the Notes evidencing the Obligations) in any proceeding pursuant to any Bankruptcy Law, foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means or the making of a distribution of any kind in any proceeding pursuant to any Bankruptcy Law to the Collateral Agent, for the account of the Holders, in full or partial satisfaction of the Obligations. THE COMPANY EXPRESSLY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING MAKE-WHOLE PREMIUM AND PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION INCLUDING IN CONNECTION WITH ANY VOLUNTARY OR INVOLUNTARY ACCELERATION OF THE OBLIGATIONS PURSUANT TO ANY PROCEEDING PURSUANT TO ANY BANKRUPTCY LAW OR PURSUANT TO A PLAN OF REORGANIZATION. The Company expressly agrees that: (A) the Make-Whole Premium and Prepayment Premium are reasonable and are the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Make-Whole Premium and Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Holders and the Company giving specific consideration in this transaction for such agreement to pay the Make-Whole Premium and Prepayment Premium; and (D) the Company shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Company expressly acknowledges that its agreement to pay the Make-Whole Premium and Prepayment Premium to the Holders as herein described is a material inducement to Holders to purchase the Notes.

(6) *MANDATORY REDEMPTION.*

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *REPURCHASE AT THE OPTION OF HOLDER.*

(a) If there is a Change of Control, the Company shall not consummate the Change of Control unless at least 30 days prior to the Change of Control, it has made an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of each Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest thereon to the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date occurring on or prior to the redemption date (the "*Change of Control Payment*"); *provided* that if the Change of Control Payment Date is the date of consummation of the Change of Control, the payment for the repurchase of Notes will be made at a time no later than substantially concurrently with the consummation of such Change of Control. The Company will mail a notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Indenture within the time periods required by the Indenture.

(b) If the Company consummates any Asset Sales or Applicable Transactions (other than any Royalty Transaction which is subject to Section 4.16 of the Indenture), within five Business Days of each date on which the aggregate amount of Excess Proceeds exceeds $2.5 million, the Company will commence an offer to all Holders of Notes (an "*Asset Sale Offer*") pursuant to Section 3.10 of the Indenture to purchase the maximum principal amount of Notes that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any thereon to the date of purchase, in accordance with the procedures set forth in the Indenture. To the extent that the aggregate amount of Notes tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company (or such Restricted Subsidiary) may use such deficiency for any purpose not otherwise prohibited by the Indenture. If the aggregate principal amount of Notes tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased on a *pro rata* basis, subject to the applicable procedures of the Depositary. Holders of Notes that are the subject of an offer to purchase will receive an Asset Sale Offer from the Company prior to any related purchase date and may elect to have such Notes purchased by completing the form entitled "*Option of Holder to Elect Purchase*" attached to the Notes.

(c) Within five Business Days of the receipt of any Net Proceeds of any Royalty Transaction newly entered into by the Company or any of its Restricted Subsidiaries following the date of the Indenture, the Company shall send a notice describing the applicable Royalty Transaction and offering to repurchase Notes (such offer, a "*Royalty Transactions Repurchase Offer*") in an amount of not less than 50% of such Net Proceeds, at a price of 101% of the principal amount, plus accrued and unpaid interest, if any, to the Repurchase Date. The Royalty Transactions Repurchase Offer shall be made to all Holders and will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "*Royalty Transactions Repurchase Offer Period*"). No later than three Business Days after the termination of the Royalty Transactions Repurchase Offer Period (the "*Repurchase Date*"), the Company will apply not less than 50% of such Net Proceeds (the "*Royalty Transactions Repurchase Offer Amount*") to the purchase of Notes or, if less than the Royalty Transactions Repurchase Offer Amount has been tendered, all Notes tendered in response to the Royalty Transactions Repurchase Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made. If there are Excess Royalty Proceeds, such Excess Royalty Proceeds shall be subject to the reinvestment and application provisions set forth in Section 4.16 of the Indenture with respect to such Excess Royalty Proceeds.

(8) *Notice of Redemption*. Notice of redemption will be given at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction or discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed.

(9) *Denominations, Transfer, Exchange*. The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before the mailing of a notice of redemption or during the period between a record date and the corresponding Interest Payment Date.

(10) *Persons Deemed Owners*. The registered Holder of a Note shall be treated as its owner for all purposes.

(11) *Amendment, Supplement and Waiver.* Subject to certain exceptions, the Indenture, the Notes or the Note Guarantees may be amended or supplemented with the consent of the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes voting as a single class, and any existing Default or Event or Default or compliance with any provision of the Indenture, the Notes or the Note Guarantees may be waived with the consent of the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes voting as a single class. Without the consent of any Holder of a Note, the Indenture, the Notes or the Note Guarantees may be amended or supplemented to cure any ambiguity, defect or inconsistency, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's or a Guarantor's obligations to Holders of the Notes and Note Guarantees in case of a merger or consolidation, to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights under the Indenture of any such Holder or to allow any Guarantor to execute a supplemental indenture to the Indenture and/or a Note Guarantee with respect to the Notes or to release a Guarantor from its Note Guarantee in accordance with the terms of the Indenture.

(12) *Defaults and Remedies.* Events of Default include: (i) default for 5 days in the payment when due of interest on the Notes; (ii) default in the payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes; (iii) (x)failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Sections 2.06(b)(4), 3.10, 4.10, 4.15, 4.16, 4.22, 4.24 or 5.01 of the Indenture or Section 4(q) of the Security Agreement, (y) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Sections 4.07, 4.08, 4.09, 4.12 or 4.21 hereof and such default continues for a period of 5 Business Days after the earlier of the date an Executive Officer (as defined in the Securities Act) of the Company has knowledge of such failure and the date written notice of such default has been given by the Trustee or the Collateral Agent to the Company or (z) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Section 4.03(f), 4.03(g), 4.03(h) or 4.03(i) of the Indenture, and such default continues for a period of 20 days; (iv) failure by the Company or any of its Restricted Subsidiaries for 60 days after notice to the Company by the Trustee, the Collateral Agent or the holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in the Indenture Documents; (v) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness (other than Indebtedness owed to the Company or any Restricted Subsidiary of the Company) for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), whether such Indebtedness or Guarantee now exists, or is created after the date of the indenture, if that default meets certain criteria set forth in the Indenture; (vi) failure by the Company or any of its Restricted Subsidiaries to pay final judgments entered by a court or courts of competent jurisdiction aggregating in excess of $15.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed within a period of 60 days of the entry thereof; (vii) certain events of bankruptcy or insolvency with respect to the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary (or such events in respect of Restricted Subsidiaries that are not Significant Subsidiaries to the extent they have had or would reasonably be expected to result in a Material Adverse Effect); (viii) except as permitted by the Indenture and the Collateral Documents, with respect to any assets or property having a Fair Market Value in excess of $2.5 million, individually or in the aggregate, that constitutes or, under the indenture or the Collateral Documents is required to constitute, Collateral, (a) any of the Collateral Documents shall for any reason cease to be in full force and effect in all material respects, or the Company or a Guarantor shall so assert, or (b) any security interest created, or purported to be created, by any of the Collateral Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby, except in each case solely as a result of the Collateral Agent taking or refraining from taking any action in its sole control; (ix) except as permitted by the Indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee; (x) any order, judgment or decree shall be entered against the Company or any of its Restricted Subsidiaries decreeing the dissolution or split up of the Company or such Restricted Subsidiary and such order shall remain undischarged or unstayed for a period in excess of thirty days; (xi) (A) the loss, suspension or revocation of, or failure to renew, any material license (it being understood that any licenses under the applicable Collaboration Agreements for any Specified Drugs shall not constitute material licenses for purposes of this clause (xi)(A) unless the loss, suspension or revocation of, or failure to renew, any licenses under the applicable Collaboration Agreements for any Specified Drugs results from a breach under such agreements by the Company or any of its Restricted Subsidiaries) or material permit with respect to any Specified Drug now held or hereafter acquired by the Company or any of its Restricted Subsidiaries or (B) the loss, suspension or revocation of, or failure to renew, any material license or material permit other than with respect to any Specified Drug now held or hereafter acquired by the Company or any of its Restricted Subsidiaries, if, in the case of this clause (B), such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect; and (xii) the indictment of the Company or any of its Restricted Subsidiaries under any criminal statute, or commencement of criminal or civil proceedings against the Company or any of its Restricted Subsidiaries pursuant to which statute or proceedings the penalties actually sought include forfeiture to any governmental authority of any material portion of the property of the Company and its Restricted Subsidiaries, taken as a whole, constituting Collateral.

If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest or premium, if any,) if it determines that withholding notice is in their interest. The Holders of at least 50.1% in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *Trustee Dealings with Company*. The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

(14) *No Recourse Against Others.* No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the Indenture Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

(15) *Authentication*. This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) *Abbreviations*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *CUSIP Numbers*. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes, and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption, and reliance may be placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW.* THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE DOCUMENTS WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Nektar Therapeutics
455 Mission Bay Boulevard South
San Francisco, CA 94158
Attention: Gil Labrucherie, Esq

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____

(Insert assignee's legal name)

_____

(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

_____

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Company pursuant to Section 4.10, 4.15 or 4.16 of the Indenture, check the appropriate box below:

¬Section 4.10 ¬Section 4.15 ¬Section 4.16

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.10, 4.15 or Section 4.16 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature: _____

(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE *

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized signatory of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Nektar Therapeutics
455 Mission Bay Boulevard South
San Francisco, CA 94158

Wilmington Trust, National Association,
as Trustee and Registrar
50 South Sixth St, Suite 1290
Minneapolis, MN 55402

Re: 7.750% Senior Secured Notes due 2020

Reference is hereby made to the Indenture, dated as of October 5, 2015 (the "*Indenture*"), between, Nektar Therapeutics, as issuer (the "*Company*") and Wilmington Trust, National Association, as trustee (in such capacity, the "*Trustee*") and TC Lending, LLC, as collateral agent (in such capacity, the "*Collateral Agent*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the "*Transferor*") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "*Transfer*"), to _____ (the "*Transferee*"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ **Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended (the "*Securities Act*"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A, and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

2. ☐ **Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Restricted Definitive Note pursuant to Regulation S**. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act and (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S**. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) ☐ such Transfer is being effected to the Company or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) ☐ such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

4. ☐ **Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note**.

(a) ☐ **Check if Transfer is pursuant to Rule 144**. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) ☐ **Check if Transfer is Pursuant to Regulation S**. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) ☐ **Check if Transfer is Pursuant to Other Exemption**. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(iv) ☐ Unrestricted Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Nektar Therapeutics
455 Mission Bay Boulevard South
San Francisco, CA 94158

Wilmington Trust, National Association,
as Trustee and Registrar
50 South Sixth St, Suite 1290
Minneapolis, MN 55402

Re: 7.750% Senior Secured Notes due 2020

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of October 5, 2015 (the "*Indenture*"), between, Nektar Therapeutics, as issuer (the "*Company*") and Wilmington Trust, National Association, as trustee (in such capacity, the "*Trustee*") and TC Lending, LLC, as collateral agent (in such capacity, the "*Collateral Agent*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the "*Owner*") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "*Exchange*"). In connection with the Exchange, the Owner hereby certifies that:

1. **Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note**

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note**. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the Securities Act of 1933, as amended (the "*Securities Act*") and (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act.

(b) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note**. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) ☐ **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note**. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) ☐ **Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note**. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. **Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes**

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) ☐ **Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note**. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] ☐ 144A Global Note, ☐ Regulation S Global Note, ☐ IAI Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Dated: _____

EXHIBIT D

FORM OF CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Nektar Therapeutics
455 Mission Bay Boulevard South
San Francisco, CA 94158

Wilmington Trust, National Association,
as Trustee and Registrar
50 South Sixth St, Suite 1290
Minneapolis, MN 55402

Re: 7.750% Senior Secured Notes due 2020

Reference is hereby made to the Indenture, dated as of October 5, 2015 (the "*Indenture*"), between, Nektar Therapeutics, as issuer (the "*Company*") and Wilmington Trust, National Association, as trustee (in such capacity, the "*Trustee*") and TC Lending, LLC, as collateral agent (in such capacity, the "*Collateral Agent*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $_____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144 under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (D) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications and, except in the case of a resale pursuant to Rule 144 under the Securities Act, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment. We [are] [are not] a Competitor or Specified Entity.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion; *provided* that, by making such representations, we do not agree to hold any of the Notes for any minimum or other specific term and reserve the right to dispose of the Notes at any time in accordance with an exemption under the Securities Act or pursuant to an effective registration statement thereunder.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

_____
[Insert Name of Accredited Investor]

By: _____
Name:
Title:

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Dated: _____

EXHIBIT E

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

THIS [_____] SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, 20__, among _____ (the "*Guaranteeing Subsidiary*"), a [direct or indirect] domestic subsidiary of Nektar Therapeutics (or its permitted successor), a Delaware corporation (the "*Company*"), the Company, the other Guarantors (as defined in the Indenture referred to herein) and Wilmington Trust, National Association, as trustee (the "*Trustee*") under the Indenture referred to below.

W I T N E S S E T H

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of October 5, 2015 providing for the issuance of 7.750% Senior Secured Notes due 2020 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Note Guarantee*"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in the Note Guarantee and in the Indenture including but not limited to Article 11 thereof.

4. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Notes, any Note Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

5. NEW YORK LAW TO GOVERN. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

6. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

7. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

8. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

NEKTAR THERAPEUTICS

By: _____
Name:
Title:

[EXISTING GUARANTORS]

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

Exhibit 10.3

EXECUTION VERSION

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (this "Agreement") is made as of October 5, 2015, by Nektar Therapeutics, a corporation organized under the laws of the State of Delaware (the "Company"), and the subsidiaries of the Company that become guarantors hereunder pursuant to Section 10(o) hereof (together with the Company, the "Grantors" and each one a "Grantor"), whose principal place of business and chief executive office (as those terms are used in the Uniform Commercial Code of the State of New York (the "New York UCC")) are set forth beneath their corresponding signature pages hereto, in favor of TC Lending, LLC, not in its individual capacity but solely as collateral agent (together with its successors and assigns, in such capacity "Collateral Agent"), for the benefit of the Secured Parties (as hereinafter defined), to secure the Notes, the Note Guarantees and all other Obligations under the other Indenture Documents. The Grantors hereby agree with Collateral Agent as follows:

1. *Definitions.*

(a) Except as specifically defined in this Agreement, (i) capitalized terms used but not defined in this Agreement that are defined in the Indenture shall have their respective meanings ascribed to them in the Indenture, and the principles of construction and interpretation provided in Section 1.04 of the Indenture shall be incorporated herein by reference and (ii) all terms used but not defined in this Agreement and defined in the New York UCC, including the terms accessions, account debtor, certificated security, chattel paper, clearing corporation, commercial tort claim, deposit account, document, electronic chattel paper, equipment, financial asset, fixtures, goods, inventory, instrument, investment property, letter-of-credit rights, payment intangibles, proceeds, securities accounts, securities intermediary, security, security entitlement, software, supporting obligations, tangible chattel paper and uncertificated security, shall have the meaning given therein or unless the context provides otherwise.

(b) As used in this Agreement, the following terms shall have the meanings indicated below:

"Accounts" shall mean and include as to each Grantor, all of such Grantor's "accounts" as defined in the UCC, whether now owned or hereafter acquired including, without limitation all present and future rights of such Grantor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by chattel paper or an instrument, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a secondary obligation incurred or to be incurred, or (iv) arising out of the use of a credit or charge card or information contained on or for use with any such card.

"Cash Collateral Account" is defined in Section 4(e).

"Collateral" shall mean all tangible and intangible property of each Grantor, all personal and real property of each Grantor, all movable and immovable property of each Grantor, in each case whether now owned or hereafter acquired and wherever located, including, but not limited to, the following of each Grantor:

(c) all Accounts;

(d) all certificated securities and uncertificated securities;

(e) all chattel paper, including electronic chattel paper;

(f) all Computer Hardware and Software and all rights with respect thereto, including, any and all licenses, options, warranties, service contracts, program services, test rights, maintenance rights, supporting information, improvement rights, renewal rights and indemnifications, and any substitutions, replacements, additions or model conversions of any of the foregoing;

(g) all Contract Rights;

(h) all commercial tort claims, (including, without limitation any commercial tort claims from time to time described on Schedule 3 (as such Schedule 3 may from time to time be updated));

(i) all deposit accounts;

(j) all documents;

(k) all financial assets;

(l) all General Intangibles, including payment intangibles and software;

(m) all goods (including all Equipment and Inventory), and all embedded software, accessions, additions, attachments, improvements, substitutions and replacements thereto and therefor;

(n) all instruments;

(o) all Intellectual Property, including, without limitation, all Intellectual Property related to Specified Drugs;

(p) all Investment Property;

(q) all of the Capital Stock of each Subsidiary that is owned directly by the Company or a Grantor, including, without limitation, any shares, membership interests, Partnership Interests, Limited Liability Company Interests or other equity interests set forth on Schedule 1 hereto (the "Pledged Securities");

(r) all leasehold interests;

(s) all cash, cash equivalents or other money;

(t) all letter-of-credit rights;

(u) all supporting obligations; and

(v) all books, records, writings, data bases, information and other property relating to, used or useful in connection with, or evidencing, embodying, incorporating or referring to any of the foregoing, and all proceeds, products, offspring, rents, issues, profits and returns of and from any of the foregoing;

provided, however, that, no Excluded Assets shall be included in the Collateral.

"Collateral Documents" means, collectively, this Agreement, each Mortgage, collateral assignment, Control Agreement and any other related agreement, document or instrument pursuant to which a Lien is granted by a Grantor to secure any Indenture Obligations or under which rights or remedies with respect to any such Lien are governed, (including, without limitation, financing statements under the UCC of the relevant states and filings concerning intellectual property to be made with appropriate governmental agencies), in each case, as the same may be amended, supplemented, restated, renewed, replaced or otherwise modified from time to time.

"Computer Hardware and Software" shall mean all of each Grantor's rights (including rights as licensee and lessee) with respect to (a) computer and other electronic data processing hardware, including all integrated computer systems, central processing units, memory units, display terminals, printers, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories, peripheral devices and other related computer hardware; (b) all software and all software programs designed for use on the computers and electronic data processing hardware described in clause (a) above, including all operating system software, utilities and application programs in whatsoever form (source code and object code in magnetic tape, disk or hard copy format or any other listings whatsoever); (c) any firmware associated with any of the foregoing; and (d) any documentation for hardware, software and firmware described in clauses (a), (b) and (c) above, including flow charts, logic diagrams, manuals, specifications, training materials, charts and pseudo codes. For the avoidance of doubt, this definition includes all outsourced information technology functions and relationships.

"Contract Right" shall mean any right of each Grantor to payment under a contract for the sale or lease of goods, the rendering of services or the licensing of any Intellectual Property, which right is at the time not yet earned by performance.

"Contracts" shall mean all contracts between any Grantor and one or more additional parties (including any license, manufacturing, supply, technology transfer, asset sale, partnership, joint venture, and limited liability company agreements).

"Copyrights" shall mean all of each Grantor's now existing or hereafter acquired right, title, and interest in and to all of such Grantor's copyrights, rights to any works of authorship or other copyrightable subject material and all applications for registration, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency in the United States of America, any State thereof, any political subdivision thereof or in any other country together with all rights and privileges arising under applicable law with respect to such Grantor's use of any copyrights and all reissues, divisions, continuations and renewals thereof, including the right to sue and recover damages for past, present and future infringements of any of the foregoing.

"Domain Names" shall mean all Internet domain names and associated uniform resource locator addresses.

"Equipment" shall mean and include as to each Grantor, all of such Grantor's, whether now owned or hereafter acquired and wherever located equipment, machinery, apparatus, motor vehicles, fittings, furniture, furnishings, fixtures, parts, accessories, and all other goods (other than Inventory) and all replacements and substitutions therefor or accessions thereto.

"Excluded Assets" shall mean:

(1) the Voting Stock of any direct or indirect Foreign Subsidiary of the Company in excess of 65% of all of the outstanding Voting Stock of such Foreign Subsidiary;

(2) any property or asset, if and only for so long as the grant of a Lien under the Collateral Documents will constitute or result in (i) a breach, termination or default under any lease, license or any agreement governing a Collaboration Transaction or Royalty Transaction, in each case to which such property or asset is subject (other than pursuant to any provision of any such lease, license or agreement that would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law or principles of equity), but only to the extent the Collateral Agent has a perfected first priority lien on any payments, proceeds or other consideration received or receivable by the Company or any Restricted Subsidiary in connection with the applicable lease, license, Collaboration Transaction or Royalty Transaction or (ii) a violation of applicable law with respect to such property or asset;

(3) property and assets owned by any Grantor that are the subject (i) of Permitted Liens described in clause (6) of the definition thereof for so long as such Permitted Liens are in effect and the Indebtedness secured thereby constitutes Permitted Debt described in clause (4) of the definition thereof or (b) Permitted Liens described in clause (13) of the definition thereof for so long as such Permitted Liens are in effect and the Indebtedness secured thereby constitutes Permitted Debt described in clause (13) of the definition thereof incurred in respect of a Royalty Transaction, and in each case the agreements or instruments evidencing or governing such Indebtedness otherwise prohibits any other Liens thereon, but only for so long as such prohibition exists and is effective and valid;

(4) (i) Deposit Accounts and Securities Accounts the balance of which consists exclusively of (a) withheld income taxes and federal, state or local employment taxes in such amounts as are required to be paid to the Internal Revenue Service or state or local government agencies within the following two months with respect to employees of the Company or any of its Restricted Subsidiaries, and (b) any payroll accounts, health care reimbursement accounts and employee benefits accounts, including any accounts containing amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of the Company or any of its Restricted Subsidiaries, (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) tax accounts, fiduciary accounts and trust accounts and (iii) any Deposit Accounts and Securities Accounts, amounts on deposit in which do not exceed $50,000 individually or $250,000 in the aggregate at any one time;

(5) vehicles and other items covered by certificates of title or ownership, in each case, with a Fair Market Value of less than $1,000,000, to the extent that a security interest cannot be perfected solely by filing a UCC-1 financing statement (or similar instrument);

(6) proceeds and products from any and all of the foregoing excluded collateral described in clauses (1) through (5), unless such proceeds or products would otherwise constitute Collateral securing the Notes.

For the avoidance of doubt, (i) no Specified Drug shall ever be considered an Excluded Asset and (ii) each Specified Drug shall at all times constitute part of the Collateral.

"Excluded Perfection Assets" shall mean (1) registered Intellectual Property to the extent registered in a country other than the Specified Jurisdictions, (2) leasehold interests in real property, to the extent that a security interest cannot be perfected solely by filing a UCC-1 financing statement (or similar instrument), and (3) letter-of-credit rights, electronic chattel paper, commercial tort claims, promissory notes, uncertificated securities and deposit accounts and securities accounts with a Fair Market Value, in the aggregate, of less than $1,500,000, to the extent that a security interest therein cannot be perfected solely by filing a UCC-1 financing statement (or similar instrument).

"General Intangibles" shall mean and include as to each Grantor all of such Grantor's general intangibles (as such term is defined in the UCC), whether now owned or hereafter acquired including, without limitation, all payment intangibles, choses in action, commercial tort claims, causes of action, corporate or other business records, inventions, designs, patents, patent applications, equipment formulations, manufacturing procedures, quality control procedures, trademarks, service marks, trade secrets, goodwill, copyrights, design rights, registrations, licenses, franchises, customer lists, tax refunds, tax refund claims, computer programs and computer software, all claims under guaranties, all rights of indemnification and all other intangible property of every kind and nature.

"Indenture" shall mean the Indenture dated as of October 5, 2015, by and among the Company, the other Grantors party thereto, the Trustee and the Collateral Agent, as amended, supplemented or otherwise modified from time to time.

"Indenture Documents" shall mean the Notes, the Indenture, the Note Guarantees, the Fee Letter, the Collateral Documents and any purchase agreement entered into by a Holder and the Company in connection with the purchase of the Notes.

"Indenture Obligations" shall mean all Obligations in respect of the Notes or arising under the other Indenture Documents.

"Intellectual Property" shall mean, as to each Grantor, such Grantor's now owned and hereafter arising or acquired: Patents, Copyrights, works which are the subject matter of copyrights, Marks, and designs, and licenses and rights to use any of the foregoing and all applications, registrations and recordings relating to any of the foregoing as may be filed in the United States Copyright Office, the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country or jurisdiction, together with all rights and privileges arising under applicable law with respect to any Grantor's use of any of the foregoing; all extensions, adjustments, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing; all rights to sue for past, present and future infringement of any of the foregoing; inventions, trade secrets, formulae, processes, compounds, drawings, designs, blueprints, surveys, reports, manuals, and operating standards; goodwill (including any goodwill associated with any trademark or service mark, or the license of any trademark or service mark); customer and other lists in whatever form maintained; trade secret rights, Domain Names; software and contract rights relating to computer software programs, in whatever form created or maintained.

"Intellectual Property Rights" shall mean all Copyrights, Marks, and Patents, as well as any right, title, and interest in or to trade secrets and Domain Names.

"Inventory" shall mean and include as to each Grantor, all of such Grantor's now owned or hereafter acquired inventory (as such term is defined in the UCC), goods, merchandise and other personal property, wherever located, to be furnished under any contract of service or held for sale or lease, all raw materials, work in process, finished goods and materials and supplies of any kind, nature or description which are or might be used or consumed in such Grantor's business or used in selling or furnishing such goods, merchandise and other personal property, all other inventory of such Grantor, and all documents of title or other documents representing them.

"Investment Property" shall mean any "investment property" as such term is defined in Section 9-102 of the UCC now owned or hereafter acquired by any Grantor, wherever located, including (a) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (b) all securities entitlements of any Grantor, including the rights of any Grantor to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (c) all securities accounts of any Grantor; (d) all commodity contracts of any Grantor; and (e) all commodity accounts held by any Grantor.

"Limited Liability Company Interests" shall mean the entire limited liability company membership interest at any time owned by any Grantor in any limited liability company.

"Marks" shall mean all of each Grantor's now existing or hereafter acquired right, title, and interest in and to all of such Grantor's trademarks, tradenames, trade styles, trade dress, service marks and other protectable indicia of origin and all applications for registration, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office, or any similar office or agency in the United States of America, any State thereof, any political subdivision thereof or in any other country, together with all rights and privileges arising under applicable law with respect to such Grantor's use of any trademarks, tradenames, trade styles and service marks, and all reissues, extensions, continuation and renewals thereof, including the right to sue and recover damages for past, present and future infringements of any of the foregoing.

"New York UCC" is defined in the preamble hereto.

"Organizational Information" is defined in Section 3(h).

"Partnership Interest" shall mean the entire general partnership interest or limited partnership interest at any time owned by any Grantor in any general partnership or limited partnership.

"Patents" shall mean each of Grantor's now existing, or hereafter acquired right, title and interest in and to all of such Grantor's patents and patent applications, including any original, divisional, continuation, continuation-in-part, reissue and reexamination applications or any applications for extension or adjustment of the term of that patent, as may at any time be filed in the United States Patent and Trademark Office or any similar office or agency in any other country, together with all rights and privileges arising under applicable law with respect to such Grantor's use of any such patents or patent applications, including the right to sue and recover damages for past, present and future infringements of any of the foregoing.

"Pledged Company" means, each Person listed on Schedule 1 hereto as a "Pledged Company", together with each other Person, all or a portion of whose Capital Stock, is acquired or otherwise owned by a Grantor after the Issue Date.

"Pledged Securities" is defined in clause (q) of the definition of "Collateral".

"Real Property" shall mean all of each Grantor's right, title and interest in and to its owned and leased premises.

"Secured Party" shall refer to each of the holders of the Notes, the Trustee and the Collateral Agent.

"Security Agreement Joinder" means a Pledge and Security Agreement Joinder, substantially in the form of the attached Annex E, executed and delivered to the Collateral Agent by a Subsidiary for the purpose of adding an additional Grantor as a party to this Agreement.

"Specified Jurisdictions" means the United States of America, the United Kingdom, France, Germany, Spain, Italy and Japan.

"Termination Date" shall mean the earliest to occur of the date on which (a) all Indenture Obligations (other than unasserted indemnification obligations) have been paid in full in cash; (b) the Company exercises its legal defeasance option or covenant defeasance option described in Article 8 of the Indenture; and (c) the satisfaction and discharge of the Indenture occurs in accordance with Article 8 thereof.

"Trustee" shall refer to Wilmington Trust, National Association, in its capacity as indenture trustee under the Indenture.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the relevant jurisdiction.

2. *Security Interest.*

(a) Granting Clause. In consideration of and as collateral security for the prompt full and complete payment and performance when due of the Indenture Obligations now existing or hereafter arising, each Grantor, for value received, does hereby assign, mortgage, pledge and hypothecate to the Collateral Agent, for the benefit of the Secured Parties, and does hereby grant to the Collateral Agent, for the benefit of the Secured Parties, an absolute, unconditional and continuing security interest in all of such Grantor's Collateral.

(b) Voting, etc. Until the occurrence and continuance of a Default or Event of Default, each Grantor shall be entitled to vote any and all of the Capital Stock; provided, however, that no vote shall be cast or any action taken by such Grantor with respect to any Capital Stock which would materially violate any of the terms of this Agreement, the Indenture, any other Indenture Document or which would authorize or effect actions prohibited under the terms of the Indenture or any Indenture Document; and provided further, that the foregoing proviso shall not apply to Capital Stock described in clause (1) of the definition of Excluded Assets. All such rights of such Grantor to vote any Capital Stock (not subject to the provisos in the preceding sentence) shall cease upon notice after the occurrence and during the continuance of a Default or an Event of Default; provided, however, that upon the cure or waiver of such Default or Event of Default, any rights of the Collateral Agent to vote any and all of the Capital Stock shall cease and all such rights of such Grantor to vote any and all of the Capital Stock shall resume.

(c) Payments and Other Distributions. Until the occurrence and continuance of a Default or Event of Default, all cash, dividends or distributions payable in respect of the Capital Stock (to the extent such payments shall be permitted pursuant to the terms and provisions of the Indenture) shall be paid to the applicable Grantor; provided, however, that upon the occurrence and during the continuance of a Default or Event of Default, all cash dividends or distributions payable in respect of the Capital Stock shall be paid to the Collateral Agent as security for the Indenture Obligations; provided, further that upon written notice of the Collateral Agent (at the direction of the holders of the Notes) delivered after the cure or waiver of such Default or Event of Default, all cash dividends or distributions payable in respect of the Capital Stock shall be paid to such Grantor. The Collateral Agent shall be entitled to receive directly, and to retain as part of the Collateral:

(i) all other or additional securities or Investment Property, or rights to subscribe for or purchase any of the foregoing, or property (other than cash) paid or distributed by way of dividend in respect of the Capital Stock; and

(ii) all other or additional securities, Investment Property or property (other than cash) paid or distributed in respect of the Capital Stock by way of split, spin-off, split-up, reclassification, combination of shares or similar rearrangement.

If at any time any Grantor shall obtain or possess any Capital Stock, such Grantor shall be deemed to hold such Capital Stock in trust for the Collateral Agent for the benefit of the Collateral Agent and the other Secured Parties, and such Grantor shall promptly surrender and deliver such Capital Stock to the Collateral Agent; provided, that the foregoing shall not apply to Capital Stock described in clause (1) of the definition of Excluded Assets.

3. *Representations, Warranties and Agreements*. In addition to any representations and warranties of any Grantor set forth in the Indenture Documents, which are incorporated herein by this reference, each Grantor hereby represents and warrants the following to the Collateral Agent:

(a) Authority. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of such Grantor.

(b) Accuracy of Information. The exact legal name of such Grantor is correctly shown on the signature pages hereof.

(c) Enforceability. This Agreement is the legal, valid and binding obligations of such Grantor, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights and except to the extent specific remedies may generally be limited by equitable principles.

(d) Ownership and Liens.

(i) At the time the Collateral becomes subject to the Collateral Agent's Lien, each Grantor shall be the sole owner of and fully authorized and able to sell, transfer, pledge and/or grant a Lien in each and every item of its respective Collateral to the Collateral Agent; and the Collateral shall be free and clear of all Liens and encumbrances whatsoever other than Permitted Liens;

(ii) All of the Pledged Securities (including, without limitation, the Pledged Securities indicated on Schedule 1) have been (to the extent such concepts are relevant with respect to such Pledged Securities) duly authorized and validly issued, are fully paid and non-assessable and other than in connection with a disposition permitted pursuant to the Indenture, there are no options to purchase or similar rights. Except as set forth on Schedule 1 hereto, such Grantor owns 100% of the issued and outstanding shares of Capital Stock or membership interests, Partnership Interests, Limited Liability Company Interests or other equity interests of each of the direct Subsidiaries of such Grantor, and the Pledged Securities constitute or will constitute the percentage of the issued and outstanding Capital Stock of the Pledged Companies of such Grantor identified on Schedule 1 hereto;

(iii) With respect to all Collateral of each Grantor whereby or with respect to which the Collateral Agent may obtain "control" thereof within the meaning of Section 8-106 of the UCC or under any provision of the UCC as the same may be amended or supplemented from time to time, or under the laws of any relevant State, such Grantor shall take commercially reasonable efforts to provide "control" of such Collateral (other than Excluded Perfection Assets) to the Collateral Agent; provided that with respect to such Collateral in existence as of the date hereof, such Grantor shall have sixty (60) days after the date hereof to take commercially reasonable efforts to provide "control" of such Collateral (other than Excluded Perfection Assets) to the Collateral Agent; and

(iv) Each Grantor represents, warrants, covenants and agrees that (a) the certificated Pledged Securities listed on Schedule 1 are the only equity interests owned by such Grantor which are certificated; and (b) the uncertificated Pledged Securities listed on Schedule 1 are the only equity interests owned by such Grantor which are uncertificated.

(e) Capital Stock.

(i) All of the issued and outstanding shares of Capital Stock, membership interests, Limited Liability Company Interests, Partnership Interests, or other similar equity interests, as applicable, owned by such Grantor have been duly authorized and validly issued, are fully paid and nonassessable and were not issued in violation of, and are not subject to, any preemptive or similar rights. All of the outstanding shares of Capital Stock, membership interests, Limited Liability Company Interests, Partnership Interests, or other similar equity interests of its Subsidiaries are owned directly or indirectly by the Company, free and clear of all Liens other than (A)) those imposed by the Securities Act, the rules and regulations of the SEC and the securities or "Blue Sky" laws of certain U.S. state or non-U.S. jurisdictions and (B) those set forth in the corporate organizational documents of the relevant entities. No issuer of Capital Stock is party to any agreement granting "control" (as defined in Section 8-106 of the UCC) of such Grantor's Capital Stock to any third party, except as permitted pursuant to the Indenture Documents. All such Capital Stock is held by such Grantor directly and not through any securities intermediary.

(ii) All Capital Stock owned by each Grantor is and shall be at all times during the term of this Agreement, freely transferrable without restriction or limitation, except as limited (A) by the terms of the Indenture Documents and (B) by foreign laws in connection with the pledge of Capital Stock of issuers organized under the laws of a jurisdiction outside of the United States.

(iii) There are no outstanding options, warrants, convertible securities or other rights, contingent or absolute, to acquire the Capital Stock that is Collateral, and no Capital Stock that is Collateral is subject to any shareholder, voting trust or similar agreement. No consent of any Person is necessary or desirable in connection with the creation or perfection of the security interest in any Capital Stock or the exercise by the Collateral Agent of the voting or other rights and remedies in respect thereof provided for in this Agreement, except as may be required in connection with (A) any disposition by laws affecting the offering and sale of securities generally or (B) the Capital Stock of issuers organized under the laws of a jurisdiction outside the United States.

(f) No Conflicts or Consents. Neither the ownership or intended use of the Collateral by any Grantor, nor the grant of the security interest by each Grantor to the Collateral Agent herein, will (i) materially conflict with any provision of (A) any material federal, state or local law, statute, rule or regulation, (B) any provision of the organizational documents of any of the Grantors, (C) result in a loss or impairment of any Grantor's or its subsidiary's right to use any Intellectual Property to the same extent used prior to the date of this Agreement, or (D) any material agreement, judgment, license, order or permit applicable to or binding upon any of the Grantors, or (ii) result in or require the creation of any lien, charge or encumbrance upon any of the Collateral except as may be contemplated or permitted in the Indenture Documents. Except as expressly contemplated in the Indenture Documents, no consent, approval, authorization or order of, and no notice to or filing with, any court, governmental authority or other Person is required in connection with the grant by each Grantor of the security interest herein or the exercise by the Collateral Agent of its rights and remedies hereunder, other than (x) those previously or contemporaneously obtained or received, (y) as may be required in connection with any disposition by laws affecting the offering and sale of securities generally or (z) as may be required in connection with the Capital Stock of issuers organized under the laws of a jurisdiction outside the United States.

(g) Security Interest. This Agreement creates a legal, valid and binding Lien and security interest in favor of the Collateral Agent in the Collateral securing the Indenture Obligations, except as limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights and except to the extent specific remedies may generally be limited by equitable principles. Upon the taking of the actions described in Section 4(c) hereof, the Lien and security interest in favor of the Collateral Agent in the Collateral created hereby shall be prior and superior in right to any other Person or any other Lien (except Permitted Liens).

(h) Location/Identity. Each Grantor's principal place of business and chief executive office (as those terms are used in the New York UCC) is located at the address set forth on Schedule 2 hereto. Each Grantor's (i) organizational structure and state of organization, (ii) organizational and taxpayer ID numbers, (iii) other legal names, together with the date of any relevant change within the last five years, (iv) recent changes to its identity or corporate structure, and (v) other names (including trade names and d/b/a names, but not including brand names or trademarks relating to products) used within the last five years (the "Organizational Information"), are set forth on Schedule 2 hereto.

(i) Collateral in the Possession of a Bailee.

If any Inventory or other Goods in excess of $1,000,000 in the aggregate are at any time in the possession of a bailee (other than where such Inventory or Goods are in transit, temporarily relocated for maintenance or repair, or located temporarily at the applicable Grantor's customers' locations (with each such location being tracked in such Grantor's customary dispatch roster or other equipment deployment schedule which roster or schedule is held at the location listed on Schedule 6 hereto from which such Inventory or Equipment was deployed)), such Grantor shall promptly notify the thereof and shall use its commercially reasonable efforts to promptly obtain an acknowledgment from such bailee that the bailee holds such Collateral for the benefit of the Collateral Agent and that the bailee shall, following the occurrence of an Event of Default, act upon the instructions of the Collateral Agent without the further consent of such Grantor. The Collateral Agent agrees with such Grantor that the Collateral Agent shall not give any such instructions unless an Event of Default has occurred and is continuing. In addition, the Grantors agree that following the occurrence of an Event of Default that is continuing, the Collateral Agent shall be entitled to remove, without the further consent of the Grantors, any Inventory or Goods (whether or not in excess of $1,000,000) in the possession of any bailee or located at any of such Grantor's customers' locations.

4. *Covenants*. In addition to all covenants and agreements of each Grantor set forth in the Indenture Documents, which are incorporated herein by this reference, the Grantors will comply with the covenants contained in this Section 4 at all times during the period of time this Agreement is effective unless otherwise consented to by the Collateral Agent in writing at the direction of the holders of the Notes.

(a) Inspection and Further Identification of Collateral. The Grantors will keep commercially reasonable records concerning the Collateral and will permit the Collateral Agent and all representatives and agents appointed by the Collateral Agent to inspect, at the Company's expense and upon reasonable prior notice to the Grantors, and unless an Event of Default is continuing, no more than twice per calendar year, any of the Collateral and the books, records, audits, correspondence and all other documents relating to the Collateral at any time during normal business hours, to make and take away photocopies, photographs and printouts thereof and to write down and record any such information. Each Grantor will furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral as the Collateral Agent or any other Secured Party may reasonably request, all in reasonable detail.

(b) Payment of Taxes. The Grantors will timely pay, when due, all taxes, assessments and governmental charges or levies lawfully imposed upon the Collateral or any part thereof. The Grantors may, however, delay paying or discharging any such taxes, assessments or charges so long as the validity thereof is contested in good faith by proper proceedings and provided the Grantors have set aside on such Grantors' books adequate reserves therefor and enforcement of any lien or levy relating to such tax is effectively stayed.

(c) Perfection of Security Interest. Each Grantor shall take all actions as may be reasonably necessary or as the Collateral Agent may reasonably request in writing so as at all times to maintain the validity, perfection, enforceability and priority of the Collateral Agent's security interest in and Lien on the Collateral or to enable the Collateral Agent to protect, exercise or enforce its rights hereunder and in the Collateral, including (i) promptly discharging all Liens other than Permitted Liens and (ii) executing and delivering financing statements, Control Agreements, instruments of pledge, mortgages, notices and assignments, in each case relating to the creation, validity, perfection, priority, maintenance or continuation of the Collateral Agent's security interest and Lien under the UCC or other applicable law, provided, however, that such Grantor shall not be required to take any actions to perfect security interests in (i) the Excluded Perfection Assets, (ii) subject to Section 4(l), shares of Capital Stock of any Pledged Company who is a Foreign Subsidiary by executing a foreign law governed pledge agreement or (iii) subject to Sections 5(e) and 5(g), any Intellectual Property Right registered in a Specified Jurisdiction other than the United States by the filing of security documents in such foreign jurisdictions.

(d) Inventory and Equipment. Each Grantor covenants and agrees that such Grantor shall keep such Grantor's Inventory and Equipment other than (i) Inventory and Equipment in transit, (ii) Inventory with an aggregate fair market or book value (whichever is more) less than $1,000,000, (iii) Equipment with an aggregate fair market or book value (whichever is more) less than $1,000,000, and (iv) Inventory and Equipment disposed of as permitted by the Indenture, only at the locations identified on Schedule 2 and its chief executive offices only at the locations identified on Schedule 2 (as such Schedule may from time to time be updated in accordance with Section 4(m), in each case unless such Grantor has provided written notice of the relocation of such Inventory and Equipment within twenty (20) Business Days thereof. All Equipment necessary to the conduct of any Grantor's business shall be maintained in good operating condition and repair (reasonable wear and tear excepted) and all necessary replacements of and repairs thereto shall be made (reasonable wear and tear excepted). Each Grantor shall use or operate any Equipment in compliance with applicable law in all material respects. Except as permitted under the Indenture, no Grantor shall sell or otherwise dispose of any of its Equipment. Each Grantor agrees that, upon the reasonable request of the Collateral Agent (as directed by the holders of at least 25% in aggregate principal amount of the Notes then outstanding), such Grantor will promptly provide the Collateral Agent with confirmation of the specific location of any Equipment.

(e) Direction to Account Debtors; Contracting Parties; etc. Upon the occurrence and during the continuance of an Event of Default, if the Collateral Agent so directs any Grantor, such Grantor agrees (i) to cause all payments on account of the Accounts and Contracts to be made directly to a cash account held by the Collateral Agent (the "Cash Collateral Account"), (ii) that, upon concurrent notice to such Grantor, the Collateral Agent may directly notify the obligors with respect to any Accounts and/or under any Contracts to make payments with respect thereto as provided in the preceding clause (i), and (iii) that the Collateral Agent may enforce collection of any such Accounts and Contracts and may, in consultation with such Grantor, adjust, settle or compromise the amount of payment thereof, in the same manner and to the same extent as such Grantor. Without notice to or assent by any Grantor, the Collateral Agent may (at the direction of the holders of the Notes), upon the occurrence and during the continuance of an Event of Default, apply any or all amounts then in, or thereafter deposited in, the Cash Collateral Account toward the payment of the Indenture Obligations in the manner provided in Section 4.01 of the Indenture. The reasonable out-of-pocket costs and expenses of collection (including reasonable attorneys' fees), whether incurred by a Grantor or the Collateral Agent, shall be borne by the relevant Grantor. The Collateral Agent shall deliver a copy of each notice referred to in the preceding clause (ii) to the relevant Grantor; provided, that (x) the failure by the Collateral Agent to so notify such Grantor shall not affect the effectiveness of such notice or the other rights of the Collateral Agent created by this Section 4 and (y) no such notice shall be required if an Event of Default of the type described in Sections 6.01(7) or (8) of the Indenture has occurred and is continuing.

(f) Collection. (i) From and after the occurrence and during the continuance of an Event of Default, upon the demand of the Collateral Agent (acting at the direction of the holders of the Notes), each Grantor shall deliver to the Collateral Agent, in original form and on the date of receipt thereof, all checks, drafts, notes, money orders, acceptances, cash and other evidences of Indebtedness at any time received by Grantors. (ii) Following the occurrence and during the continuance of any Event of Default, at its option, the Collateral Agent (acting at the direction of the holders of the Notes), shall have the exclusive right to collect the Accounts of each Grantor, take possession of the Collateral, or both. In such case, the Collateral Agent's actual reasonable, documented, out-of-pocket collection expenses, including but not limited to, stationery and postage, telephone and facsimile, secretarial and clerical expenses and the salaries of any collection personnel used for collection, shall be for the account of the Company and added to the Indenture Obligations.

(g) Instruments and Documents. If any Grantor owns or acquires any instrument or document (as defined in the New York UCC) evidencing or forming a part of the Collateral in excess of (x) so long as no Event of Default has occurred and is continuing, $1,000,000, or (y) so long as an Event of Default has occurred and is continuing, $100,000, constituting Collateral (other than checks and other payment instruments received and collected in the ordinary course of business), such Grantor will within twenty (20) Business Days deliver such instrument or document to the Collateral Agent appropriately endorsed to the order of the Collateral Agent.

(h) Grantors Remain Liable Under Accounts and Contracts. Anything herein to the contrary notwithstanding, the Grantors shall remain liable under each of the Accounts and Contracts to observe and perform all of the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to such Accounts or Contracts. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Account (or any agreement giving rise thereto) or Contract, in each case by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any other Secured Party of any payment relating to such Account or Contract pursuant hereto, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Account (or any agreement giving rise thereto) or any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by them or as to the sufficiency of any performance by any party under any Account (or any agreement giving rise thereto) or Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to them or to which they may be entitled at any time or times.

(i) Letter-of-Credit Rights. If any Grantor is at any time a beneficiary under a letter of credit with a stated amount of $1,000,000 or more, such Grantor shall use its commercially reasonable efforts to (i) arrange for the issuer and any confirmer of such letter of credit to consent in writing to an assignment to the Collateral Agent of the proceeds of any drawing under such letter of credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such letter of credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in this Agreement upon the occurrence and during the continuance of an Event of Default.

(j) Commercial Tort Claims. All commercial tort claims of each in existence on the date of this Agreement are described in Schedule 3 hereto. If any Grantor shall at any time after the date of this Agreement acquire a commercial tort claim in an amount (taking the greater of the aggregate claimed damages thereunder or the reasonably estimated value thereof) of $1,000,000 or more, such Grantor shall promptly (i) notify the Collateral Agent thereof in a writing signed by such Grantor and describing the details thereof; (ii) grant to the Collateral Agent in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement; and (iii) take such actions as may be reasonably necessary to perfect such security interest, including filing a UCC-1 financing statement or UCC-3 statement of amendment in such filing office as may be appropriate, and provide evidence thereof to the Collateral Agent.

(k) Chattel Paper. Upon the reasonable request of the Collateral Agent made at any time or from time to time, each Grantor shall promptly furnish to the Collateral Agent a list of all electronic chattel paper held or owned by such Grantor. Furthermore, if requested by the Collateral Agent, each Grantor shall promptly take all actions which are reasonably practicable so that the Collateral Agent has "control" of all electronic chattel paper with a value of (x) so long as no Event of Default has occurred and is continuing, $1,000,000, or (y) so long as an Event of Default has occurred and is continuing, $100,000, in accordance with the requirements of Section 9-105 of the UCC. Each Grantor will promptly (and in any event within ten (10) days) following any request by the Collateral Agent, deliver all of its tangible chattel paper to the Collateral Agent.

(l) Additional Procedures. To the extent that any Grantor at any time or from time to time owns, acquires or obtains any right, title or interest in any Capital Stock intended to be pledged as Collateral hereunder or the form or nature of any Capital Stock shall change, the Collateral Agent shall automatically (and without the taking of any action by any Grantor) have a security interest in all of the right, title and interest of such Grantor in, to and under such Capital Stock (other than Excluded Assets) pursuant to Section 2(a) of this Agreement and, in addition thereto, such Grantor shall (to the extent provided below but not as to any Excluded Perfection Assets) take the following actions as set forth below (as promptly as practicable and, in any event, within ten (10) Business Days after it obtains such Capital Stock) for the benefit of the Collateral Agent and the other Secured Parties:

(i) with respect to a certificated security (other than a certificated security credited on the books of a clearing corporation or securities intermediary), such Grantor shall physically deliver such certificated security to the Collateral Agent, endorsed to the Collateral Agent or endorsed in blank;

(ii) with respect to an uncertificated security (other (x) than an uncertificated security credited on the books of a clearing corporation or securities intermediary or (y) an uncertificated security of a Subsidiary that does not constitute a Significant Subsidiary), such Grantor shall use commercially reasonable efforts to cause the issuer of such uncertificated security to duly authorize, execute, and deliver to the Collateral Agent, an agreement for the benefit of the Collateral Agent and the other Secured Parties substantially in the form of Annex A hereto pursuant to which such issuer agrees to comply with any and all instructions originated by the Collateral Agent without further consent by the registered owner and not to comply with instructions regarding such uncertificated security (and any Partnership Interests and Limited Liability Company Interests issued by such issuer) originated by any other Person other than a court of competent jurisdiction;

(iii) with respect to a certificated security, uncertificated security, Partnership Interest or Limited Liability Company Interest credited on the books of a clearing corporation or securities intermediary (including a Federal Reserve Bank, Participants Trust Company or The Depository Trust Company), such Grantor shall promptly notify the Collateral Agent in writing thereof and shall comply with the applicable rules of such clearing corporation or securities intermediary (A) in the case of a clearing corporation, to perfect the security interest of the Collateral Agent under applicable law (including, in any event, under Sections 9-314(a), (b) and (c), 9-106 and 8-106(d) of the UCC) or (B) in the case of a securities intermediary, if required to perfect the security interest of the Collateral Agent under applicable law (including, in any event, under Sections 9-314(a), (b) and (c), 9-106 and 8-106(d) of the UCC); and

(iv) with respect to a Partnership Interest or a Limited Liability Company Interest (other than a Partnership Interest or Limited Liability Company Interest credited on the books of a clearing corporation or securities intermediary), (1) if such Partnership Interest or Limited Liability Company Interest is represented by a certificate and is a security for purposes of the UCC, follow the procedure set forth in Section 4(l)(i) hereof, and (2) if such Partnership Interest or Limited Liability Company Interest is not represented by a certificate or is not a security for purposes of the UCC, follow the procedure set forth in Section 4(l)(ii) hereof.

In addition, the Grantors agree that the pledge of the shares of Capital Stock of any Pledged Company who is a Foreign Subsidiary may be supplemented by one or more separate pledge agreements, deeds of pledge, share charges, or other similar agreements or instruments, in each case, reasonably requested by the Collateral Agent after determining the value of such shares of Capital Stock warrant such pledge and executed and delivered by the relevant Grantors in favor of the Collateral Agent, which pledge agreements will provide for the pledge of such shares of Capital Stock in accordance with the laws of the applicable foreign jurisdiction. With respect to such shares of Capital Stock, the Collateral Agent may, at any time and from time to time, in its sole discretion, take commercially reasonable actions in such foreign jurisdictions that will result in the perfection of the Lien created in such shares of Capital Stock.

(m) Further Actions. Without limitation of any other covenant herein, no Grantor shall change or permit to be changed the jurisdiction in which it is incorporated or otherwise organized, or change its legal name (or use a different name), or location of chief executive office, unless such Grantor has given the Collateral Agent not less than ten (10) Business Days prior written notice thereof (along with an update of Schedule 2, as applicable) and the Grantors have taken (or caused to be taken) all steps reasonably necessary to maintain the Collateral Agent's Lien on such Collateral, as well as the priority (subject to Permitted Liens) and effectiveness of such Lien, in each case, other than with respect to Excluded Perfection Assets; provided, that, except as expressly permitted under the Indenture, no Grantor shall change its jurisdiction of incorporation or organization or location of any of its Collateral, in each case, to a jurisdiction or location outside of the Specified Jurisdictions.

(n) Insurance.

(i) Each Grantor shall:

(A) keep its properties adequately insured at all times by financially sound and reputable insurers, as is customary with companies in the same or similar businesses operating in the same or similar locations;

(B) maintain such other insurance, to such extent and against such risks (and with such deductibles, retentions and exclusions), including fire and other risks insured against by extended coverage and coverage for acts of terrorism, as is customary with companies in the same or similar businesses operating in the same or similar locations, including public liability insurance against claims for personal injury or death or property damage occurring upon, in, about or in connection with the use of any properties owned, occupied or controlled by them; and

(C) maintain such other insurance as may be required by law except as could not reasonably be expected to have a Material Adverse Effect.

(ii) Each Grantor shall furnish to the Collateral Agent no more than once each fiscal year information in reasonable detail as to its property and liability insurance carriers. The Collateral Agent shall be named as an additional insured on all insurance policies of any Grantor and the Collateral Agent shall be named as loss payee, with 30 days' notice of cancellation on all property and casualty insurance policies of any Grantor; provided, that the Grantors shall have thirty (30) days (or such longer period of time agreed to by the Collateral Agent in its reasonable discretion) after the date hereof to deliver long-form endorsements (it being understood and agreed that the failure to deliver such long-form endorsements shall constitute an Event of Default).

(o) Leasehold Obligations. Each Grantor shall, and shall cause each of its Subsidiaries to, at all times pay, when and as due, its rental obligations under all leases under which it is a tenant, and shall otherwise comply, in all material respects, with all other terms of such leases and keep them in full force and effect, except, in each case, where the failure to do so could not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(p) Exculpation of Liability. Nothing herein contained shall be construed to constitute the Collateral Agent or any holder of the Notes as any Grantor's agent for any purpose whatsoever, nor shall the Collateral Agent or any holder of the Notes be responsible or liable for any shortage, discrepancy, damage, loss or destruction of any part of the Collateral wherever the same may be located and regardless of the cause thereof, except with respect to the Collateral Agent's or such holder's gross (not mere) negligence or willful misconduct as determined by a final and non-appealable order of a court of competent jurisdiction. Neither the Collateral Agent nor any holder of the Notes, whether by anything herein or in any assignment or otherwise, assumes any of any Grantor's obligations under any contract or agreement to which it is a party, and neither the Collateral Agent nor any holder of the Notes shall be responsible in any way for the performance by any Grantor of any of the terms and conditions thereof.

(q) Deposit Accounts; Etc.

(i) No Grantor maintains, or at any time after the date of this Agreement shall establish or maintain, any demand, time, savings, passbook or similar account, except for such accounts maintained with a bank (as defined in Section 9-102 of the UCC) whose jurisdiction (determined in accordance with Section 9-304 of the UCC) is within a State of the United States other than such accounts constituting Excluded Assets or Excluded Perfection Assets. Schedule 5 hereto accurately sets forth, as of the date of this Agreement, for each Grantor, each deposit account maintained by such Grantor (including a description thereof and the respective account number) and the name of the respective bank with which such deposit account is maintained. In accordance with Section 4.22 of the Indenture, and subject to Section 4(c) hereof, each Grantor shall cause each bank and other financial institution with a Deposit Account or Securities Account (other than an Excluded Account) referred to in Schedule 5 hereto to execute and deliver to the Collateral Agent (or its designee) within thirty (30) days (or such longer period of time agreed to by the Collateral Agent in its reasonable discretion) after the date of this Agreement (the "Control Agreement Date") (or, if later, the date of the establishment of the respective deposit account), a Control Agreement, in form and substance satisfactory to the Collateral Agent, duly executed by such Grantor and such bank or financial institution, or enter into other arrangements in form and substance satisfactory to the Collateral Agent, pursuant to which such institution shall irrevocably agree (unless otherwise agreed to by the Collateral Agent), among other things, that (i) it will comply at any time with the instructions originated by the Collateral Agent (or its designee) to such bank or financial institution directing the disposition of cash, Commodity Contracts, securities, Investment Property and other items from time to time credited to such account, without further consent of such Grantor, which instructions the Collateral Agent (or its designee) will not give to such bank or other financial institution in the absence of the occurrence and continuance of an Event of Default, (ii) all cash, securities, Investment Property and other items of such Grantor deposited with such institution shall be subject to a perfected, first priority security interest in favor of the Collateral Agent (or its designee), and (iii) any right of set off, banker's Lien or other similar Lien, security interest or encumbrance shall be fully waived as against the Collateral Agent (or its designee). On or after the Control Agreement Date, no cash, Cash Equivalents or any other property may be transferred from a Deposit Account or Securities Account that is subject to a Control Agreement to another Deposit Account or Securities Account that is not subject to a Control Agreement. The provisions of this Section 4(q) shall not apply to Excluded Perfection Assets or any Deposit Account or Securities Account constituting an Excluded Asset. The parties hereto agree that the failure to timely comply with the provisions of this Section 4(q)(i) shall constitute an Event of Default.

(ii) After the date of this Agreement, no Grantor shall establish any new demand, time, savings, lockbox, passbook or similar account, except for (x) deposit accounts established and maintained with banks and meeting the requirements of preceding clause (i), (y) Excluded Assets and (z) Excluded Perfection Assets. Subject to Section 4(c) hereof, at the time any such deposit account that is Collateral (other than Excluded Perfection Assets) is established, the appropriate Control Agreement shall be entered into in accordance with the requirements of preceding clause (i) and the respective Grantor shall furnish to the Collateral Agent a supplement to Schedule 5 hereto containing the relevant information with respect to the respective deposit account and the bank with which same is established.

(iii) On the date of this Agreement, the Grantors agree to deposit and maintain at least $50,000,000 in unrestricted (other than with respect to the Reserved Funds) cash and Cash Equivalents (which requirement may be satisfied by Grantors utilizing (i) the Reserved Funds and (ii) any amounts currently on deposit in existing deposit accounts of the Grantors maintained at Wells Fargo Bank, National Association ("Wells Fargo")) in one or more deposit accounts of the Grantors maintained at Wells Fargo for a period of 90 days beginning on the date of this Agreement, during which time Wells Fargo shall propose to provide investment products. If after such 90 day period, the Company, in its good faith reasonable judgment determines Wells Fargo is unable to provide such investment products on similar or better terms as the Company's existing securities investment provider or fails to comply with the Company's investment policy, then the Company will not be obligated to maintain such cash and Cash Equivalents with Wells Fargo; provided that such cash and Cash Equivalents shall be deposited in a deposit account of Company at another bank or other financial institution that is subject to a Control Agreement. It being understood that after the later to occur of the Lien Release Date (as defined in clause (iv) below) or 90 days from the date of this Agreement, the cash and Cash Equivalents may be used for normal course operating expenses and activities of the Grantors and there shall be no minimum balance requirement; provided that, prior to the Lien Release Date, none of the Reserved Funds shall be permitted to be used by Grantors other than to pay (x) all amounts required pursuant to the Existing Secured Notes Indenture to pay the Existing Secured Notes in full in cash in order for the Collateral Agent (as defined in the Existing Secured Notes Indenture) to release all Liens securing the Existing Secured Notes or (y) the Secured Obligations. The parties hereto agree that the failure to timely comply with the provisions of this Section 4(q)(iii) shall constitute an Event of Default.

(iv) On the date of this Agreement, the Grantors agree that $50,000,000 of the cash proceeds from the issuance of the Notes (the "Reserved Funds") on the date hereof shall be deposited in a blocked deposit account of the Company maintained at Wells Fargo, which deposit account shall not be able to be accessed by the Company and shall be subject to a Control Agreement, in form and substance satisfactory to the Collateral Agent, duly executed by the Company and such bank or financial institution pursuant to which such institution shall irrevocably agree, among other things, that (i) it will comply at any time with the instructions originated by the Collateral Agent (or its designee) to such bank or financial institution directing the disposition of cash, Commodity Contracts, securities, Investment Property and other items from time to time credited to such account, without further consent of such Grantor, (ii) it will not comply with the instructions originated by the Company without the prior written consent of the Collateral Agent, (iii) all cash, securities, Investment Property and other items of such Grantor deposited in such account with such institution shall be subject to a perfected, first priority security interest in favor of the Collateral Agent (or its designee), and (iv) any right of set off, banker's Lien or other similar Lien, security interest or encumbrance shall be fully waived as against the Collateral Agent (or its designee). The Company hereby acknowledges and agrees that the Collateral Agent is authorized at all times to use all or any part of the Reserved Funds to pay all amounts required pursuant to the Existing Secured Notes Indenture to pay the Existing Secured Notes in full in cash in order for the Collateral Agent (as defined in the Existing Secured Notes Indenture) to release all Liens securing the Existing Secured Notes. Company further hereby acknowledges and agrees that the Reserved Funds constitute Collateral which secure the Secured Obligations. Promptly after the Collateral Agent receives evidence, in form and substance satisfactory to the Collateral Agent, that (x) all obligations with respect to the Existing Secured Notes have been repaid in full and (y) the Collateral Agent (as defined in the Existing Secured Notes Indenture) has released all Liens securing the Existing Secured Notes (the "Lien Release Date"), the Collateral Agent will consent to the withdrawal of the Reserved Funds from such account and the deposit thereof in another deposit account of the Company as elected in writing by the Company (but subject to (A) the Company's requirement to maintain $50,000,000 at Wells Fargo in accordance with clause (iii) above and (B) such deposit account being subject to a Control Agreement if such withdrawal occurs on or after the Control Agreement Date). The parties hereto agree that the failure to timely comply with the provisions of this Section 4(q)(iv) shall constitute an Event of Default.

(r) Stock Issuance. Except as may be permitted by the Indenture, no Grantor may, directly or indirectly, (i) issue, sell, grant, assign, transfer or otherwise dispose of, any additional stock or membership interests of such Grantor or any option or warrant with respect to, or other right or security convertible into, any additional stock or membership interests of such Grantor, now or hereafter authorized, unless all such additional stock or membership interests, options, warrants, rights or other such securities are made and shall remain part of the Collateral subject to the pledge and security interest granted herein, (ii) take any action to withdraw the authority of or to limit or restrict the authority of such Grantor's managers (if any) or officers to deal and contract with Collateral Agent and to bind and obligate such Grantor, or (iii) pay any interim distribution in cash or other assets to any shareholder or member of any Grantor, except as permitted in the Indenture. Any distribution by any Grantor other than as permitted in the Indenture shall constitute a "wrongful distribution" for purposes of applicable law.

(s) Membership. In accordance with this Agreement, each Grantor hereby acknowledges and agrees that the Collateral Agent or any of its successors and assigns (or any designee of the Collateral Agent), shall, at the Collateral Agent's option, as directed by the holders of the Notes, upon written notice to any Grantor (such Grantor, the "Parent Grantor") of the Collateral Agent's intent to be admitted as a member of any other Grantor (in the place of the Parent Grantor) at any time an Event of Default exists or has occurred and is continuing and following delivery of any required notice hereunder, be admitted as a member of the relevant Grantor without any further approval of the Parent Grantor and without compliance by the Collateral Agent or any other person with any of the conditions or other requirements of the applicable membership agreement and without conferring upon any Person any option (whether under the applicable membership agreement or otherwise) to acquire the stock or membership interests so transferred to the Collateral Agent, its successors or assigns, or its designees. At such time, each Grantor agrees to take such other action and execute such further documents as may be reasonably necessary or as the Collateral Agent may reasonably request from time to time in order to give effect to the provisions of this Agreement.

(t) Further Assurances. The Company will do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, as applicable, any and all such further acts, deeds, conveyances, security agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as may be required from time to time in order to:

(i) carry out the terms and provisions of the Collateral Documents;

(ii) subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests required to be encumbered thereby;

(iii) perfect and maintain the validity, effectively and priority of any of the Collateral Documents and the Liens intended to be created thereby; and

(iv) assure, convey, grant, assign, transfer, preserve, protect and confirm to the Collateral Agent any of the rights granted now or hereafter intended by the parties thereto to be granted to the Collateral Agent under the Collateral Documents or under any other instrument executed in connection herewith.

Upon the exercise by the Trustee, the Collateral Agent or any holder of Notes of any power, right, privilege or remedy under the Indenture or any of the Collateral Documents which requires any consent, approval, recording, qualification or authorization of any governmental authority, the Company will execute and deliver all applications, certifications, instruments and other documents and papers that may be required from the Company for such governmental consent, approval, recording, qualification or authorization.

5. *Special Provisions Concerning Intellectual Property*. Additional Representations and Warranties. Each Grantor represents and warrants (i) that the Intellectual Property Rights listed in Schedule 4 hereto for such Grantor include all Intellectual Property Rights that such Grantor owns as of the date hereof which are issued or registered or applied for at the United States Patent and Trademark Office, the United States Copyright Office, or an equivalent thereof in any state of the United States or any foreign jurisdiction, and (ii) that except as set forth in Schedule 4 it is the true and lawful owner of all issuances, registrations and applications for patents or registration of Intellectual Property Rights listed in Schedule 4 hereto and such issuances, registrations and applications are valid and have not been canceled. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Grantor owns, or is licensed under, and has the right to use, all (i) third party intellectual property and (ii) Intellectual Property, including the Intellectual Property Rights, in each case as used in its businesses as currently conducted and as presently contemplated to be conducted in the future and the Intellectual Property Rights are free and clear of all Liens. No claims or notices of any potential claim have been asserted by any person or entity challenging the use of any such third party intellectual property or Intellectual Property, including the Intellectual Property Rights, by any Grantor or questioning the validity, effectiveness of, or any Grantor's rights to, any Intellectual Property Right or any license or agreement related to third party intellectual property or Intellectual Property, including the Intellectual Property Rights, other than any claims that, if successful, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and no Grantor is aware of any basis for such claims.

(b) Licenses and Assignments. Except as otherwise permitted by the Indenture Documents, each Grantor hereby agrees not to divest itself of any Intellectual Property Right or to exclusively license any Intellectual Property Right.

(c) Infringements. Except as such Grantor in its reasonable business judgment determines is not necessary in the conduct of the Grantor's business, each Grantor agrees to enforce and assert its Intellectual Property, diligently in accordance with reasonable business practices, against any person or entity infringing, misappropriating, misusing, diluting, or violating the Grantor's Intellectual Property, including the Intellectual Property Rights. The conduct of each Grantor's business, including its goods and services and the manufacturing, importation, use, and sale thereof, does not infringe, misappropriate, misuse, dilute, or violate any other person or entity's intellectual property, including any patents, copyrights, trademarks, trade secrets, and domain names, except to the extent that such infringement would not reasonably be expected to have a Material Adverse Effect.

(d) Preservation of Marks. Each Grantor agrees to use its Marks which are material to such Grantor's business in interstate commerce during the time in which this Agreement is in effect and to take all such other actions as are reasonably necessary to preserve such material Marks as trademarks or service marks under the laws of the United States (in each case, other than any such Marks which, in the Grantor's reasonable business judgment, are no longer necessary in the conduct of the Grantor's business).

(e) Maintenance of Patents, Registrations, and Applications. Each Grantor shall, at its own expense, take all commercially reasonable actions to maintain all patents, registrations and applications for patents and registration of its Intellectual Property Rights that are material to such Grantor's business or if involving any Marks, material to such Grantor's business in interstate commerce, during the time in which this Agreement is in effect.

(f) Future Intellectual Property. At its own expense, each Grantor shall take all commercially reasonable efforts to diligently prosecute all material applications for patents or registration of Intellectual Property Rights listed on Schedule 4, in each case for such Grantor and shall not abandon any such application prior to exhaustion of all administrative and judicial remedies (other than applications (i) deemed by such Grantor in its reasonable business judgment to be no longer prudent to pursue or (ii) that are deemed by such Grantor in its reasonable business judgment to no longer be necessary in the conduct of the Grantor's business). If any Grantor acquires Intellectual Property Rights after the effective date of this Agreement or makes an application for registration of an Intellectual Property Right before the United States Patent and Trademark Office, the United States Copyright Office, or an equivalent thereof in any state of the United States, any political subdivision thereof or in any other country or jurisdiction, during any fiscal quarter, contemporaneously with the delivery of the financial reports required under Section 4.03(a) of the Indenture for such fiscal quarter or, if later, as soon as legally permissible, such Grantor shall (x) notify the Collateral Agent in writing concerning such Intellectual Property Right, and (y) execute and deliver a grant of a security interest in such application prepared by the Collateral Agent, at the expense of such Grantor, confirming the grant of a security interest in such Intellectual Property Right to the Collateral Agent hereunder, the form of such security to be substantially in the form of Annex B hereto in the case of Marks, Annex C hereto in the case of Patents and Annex D hereto in the case of Copyrights or in such other form as may be reasonably satisfactory to the Collateral Agent; provided that the foregoing shall not apply to any Intellectual Property Right that is (i) an Excluded Asset or Excluded Perfection Asset or (ii) registered in a Specified Jurisdiction other than the United States unless, in the case of this clause (ii), the Collateral Agent reasonably determines that the value of such Intellectual Property Right warrants the filing of security documents in such foreign jurisdictions. Where a patent or registration that constitutes an Intellectual Property Right is issued during any fiscal quarter hereafter to any Grantor as a result of any application now or hereafter pending, if a security interest in such application has not already been granted to or recorded on behalf of the Collateral Agent hereunder, such Grantor shall deliver to the Collateral Agent a grant of security interest contemporaneously with the delivery of the financial reports required under Section 4.03(a) of the Indenture for such fiscal quarter; provided that the foregoing shall not apply to any Intellectual Property Right that is an Excluded Asset or Excluded Perfection Asset; provided, further, that (i) the Grantors shall promptly notify the Collateral Agent if any Intellectual Property Right ceases to be an Excluded Asset or Excluded Perfection Asset and (ii) any Intellectual Property Right that ceases to be an Excluded Asset or Excluded Perfection Asset shall immediately become subject to the requirements set forth in this Section 5(f).

(g) Existing Intellectual Property. For all Intellectual Property Rights existing as of the effective date of this Agreement, by no later than the effective date of the Agreement, each Grantor shall deliver or cause to be delivered to the Collateral Agent a grant of a security interest in such applications, patents, and registrations, at the expense of such Grantor, confirming the grant of a security interest in such Intellectual Property Right to the Collateral Agent hereunder, the form of such security to be substantially in the form of Annex B hereto in the case of Marks, Annex C hereto in the case of Patents and Annex D hereto in the case of Copyrights or in such other form as may be reasonably satisfactory to the Collateral Agent; provided that the foregoing shall not apply to any Intellectual Property Right that is (i) an Excluded Asset or Excluded Perfection Asset or (ii) registered in a Specified Jurisdiction other than the United States unless, in the case of this clause (ii), the Collateral Agent reasonably determines that the value of such Intellectual Property Right warrants the filing of security documents in such foreign jurisdictions; provided, further, (i) the Grantors shall promptly notify the Collateral Agent if any Intellectual Property Right ceases to be an Excluded Asset or Excluded Perfection Asset and (ii) any Intellectual Property Right that ceases to be an Excluded Asset or Excluded Perfection shall be immediately become subject to the requirements set forth in Section 5(f).

(h) Remedies. Each Grantor hereby grants to the Collateral Agent a limited power of attorney to sign, upon the occurrence and during the continuance of an Event of Default at the direction of the requisite holders of the Notes in accordance with the Indenture, any document which may be required by the United States Patent and Trademark Office, the United States Copyright Office, or an equivalent thereof in any state of the United States, any political subdivision thereof or in any other country or jurisdiction, or similar registrar in order to effect an absolute assignment of all right, title and interest in each patented or registered Intellectual Property Right and each application for a patent or registration, and record the same. If an Event of Default shall occur and be continuing, the Collateral Agent may at the direction of the requisite holders of the Notes in accordance with the Indenture, by written notice to the relevant Grantor, take any or all of the following actions: (i) declare the entire right, title and interest of such Grantor in and to the Intellectual Property Rights, vested in the Collateral Agent for the benefit of the Secured Parties, in which event such rights, title and interest shall immediately vest, in the Collateral Agent for the benefit of the Secured Parties, and the Collateral Agent shall be entitled to exercise the power of attorney referred to in this Section 5(g) hereof to execute, cause to be acknowledged and notarized and record said absolute assignment with the applicable agency or registrar; (ii) take and use or sell the Intellectual Property Rights; (iii) take and use or sell the goodwill of such Grantor's business symbolized by the Marks and the right to carry on the business and use the assets of such Grantor in connection with which the Marks or Domain Names have been used; and (iv) direct such Grantor to refrain, in which event such Grantor shall refrain, from using the Intellectual Property Rights in any manner whatsoever, directly or indirectly, and such Grantor shall execute such further documents that the Collateral Agent may reasonably request to further confirm this and to transfer ownership of the Intellectual Property Rights and registrations and any pending applications in the United States Copyright Office, United States Patent and Trademark Office, equivalent office in a state of the United States or a foreign jurisdiction or applicable Domain Name registrar to the Collateral Agent.

(i) Intellectual Property Assignments. During the term of this Agreement, each Grantor shall secure valid written assignments of ownership from all persons who have contributed to the creation or development of Intellectual Property or who have applied for patents or registration of or obtained patents for or registered Intellectual Property of all rights of such persons in such Intellectual Property that the Grantors do not already own by operation of law and valid written agreements by all such persons to cooperate in the prosecution of any applications, patents or registrations of, and in the enforcement of, any such Intellectual Property (hereinafter all such assignments and agreements referred to as the "IP Assignments"); except to the extent that any failure to obtain an IP Assignment, individually or in the aggregate, does not adversely affect the value of the Company's Intellectual Property and would not impair the Collateral Agent's ability to use and dispose of such Intellectual Property as provided for in the Collateral Documents. Copies of all such IP Assignments shall be promptly delivered to the Collateral Agent upon the request of the Collateral Agent.

(j) Additional Covenants. Notwithstanding the foregoing, to the extent that any issuance of, or registration or application for, a Grantor's Intellectual Property Rights is subject to a chain of title defect, is not in the current legal name of the applicable Grantor, or is subject to any form of Lien, such Grantor shall promptly prepare, execute, file and record (and pay all costs, including legal and filing fees) as necessary to cure such title defects, provide for current ownership of the asset by the Grantor and remove such unpermitted Liens (hereinafter all such actions referred to as the "IP Title Defect Correction Actions"); except to the extent that any failure to perform an IP Title Defect Correction Action, individually or in the aggregate, does not adversely affect the value of the Company's Intellectual Property and would not impair the Collateral Agent's ability to use and dispose of such Intellectual Property as provided for in Collateral Documents. By no later than the effective date of this Agreement, the Grantors shall have provided copies of all documentation and communications concerning such IP Title Defect Correction Actions to the Collateral Agent with respect to existing Intellectual Property Rights of the Grantor and following closing such documentation and communications for later developed or acquired Intellectual Property Rights shall promptly be provided.

6. *Rights of Collateral Agent*. The Collateral Agent shall have the rights contained in this Section 6 at all times during the period of time this Agreement is effective.

(a) Financing Statements Filings. Each Grantor hereby authorizes the Collateral Agent to file (or any Secured Party to file on behalf of the Collateral Agent), without the signature of such Grantor, (but the Collateral Agent shall not be obligated to so file and shall have no responsibility with respect to the form, content or renewal thereof) one or more financing or continuation statements, and amendments thereto, relating to the Collateral (which statements may describe the Collateral as "all assets" or words of similar import of such Grantor); provided, however, such authorization shall not relieve any Grantor from its respective obligations to take all actions necessary to perfect and maintain the perfection of the Collateral Agent's Lien on the Collateral to the extent required hereunder. All reasonable, documented, out-of-pocket charges, expenses and fees that the Collateral Agent may incur in doing any of the foregoing, and any local taxes relating thereto, shall be paid by the Grantors to the Collateral Agent within ten (10) Business Days of demand.

(b) Power of Attorney. Each Grantor hereby irrevocably appoints the Collateral Agent as such Grantor's attorney-in-fact, such power of attorney being coupled with an interest, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, after the occurrence and during the continuance of an Event of Default, to take any action and to execute any instrument that the Collateral Agent or any Secured Party may deem necessary or appropriate to accomplish the purposes of this Agreement, including without limitation: (i) to demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of the Collateral; (ii) to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (i) above; and (iii) to file any claims or take any action or institute any proceedings that the Collateral Agent or any Secured Party may deem necessary or appropriate for the collection and/or preservation of the Collateral or otherwise to enforce the rights of the Collateral Agent and the Secured Parties with respect to the Collateral.

(c) Further Rights. The Collateral Agent has been appointed as the Collateral Agent hereunder pursuant to the Indenture and shall be entitled to the benefits of the Indenture Documents. Notwithstanding anything contained herein to the contrary, the Collateral Agent may employ agents, trustees, or attorneys-in-fact and may vest any of them with any property (including, without limitation, any Collateral pledged hereunder), title, right or power deemed necessary for the purposes of such appointment. Notwithstanding anything to the contrary herein, the following provisions shall govern the Collateral Agent's rights, powers, obligations and duties under this Agreement:

(i) The Collateral Agent shall have no duty to act, consent or request any action of the Grantors or any other Person in connection with this Agreement (including all schedules and exhibits attached hereto) unless the Collateral Agent shall have received written direction from the requisite holders of the Notes in accordance with the Indenture.

(ii) The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account. Neither any Secured Party nor any of its officers, directors, employees or agents shall be liable to the Grantors for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon any of them to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct. The Collateral Agent shall not be responsible for, nor incur any liability with respect to, (A) the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the security interest in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part under this Agreement or any of the other Indenture Documents, except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Collateral Agent, (B) the validity or sufficiency of the Collateral or any agreement or assignment contained therein, (C) the validity of the title of the Grantors to the Collateral, (D) insuring the Collateral or (E) the payment of taxes, charges or assessments upon the Collateral or otherwise as to the maintenance of the Collateral.

(iii) Notwithstanding any provision to the contrary elsewhere in this Agreement or any other Indenture Documents, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth in this Agreement or such other Indenture Documents and no implied covenants, functions or responsibilities shall be read into this Agreement or otherwise exist against the Collateral Agent.

(iv) The Collateral Agent shall not be deemed to be in a relationship of trust or confidence with any Secured Party, or any other Person by reason of this Agreement, and shall not owe any fiduciary, trust or other special duties to the any Secured Party, or any other Person by reason of this Agreement. The parties hereto acknowledge that the Collateral Agent's duties do not include any discretionary authority, determination, control or responsibility with respect to any Indenture Documents or any Collateral, notwithstanding any rights or discretion that may be granted to the Collateral Agent in such Indenture Documents. The provisions of this Agreement, including, without limitation those provisions relating to the rights, duties, powers, privileges, protections and indemnification of the Collateral Agent shall apply with respect to any actions taken or not taken by the Collateral Agent under any Indenture Documents.

(v) Notwithstanding anything herein to the contrary, in no event shall the Collateral Agent have any obligation to inquire or investigate as to the correctness, veracity, or content of any instruction received from any party to this Agreement or any other Indenture Documents. In no event shall the Collateral Agent have any liability in respect of any such instruction received by it and relied on with respect to any action or omission taken pursuant thereto.

(vi) With respect to the Collateral Agent's duties under this Agreement or any of the Indenture Documents, the Collateral Agent may act through its attorneys, accountants, experts and such other professionals as the Collateral Agent deems reasonably necessary, advisable or appropriate and shall not be responsible for the misconduct or negligence of any attorney, accountant, expert or other such professional appointed with due care.

(vii) Neither the Collateral Agent nor any of its experts, officers, directors, employees, agents, attorneys-in-fact or affiliates shall be (x) liable for any action lawfully taken or omitted to be taken by it under or in connection with this Agreement or any of the Indenture Documents (except for its gross negligence or willful misconduct), or (y) responsible in any manner for any recitals, statements, representations or warranties (other than its own recitals, statements, representations or warranties) made in this Agreement or any of the other Indenture Documents or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Agreement or any of the Indenture Documents or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any of the Indenture Documents or for any failure of the Grantors or any other Person to perform their obligations hereunder and thereunder. The Collateral Agent shall not be under any obligation to any Person to ascertain or to inquire as to (A) the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any of the Indenture Documents or to inspect the properties, books or records of the Grantors, (B) whether or not any representation or warranty made by any Person in connection with this Agreement or any Indenture Documents is true, (C) the performance by any Person of its obligations under this Agreement or any of the Indenture Documents or (D) the breach of or default by any Person of its obligations under this Agreement or any of the Indenture Documents.

(viii) The Collateral Agent shall not be bound or required to take any action that in the opinion of the Collateral Agent (which may be based on advice of counsel) is in conflict with any applicable law, this Agreement or any of the other Indenture Documents, or any order of any court or administrative agency.

(ix) The Collateral Agent shall be authorized to but shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or monitoring or maintaining the perfection of any security interest in the Collateral. It is expressly agreed, to the maximum extent permitted by applicable law, that the Collateral Agent shall have no responsibility for (x) taking any necessary steps to preserve rights against any Person with respect to any Collateral or (y) taking any action to protect against any diminution in value of the Collateral, but, in each case (A) subject to the requirement that the Collateral Agent may not act or omit to take any action if such act or omission would constitute gross negligence or willful misconduct and (B) the Collateral Agent may do so and all expenses reasonably incurred in connection therewith shall be part of the Indenture Documents.

(x) The Collateral Agent shall not be liable or responsible for any loss or diminution in the value of any Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Agent in good faith, except to the extent of the Collateral Agent’s gross negligence or willful misconduct.

(xi) Notwithstanding anything in this Agreement or any of the Indenture Documents to the contrary, (A) in no event shall the Collateral Agent or any officer, director, employee, representative or agent of the Collateral Agent be liable under or in connection with this Agreement or any of the Indenture Documents for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to lost profits or loss of opportunity, whether or not foreseeable, even if the Collateral Agent has been advised of the possibility thereof and regardless of the form of action in which such damages are sought; and (B) the Collateral Agent shall be afforded all of the rights, powers, immunities and indemnities set forth in this Agreement or in all of the other Indenture Documents to which it is a signatory as if such rights, powers, immunities and indemnities were specifically set out in each such Indenture Documents. In no event shall the Collateral Agent be obligated to invest any amounts received by it hereunder.

(xii) The Collateral Agent shall be entitled conclusively to rely, and shall be fully protected in relying, upon any note, writing, resolution, request, direction, certificate, notice, consent, affidavit, letter, cablegram, telegram, telecopy, email, telex or teletype message, statement, order or other document or conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and/or upon advice and/or statements of legal counsel, independent accountants and other experts reasonably selected by the Collateral Agent and need not investigate any fact or matter stated in any such document. Any such statement of legal counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in accordance therewith. The Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any of the other Indenture Documents (A) if such action would, in the reasonable opinion of the Collateral Agent (which may be based on the opinion of legal counsel), be contrary to applicable law or any of the Indenture Documents, (B) if such action is not provided for in this Agreement or any of the other Indenture Documents, (C) if, in connection with the taking of any such action hereunder or under any of the Indenture Documents that would constitute an exercise of remedies hereunder or under any of the Indenture Documents it shall not first be indemnified to its satisfaction by the holders of the Notes against any and all risk of nonpayment, liability and expense that may be incurred by it, its agents or its counsel by reason of taking or continuing to take any such action, or (D) if, notwithstanding anything to the contrary contained in this Agreement, in connection with the taking of any such action that would constitute a payment due under any agreement or document, it shall not first have received from the holders of the Notes or the applicable Grantor funds equal to the amount payable. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any of the other Indenture Documents in accordance with a request of the Trustee or the requisite holders of the Notes in accordance with the Indenture, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the other holders of the Notes and the Trustee.

(xiii) The Collateral Agent shall not be deemed to have actual, constructive, direct or indirect knowledge or notice of the occurrence of any Default or Event of Default unless and until the Collateral Agent has received a written notice or a certificate from a Grantor, a holder of the Notes or the Trustee stating that a Default or Event of Default has occurred. The Collateral Agent shall have no obligation whatsoever either prior to or after receiving such notice or certificate to inquire whether a Default or Event of Default has in fact occurred and shall be entitled to rely conclusively, and shall be fully protected in so relying, on any notice or certificate so furnished to it. No provision of this Agreement or any of the Indenture Documents shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Agreement, any of the other Indenture Documents or the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability including an advance of moneys necessary to perform work or to take the action requested is not reasonably assured to it, the Collateral Agent may decline to act unless it receives indemnity satisfactory to it in its sole discretion, including an advance of moneys necessary to take the action requested. The Collateral Agent shall be under no obligation or duty to take any action under this Agreement or any of the other Indenture Documents or otherwise if taking such action (x) would subject the Collateral Agent to a tax in any jurisdiction where it is not then subject to a tax or (y) would require the Collateral Agent to qualify to do business in any jurisdiction where it is not then so qualified.

7. *Remedies and Related Rights*.

If an Event of Default shall have occurred and be continuing, then and in every such case, the Collateral Agent, in addition to any rights now or hereafter existing under applicable law and under the other provisions of this Agreement, shall have all rights as a secured creditor under any UCC, and such additional rights and remedies to which a secured creditor is entitled under the laws in effect in all relevant jurisdictions when a debtor is in default under a security agreement and may exercise one or more of the rights and remedies provided in this Section.

(a) Remedies. If an Event of Default shall have occurred and be continuing, the Collateral Agent may from time to time at the written direction of the requisite holders of the Notes in accordance with the Indenture and applicable law, without limitation and without notice except as expressly provided in any of the Indenture Documents:

(i) exercise in respect of the Collateral all the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Collateral);

(ii) require the Grantors to, and such Grantors hereby agree that they will at their expense and upon request of the Collateral Agent, assemble the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place where such Collateral is permitted to be kept pursuant to Section 3(i);

(iii) reduce the Secured Parties' claim to judgment or foreclose or otherwise enforce, in whole or in part, the security interest granted hereunder by any available judicial procedure;

(iv) sell or otherwise dispose of, at its office, on the premises of any Grantor or elsewhere, the Collateral, for cash, on credit, and upon such terms as may be commercially reasonable, as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale or other disposition of any part of the Collateral shall not exhaust the Collateral Agent's power of sale, but sales or other dispositions may be made from time to time until all of the Collateral has been sold or disposed of or until the Indenture Obligations have been paid and performed in full), and at any such sale or other disposition it shall not be necessary to exhibit any of the Collateral;

(v) buy the Collateral, or any portion thereof, at any public sale;

(vi) buy the Collateral, or any portion thereof, at any private sale, for cash, on credit, and upon such other terms as may be commercially reasonable, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations;

(vii) apply for the appointment of a receiver for the Collateral, and Grantors hereby consent to any such appointment; and

(viii) at the option of and if instructed by the requisite holders of the Notes, retain the Collateral on behalf of the holders of the Notes or distribute the Collateral to the holders of the Notes, in each case in satisfaction of the Indenture Obligations, whenever the circumstances are such that the Collateral Agent is entitled to do so under the UCC or otherwise; to the full extent permitted by the UCC, the Collateral Agent shall be permitted to elect whether such retention shall be in full or partial satisfaction of the Indenture Obligations.

In the event the Collateral Agent shall elect (at the instruction of the requisite holders of the Notes) to sell the Collateral, the Collateral Agent may sell the Collateral without giving any warranties and shall be permitted to specifically disclaim any warranties of title or the like. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell (at the instruction of the requisite holders of the Notes) the Collateral and the Grantors shall be credited with the proceeds of the sale. Each Grantor agrees that in the event such Grantor or any obligor is entitled to receive any notice under the UCC, as it exists in the state governing any such notice, of the sale or other disposition of any Collateral, reasonable notice shall be deemed given when such notice is deposited in a depository receptacle under the care and custody of the United States Postal Service, postage prepaid, at such party's address set forth on the signature pages hereof, ten (10) days prior to the date of any public sale, or after which a private sale, of any of such Collateral is to be held. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) Application of Proceeds. If any Event of Default shall have occurred and be continuing, any cash held by the Collateral Agent as Collateral, and any cash proceeds received by the Collateral Agent in respect of any sale or other disposition of, collection from, or other realization upon, all or any part of the Collateral shall be transferred, conveyed or distributed to the Trustee to be applied in accordance with the Indenture or as otherwise may be directed by the Trustee pursuant to the Indenture Documents.

(c) Deficiency. In the event that the proceeds of any sale of, collection from, or other realization upon, all or any part of the Collateral by the Collateral Agent are insufficient to pay all amounts to which the Collateral Agent is legally entitled, the Company, the other Grantors and any other Person who guaranteed or is otherwise obligated to pay all or any portion of the Indenture Obligations shall be liable for the deficiency, together with interest thereon as provided in the Indenture Documents, to the full extent permitted by the UCC.

(d) Waiver. Except as otherwise provided in this Agreement, EACH GRANTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE COLLATERAL AGENT'S TAKING POSSESSION OR THE COLLATERAL AGENT'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH ANY GRANTOR WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR OF ANY STATE, and each Grantor hereby further waives, to the extent permitted by applicable law, and releases the Collateral Agent from:

(i) all claims, damages and demands against the Collateral Agent arising out of the repossession, retention or sale of all or any part of the Collateral, except any damages which are the direct result of the Collateral Agent's gross negligence or willful misconduct;

(ii) all claims, damages and demands against the Collateral Agent arising by reason of the fact that the price at which the Collateral, or any part thereof, may have been sold at a private sale was less than the price which might have been obtained at public sale or was less than the aggregate amount of the Indenture Obligations, even if the Collateral Agent accepts the first offer received which the Collateral Agent in good faith deems to be commercially reasonable under the circumstances and does not offer the Collateral, or any portion thereof, to more than one offeree;

(iii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder; and

(iv) all equities or rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale or other disposition of the Collateral or any portion thereof, and each Grantor, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of each Grantor therein and thereto, and shall be a perpetual bar both at law and in equity against each Grantor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under the Grantor.

(e) Remedies Cumulative. No right, power or remedy herein conferred upon or reserved to the Collateral Agent is intended to be exclusive of any other right, power or remedy, and every such right, power and remedy shall, to the extent permitted by applicable Law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent or later assertion or employment of any other appropriate right, power or remedy.

(f) Delay Not Waiver. No delay or omission of the Collateral Agent or any other Secured Party to exercise any right, power or remedy accruing upon the occurrence and during the continuance of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every right, power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by the Collateral Agent.

(g) Restoration of Rights and Powers. In case the Collateral Agent shall have instituted any action or proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry, leasing, conveyance, assignment, transfer, other disposition, other realization or otherwise, and such action or proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case each Grantor, the Collateral Agent and each other Secured Party shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of the Collateral Agent and each Grantor shall continue as if no such actions or proceedings had been instituted.

(h) Environmental Liability. In the event that the Collateral Agent is requested to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, which in the Collateral Agent's sole discretion may cause the Collateral Agent to be considered an "owner or operator" under any environmental laws or otherwise cause the Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Agent reserves the right to not follow such direction, to resign as Collateral Agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver. Neither the Trustee nor the Collateral Agent will be liable to any Person for any environmental liability or any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment. Neither the Trustee nor the Collateral Agent shall be responsible for any loss incurred by the Secured Parties by the Collateral Agent's refusal to take actions to acquire title or other actions that may result in it being considered an "owner or operator".

8. *Security Interest Absolute*. All rights of the Collateral Agent and the security interests granted to the Collateral Agent hereunder, and all obligations of Grantors hereunder, to the extent permitted by applicable law, are absolute and unconditional, irrespective of:

(a) Any lack of validity or enforceability of the Indenture, the Notes or any other Indenture Document; or

(b) The failure of the Collateral Agent or any holder of a Note:

(i) To assert any claim or demand or to enforce any right or remedy under the provisions of the Notes or any other Indenture Document or otherwise, or

(ii) To exercise any right or remedy against any collateral securing any obligations of Grantors owing to the Secured Parties; or

(c) Any change in the time, manner or place of payment of, or in any other term of, all or any of the Indenture Obligations or any other extension, compromise or renewal of any Indenture Obligations; or

(d) Any reduction, limitation, impairment or termination of any Indenture Obligations for any reason (other than the satisfaction and discharge of the Indenture Obligations in full), including any claim of waiver, release, surrender, alteration or compromise (and the Grantors hereby waive any right to or claim of any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of any invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Indenture Obligations); or

(e) Any amendment to, rescission, waiver, or other modification of, or any consent to departure from, the Notes or any other Indenture Document; or

(f) Any addition, exchange, release, surrender or nonperfection of any collateral (including the Collateral), or any amendment to or waiver or release of or addition to or consent to departure from any guaranty, for any of the Indenture Obligations; or

(g) Any other circumstances which might otherwise constitute a defense available to, or a legal or equitable discharge of, any Grantor, including, without limitation, any and all suretyship defenses.

9. *Indemnity.*

(a) Each Grantor jointly and severally agrees to indemnify, reimburse and hold the Collateral Agent, each other Secured Party and their respective successors, assigns, officers, directors, employees, affiliates and agents (hereinafter in this Section 9 referred to individually as "Indemnitee," and collectively as "Indemnitees") harmless from any and all liabilities, obligations, damages, injuries, penalties, claims, demands, actions, suits, judgments and any and all out-of-pocket costs, expenses or disbursements (including reasonable attorneys' fees and expenses) (for the purposes of this Section 9 the foregoing are collectively called "expenses") of whatsoever kind and nature imposed on, asserted against or incurred by any of the Indemnitees in any way relating to or arising out of this Agreement, any other Indenture Document or any other document executed in connection herewith or therewith or in any other way connected with the administration of the transactions contemplated hereby or thereby or the enforcement of any of the terms of, or the preservation of any rights under any thereof, or in any way relating to or arising out of the manufacture, ownership, ordering, purchase, delivery, control, acceptance, lease, financing, possession, operation, condition, sale, return or other disposition, or use of the Collateral (including latent or other defects, whether or not discoverable), the violation of the laws of any country, state or other governmental body or unit, any tort (including claims arising or imposed under the doctrine of strict liability, or for or on account of injury to or the death of any Person (including any Indemnitee), or property damage), or contract claim; provided, that no Indemnitee shall be indemnified pursuant to this Section 9(a) for losses, damages or liabilities to the extent caused by the gross negligence or willful misconduct of such Indemnitee (as determined by a court of competent jurisdiction in a final and non-appealable decision). Each Grantor agrees that upon written notice by any Indemnitee of the assertion of such a liability, obligation, damage, injury, penalty, claim, demand, action, suit or judgment, the relevant Grantor shall assume full responsibility for the defense thereof. Each Indemnitee agrees to promptly notify the relevant Grantor of any such assertion of which such Indemnitee has knowledge.

(b) Without limiting the application of Section 9(a) hereof, each Grantor agrees, jointly and severally, to pay or reimburse the Collateral Agent for any and all reasonable fees, out-of-pocket costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Collateral Agent's Liens on, and security interest in, the Collateral, including all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens upon or in respect of the Collateral, premiums for insurance with respect to the Collateral and all other fees, out-of-pocket costs and expenses in connection with protecting, maintaining or preserving the Collateral and the Collateral Agent's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Collateral.

(c) Without limiting the application of Section 9(a) or (b) hereof, each Grantor agrees, jointly and severally, to pay, indemnify and hold each Indemnitee harmless from and against any loss, out-of-pocket costs, damages and expenses which such Indemnitee may suffer, expend or incur in consequence of or growing out of any misrepresentation by any Grantor in this Agreement, any other Indenture Document or in any writing contemplated by or made or delivered pursuant to or in connection with this Agreement or any other Indenture Documents.

(d) If and to the extent that the obligations of any Grantor under this Section 9 are unenforceable for any reason, such Grantor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

(e) Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Indenture Obligations secured by the Collateral. The indemnity obligations of each Grantor contained in this Section 9 shall continue in full force and effect notwithstanding the full payment of all of the other Indenture Obligations and notwithstanding the full payment of all the Notes issued under the Indenture and the payment of all other Indenture Obligations and notwithstanding the discharge thereof and the occurrence of the Termination Date.

(f) To the extent permitted by applicable law, no party hereto shall assert against any other party hereto or any Secured Party, and each party hereby waives, any claim against any other party hereto or any Secured Party on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Indenture Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, the Notes or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party hereto hereby waives, releases and agrees not to sue any other party hereto or any Secured Party upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(g) The agreements in this Section shall survive repayment of the Indenture Obligations, all other amounts payable under the Indenture Documents and the resignation or removal of the Collateral Agent.

10. *Miscellaneous*.

(a) Amendment. None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by each Grantor and the Collateral Agent (with the written consent of the holders of the Notes in accordance with the Indenture).

(b) No Waiver by Collateral Agent. Neither the failure by the Collateral Agent to exercise, nor the delay by the Collateral Agent in exercising, any right or remedy upon any Event of Default shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right or remedy at a later date. No single or partial exercise by the Collateral Agent of any right or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right or remedy hereunder may be exercised at any time. No waiver of any provision hereof or consent to any departure by any Grantor therefrom shall be effective unless the same shall be in writing and signed by the Collateral Agent and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to or demand on any Grantor in any case shall of itself entitle such Grantor to any other or further notice or demand in similar or other circumstances.

(c) Costs and Expenses. The Grantors will upon demand pay to the Collateral Agent and the Secured Parties the amount of any and all reasonable, documented, out-of-pocket costs and expenses (including without limitation, reasonable attorneys' agents' and professional advisors' fees and expenses), which the Collateral Agent and the Secured Parties may incur in connection with the enforcement of any of the rights of the Collateral Agent and the Secured Parties under the Indenture Documents in connection with any Event of Default.

(d) No Third Party Beneficiaries. The agreements of the parties hereto are solely for the benefit of the Grantors, the Collateral Agent, and the other Secured Parties and their respective successors and assigns and no other Person shall have any rights hereunder.

(e) Termination; Release. After the Termination Date, this Agreement (including any provision providing for the appointment of the Collateral Agent as attorney-in-fact for any Grantor) and the Liens and security interests granted hereunder shall terminate automatically and without further action by any party, and the Collateral Agent, at the written request and sole expense of the Company, will execute and deliver to each Grantor the proper instruments acknowledging the termination of this Agreement, and will duly assign, transfer and deliver to each Grantor (without recourse and without any representation or warranty) such of the Collateral as may be in possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement. In addition, the Collateral Agent, at the written request and sole expense of the Company, will release from the Lien created hereunder: (1) Collateral that is sold, transferred, disbursed or otherwise disposed of to a Person other than a Grantor to the extent such sale, transfer, disbursement or disposition is not prohibited by the provisions of the Indenture, as certified in writing by the Company; *provided* that any products, proceeds or other consideration received by the Grantors in respect of any such Collateral shall continue to constitute Collateral to the extent required hereunder; (2) the property and assets of a Grantor upon the release of such Grantor from its Note Guarantee in accordance with the terms of the Indenture, as certified in writing by the Company; and (3) any property or asset of a Grantor that is or becomes an Excluded Asset, as certified in writing by the Company. The Collateral Agent shall also execute and deliver, at the written request and expense of the Company, upon termination of this Agreement or occurrence of any event in the immediately preceding sentence, such UCC termination statements, and such other documentation as shall be reasonably requested by any Grantor to effect the termination and release of the Liens and security interests granted by this Agreement.

(f) Governing Law; Submission to Jurisdiction.

(i) THIS AGREEMENT, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE AND MATTERS RELATING TO THE CREATION, VALIDITY, ENFORCEMENT OR PRIORITY OF THE LIENS CREATED BY THIS AGREEMENT, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATION LAW) EXCEPT AS MAY BE REQUIRED BY OTHER MANDATORY PROVISIONS OF LAW.

(ii) Each Grantor hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Each Grantor hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. To the extent permitted by applicable law, each Grantor further irrevocably agrees to the service of process of any of the aforementioned courts in any suit, action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, return receipt requested, to such Grantor at the address referenced in Section 10(i), such service to be effective upon the date indicated on the postal receipt returned from the Grantor.

(iii) To the extent any Grantor may, in any action or proceeding arising out of or relating to this Agreement, be entitled under any applicable law to require or claim that the Collateral Agent or any Secured Party post security for costs or take similar action, such Grantor hereby irrevocably (to the extent permitted by applicable law) waives and agrees not to claim the benefit of such entitlement.

(g) WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE SECURED PARTIES TO ENTER INTO THIS AGREEMENT AND THE OTHER INDENTURE DOCUMENTS.

(h) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held to be illegal, invalid or unenforceable.

(i) Notices. All notices to permitted or required under this Agreement may be sent as follows:

If to any Grantor: to the address of each Grantor set forth on the signature page hereto with a copy (which shall not constitute notice) to:

Sidley Austin LLP
2001 Ross Avenue
Suite 3600
Dallas, Texas 75201
Attention: Christopher Gleason

If to the Collateral Agent:

TC Lending, LLC
301 Commerce Street, Suite 3300
Fort Worth, TX 76102
Attention: Legal and Compliance Department

with a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attention: Frederic L. Ragucci

All notices to any Secured Party permitted or required under this Agreement may be sent to the Collateral Agent with a copy to the Trustee.

Any notice required to be given to any Grantor shall be given to all Grantors.

Unless otherwise specifically provided herein, any notices or other communications required or permitted hereunder shall be in writing, and shall be sufficiently given if made by hand delivery, by telecopier or registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below each party's name on the signature pages hereto. Each of the parties by written notice to each other may designate additional or different addresses for notices to such Person. Any notice or communication to the parties shall be deemed to have been given or made as of the date so delivered if personally delivered; when receipt is acknowledged, if faxed; and five (5) calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address or a notice sent by mail to the Collateral Agent shall not be deemed to have been given until actually received by the addressee).

(j) Binding Effect and Assignment. This Agreement (i) creates a continuing security interest in the Collateral, (ii) shall be binding on each Grantor and its successors and assigns, and (iii) shall inure to the benefit of the Collateral Agent and its successors and assigns. Neither the Collateral Agent's nor Grantors' rights and obligations hereunder may be assigned or otherwise transferred without the prior written consent of the other party, except that the Collateral Agent's rights under the Agreement may be assigned to any Person to whom the Indenture Obligations are validly assigned in accordance with the Indenture Documents.

(k) Cumulative Rights. All rights and remedies of the Collateral Agent hereunder are cumulative of each other and of every other right or remedy that the Collateral Agent may otherwise have at law or in equity or under any of the other Indenture Documents, and the exercise of one or more of such rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies. Further, except as specifically noted as a waiver herein, no provision of this Agreement is intended by the parties to this Agreement to waive any rights, benefits or protection afforded to the Collateral Agent under the UCC.

(l) Gender and Number. Within this Agreement, words of any gender shall be held and construed to include the other gender, and words in the singular number shall be held and construed to include the plural and words in the plural number shall be held and construed to include the singular, unless in each instance the context requires otherwise.

(m) Descriptive Headings. The headings in this Agreement are for convenience only and shall in no way enlarge, limit or define the scope or meaning of the various and several provisions hereof.

(o) Additional Grantors. Additional Subsidiaries may become a party to this Agreement by the execution and delivery of a Security Agreement Joinder substantially in the form attached hereto as Annex E, and the execution and delivery of such other supporting documentation, corporate governance and authorization documents, and an opinion of counsel, as required by Section 4.17 of the Indenture.

[Signature Pages Follow]

EXECUTED as of the date first written above.

GRANTORS:

NEKTAR THERAPEUTICS, a Delaware corporation

By: _____
Name: _____
Title: _____

Address:

455 Mission Bay Boulevard South
San Francisco, California 94158

COLLATERAL AGENT:

TC LENDING, LLC, as Collateral Agent

By: _____
Name: _____
Title: _____

SCHEDULE 1

PLEDGED COMPANIES AND INTERESTS

Name of entity	Jurisdiction	Number of shares authorized	Number & percentage of outstanding shares owned by Company or subsidiary	Certificated or Uncertificated	Percentage of Voting Stock Pledged
Nektar Therapeutics UK Limited	England	221,651,000 Ordinary 127,120 “A” Ordinary	1,917,383 Ordinary (100%) 127,119 “A” Ordinary (100%)	Uncertificated	65%
Nektar Therapeutics (India) Pvt. Ltd	India	300,000,000	29,390,749 (99.9%)	Uncertificated	65%

SCHEDULE 2

CORPORATE EXISTENCE

Name of Obligor/Chief Executive Office and Principal Place of Business	Jurisdiction of Organization	Taxpayer I.D. Number	Organizational I.D. Number	Is Location Owned or Leased?	If Leased, Name of Record Owner
Nektar Therapeutics 455 Mission Bay Blvd South San Francisco, CA 94158	Delaware			Leased	Alexandria Real Estate Equities, Inc. 1700 Owens Street, Suite 590 San Francisco, CA 94158 Sublessor (West Wing): Pfizer Inc. 235 East 42nd Street New York, NY 10017

PRIOR COMPANY NAMES

Current Name	Prior Name	Date of Change
Nektar Therapeutics	Nektar Therapeutics AL, Corporation	July 31, 2009

CHANGES IN IDENTITY OR STRUCTURE

(1) On July 31, 2009 Nektar Therapeutics AL, Corporation merged with and into Nektar Therapeutics as the surviving entity.

(2) On December 2, 2010 Aerogen, Inc., a Delaware corporation, and previous subsidiary of the Company was dissolved.

TRADE AND OTHER NAMES USED BY THE COMPANY AND ITS SUBSIDIARIES

1. Nektar Therapeutics has used the name “Nektar Therapeutics Inc.” when required to use a suffix indicating that the Company is an incorporated entity.

LOCATIONS OF TANGIBLE COLLATERAL

Street Address (including zip code)	**Owned or Leased?**	**Landlord**
Nektar Therapeutics 455 Mission Bay Blvd South San Francisco, CA 94158	Leased	Alexandria Real Estate Equities, Inc. 1700 Owens Street, Suite 590 San Francisco, CA 94158 Sublessor (West Wing only): Pfizer Inc. 235 East 42nd Street New York, NY 10017
Nektar Therapeutics Church Street Facility 1112 Church Street Huntsville, AL 35801	Owned	N/A
Nektar Therapeutics Discovery Drive Campus 490 Discovery Drive Huntsville, AL 35806	Owned	N/A
Nektar Therapeutics (Former Corporate Headquarters) 201 Industrial Road San Carlos, CA 94070	Leased	BMR-201 Industrial Road LP 17190 Bernardo Center Drive San Diego, CA 92128
Nektar Therapeutics (India) Private Limited Sy Nos. 101/2 Genome Valley Laigadi Malakpet Shameerpet Mandal Rangareddy District Airport Exit Road Begumpet, Hyderabad	Owned	N/A

SCHEDULE 3

COMMERCIAL TORT CLAIMS

None.

SCHEDULE 4

INTELLECTUAL PROPERTY RIGHTS

Patents

(*See attached*)

Trademarks

(*See attached*)

Domain Names

(*See attached*)

Copyrights/ Mask Works

None.

In-Bound Licenses

(*See attached*)

SCHEDULE 5

Lock-box Accounts; Deposit Accounts; Securities Accounts

(*See attached*)

SCHEDULE 6

Collateral in Possession of Another Person

Name and Address of Person in possession of Collateral	**Description of Collateral**	**Relationship to Company**
Gerresheimer Regensburg GmbH Hirtenstrasse 50 Pfreimd 92536 Germany	Equipment	Contract Manufacturer
Veco B.V. Karel van Gelreweg 22 6961 LB Eerbeek 6960 AA Eerbeek The Netherlands	Equipment	Contract Manufacturer

ANNEX A

FORM OF AGREEMENT REGARDING UNCERTIFICATED SECURITIES,
LIMITED LIABILITY COMPANY INTERESTS AND PARTNERSHIP INTERESTS

AGREEMENT (as amended, modified, restated and/or supplemented from time to time, this "Agreement"), dated as of [_____ __, 201_], among the undersigned pledgor (the "Pledgor"), TC Lending, LLC, not in its individual capacity but solely as Collateral Agent (the "Pledgee"), and [_____], as the issuer of the Uncertificated Securities, Limited Liability Company Interests and/or Partnership Interests (each as defined below) (the "Issuer").

W I T N E S S E T H :

WHEREAS, the Pledgor[, certain of its affiliates] and the Pledgee have entered into a Pledge and Security Agreement, dated as of October 5, 2015 (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"), under which, among other things, in order to secure the payment of the Indenture Obligations (as defined in the Security Agreement), the Pledgor has or will pledge to the Pledgee for the benefit of the Secured Parties (as defined in the Security Agreement), and grant a security interest in favor of the Pledgee for the benefit of the Secured Parties in, all of the right, title and interest of the Pledgor in and to any and all ["uncertificated securities" (as defined in Section 8-102(a)(18) of the Uniform Commercial Code, as adopted in the State of New York) ("Uncertificated Securities")] [Partnership Interests (as defined in the Security Agreement)] [Limited Liability Company Interests (as defined in the Security Agreement)], from time to time issued by the Issuer, whether now existing or hereafter from time to time acquired by the Pledgor (with all of such [Uncertificated Securities] [Partnership Interests] [Limited Liability Company Interests] being herein collectively called the "Issuer Pledged Securities"); and

WHEREAS, the Pledgor desires the Issuer to enter into this Agreement in order to perfect the security interest of the Pledgee under the Pledge Agreement in the Issuer Pledged Securities, to vest in the Pledgee control of the Issuer Pledged Securities and to provide for the rights of the parties under this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual promises and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Pledgor hereby irrevocably authorizes and directs the Issuer, and the Issuer hereby agrees, to comply with any and all instructions and orders originated by the Pledgee (and its successors and assigns) regarding any and all of the Issuer Pledged Securities without the further consent by the registered owner (including the Pledgor), and, following its receipt of a notice from the Pledgee stating that the Pledgee is exercising exclusive control of the Issuer Pledged Securities, not to comply with any instructions or orders regarding any or all of the Issuer Pledged Securities originated by any person or entity other than the Pledgee (and its successors and assigns) or a court of competent jurisdiction.

2. The Issuer hereby certifies that (i) no notice of any security interest, lien or other encumbrance or claim affecting the Issuer Pledged Securities (other than the security interest of the Pledgee) has been received by it, and (ii) the security interest of the Pledgee in the Issuer Pledged Securities has been registered in the books and records of the Issuer.

3. The Issuer hereby represents and warrants that (i) the pledge by the Pledgor of, and the granting by the Pledgor of a security interest in, the Issuer Pledged Securities to the Pledgee, for the benefit of the Secured Parties, does not violate the charter, by-laws, partnership agreement, membership agreement or any other agreement governing the Issuer or the Issuer Pledged Securities, and (ii) the Issuer Pledged Securities consisting of capital stock of a corporation are fully paid and nonassessable.

4. All notices, statements of accounts, reports, prospectuses, financial statements and other communications to be sent to the Pledgor by the Issuer in respect of the Issuer will also be sent to the Pledgee at the following address:

TC Lending, LLC
301 Commerce Street, Suite 3300
Fort Worth, TX 76102
Attention: Legal and Compliance Department

5. Following its receipt of a notice from the Pledgee stating that the Pledgee is exercising exclusive control of the Issuer Pledged Securities and until the Pledgee shall have delivered written notice to the Issuer that all of the Indenture Obligations have been paid in full and this Agreement is terminated, the Issuer will send any and all redemptions, distributions, interest or other payments in respect of the Issuer Pledged Securities from the Issuer for the account of the Pledgee only by wire transfers to such account as the Pledgee shall instruct.

6. Except as expressly provided otherwise in Sections 4 and 5, all notices, instructions, orders and communications hereunder shall be sent or delivered by mail, telegraph, telex, telecopy, cable or overnight courier service and all such notices and communications shall, when mailed, telexed, telecopied, cabled or sent by overnight courier, be effective when deposited in the mails or delivered to overnight courier, prepaid and properly addressed for delivery on such or the next Business Day, or sent by telex or telecopier, except that notices and communications to the Pledgee or the Issuer shall not be effective until received. All notices and other communications shall be in writing and addressed as follows:

(a) if to the Pledgor, at:

_____
_____
_____
_____
Attention:
Telephone No.: _____
Fax No.:

(b) if to the Pledgee, at the address given in Section 4 hereof;

(c) if to the Issuer, at:

_____

_____

_____

or at such other address as shall have been furnished in writing by any person described above to the party required to give notice hereunder. As used in this Section 6, "Business Day" means any day other than a Saturday, Sunday, or other day in which banks in New York are authorized to remain closed.

7. This Agreement shall be binding upon the successors and assigns of the Pledgor and the Issuer and shall inure to the benefit of and be enforceable by the Pledgee and its successors and assigns. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument. In the event that any provision of this Agreement shall prove to be invalid or unenforceable, such provision shall be deemed to be severable from the other provisions of this Agreement which shall remain binding on all parties hereto. None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever except in writing signed by the Pledgee, the Issuer and the Pledgor.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflict of laws.

IN WITNESS WHEREOF, the Pledgor, the Pledgee and the Issuer have caused this Agreement to be executed by their duly elected officers duly authorized as of the date first above written.

[_____],
as Pledgor

By _____
Name:
Title:

TC LENDING, LLC,
not in its individual capacity but solely as Collateral Agent and Pledgee

By _____
Name:
Title:

[_____],
as the Issuer

By _____
Name:
Title:

ANNEX B

GRANT OF SECURITY INTEREST
IN UNITED STATES TRADEMARKS

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, [Name of Grantor], a _____ _____ (the "Grantor") with principal offices at _____, hereby grants to TC Lending, LLC, as Collateral Agent, with principal offices at 301 Commerce Street, Suite 3300, Fort Worth, TX 76102, (the "Grantee"), a continuing security interest in (i) all of the Grantor's right, title and interest in, to and under to the United States trademarks, trademark registrations and trademark applications (the "Marks") set forth on Schedule A attached hereto, (ii) all proceeds (as such term is defined in the Uniform Commercial Code of the State of New York as in effect from time to time) and products of the Marks, (iii) the goodwill of the businesses with which the Marks are associated and (iv) all causes of action arising prior to or after the date hereof for infringement of any of the Marks or unfair competition regarding the same.

THIS GRANT is made to secure the satisfactory performance and payment of all the Obligations of the Grantor, as such term is defined in the Pledge and Security Agreement among the Grantor, the other Grantors from time to time party thereto and the Grantee, dated as of October 5, 2015 (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"). Upon the occurrence of the Termination Date (as defined in the Security Agreement), the Grantee shall execute, acknowledge, and deliver to the Grantor an instrument in writing releasing the security interest in the Marks acquired under this Grant.

This Grant has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights and remedies of the Grantee with respect to the security interest granted herein are as set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Grant are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Grant as of the ____ day of _____, ____.

[NAME OF GRANTOR], Grantor

By _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned have executed this Grant as of the ____ day of _____, ____.

TC LENDING, LLC,
as Collateral Agent and Grantee

By _____
Name:
Title:

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of _____, ____, before me personally came _____ _____ who, being by me duly sworn, did state as follows: that [s]he is _____ of [Name of Grantor], that [s]he is authorized to execute the foregoing Grant on behalf of said _____ and that [s]he did so by authority of the [Board of Directors] of said _____.

_____
Notary Public

STATE OF _____)
) ss:
COUNTY OF _____)

On this ____ day of _____, ____, before me personally came _____ _____ who, being by me duly sworn, did state as follows: that [s]he is _____ of TC Lending, LLC, that [s]he is authorized to execute the foregoing Grant on behalf of said TC Lending, LLC and that [s]he did so by authority of the Board of Directors of said TC Lending, LLC.

_____
Notary Public

SCHEDULE A

MARK	REG. NO.	REG. DATE

ANNEX C

GRANT OF SECURITY INTEREST
IN UNITED STATES PATENTS

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, [Name of Grantor], a _____ _____ (the "Grantor") with principal offices at _____, hereby grants to TC Lending, LLC, as Collateral Agent, with principal offices at 301 Commerce Street, Suite 3300, Fort Worth, TX 76102, (the "Grantee"), a continuing security interest in (i) all of the Grantor's rights, title and interest in, to and under the United States patents (the "Patents") set forth on Schedule A attached hereto, in each case together with (ii) all proceeds (as such term is defined in the Uniform Commercial Code of the State of New York as in effect from time to time) and products of the Patents, and (iii) all causes of action arising prior to or after the date hereof for infringement of any of the Patents or unfair competition regarding the same.

THIS GRANT is made to secure the satisfactory performance and payment of all the Obligations of the Grantor, as such term is defined in the Pledge and Security Agreement among the Grantor, the other Grantors from time to time party thereto and the Grantee, dated as of October 5, 2015 (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"). Upon the occurrence of the Termination Date (as defined in the Security Agreement), the Grantee shall execute, acknowledge, and deliver to the Grantor an instrument in writing releasing the security interest in the Patents acquired under this Grant.

This Grant has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights and remedies of the Grantee with respect to the security interest granted herein are as set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Grant are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Grant as of the ____ day of _____, ____.

[NAME OF GRANTOR], Grantor

By _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned have executed this Grant as of the ____ day of _____, ____.

TC LENDING, LLC,
as Collateral Agent and Grantee

By _____
Name:
Title:

STATE OF _____)
) ss:
COUNTY OF _____)

On this ____ day of _____, ____, before me personally came _____ _____ who, being by me duly sworn, did state as follows: that [s]he is _____ of [Name of Grantor], that [s]he is authorized to execute the foregoing Grant on behalf of said _____ and that [s]he did so by authority of the Board of Directors of said _____.

_____
Notary Public

STATE OF _____)
) ss:
COUNTY OF _____)

On this ____ day of _____, ____, before me personally came _____ _____ who, being by me duly sworn, did state as follows: that [s]he is _____ of TC Lending, LLC, that [s]he is authorized to execute the foregoing Grant on behalf of said TC Lending, LLC and that [s]he did so by authority of the Board of Directors of said TC Lending, LLC.

_____
Notary Public

SCHEDULE A

PATENT	PATENT NO.	ISSUE DATE

ANNEX D

GRANT OF SECURITY INTEREST
IN UNITED STATES COPYRIGHTS

WHEREAS, [Name of Grantor], a _____ _____ (the "Grantor"), having its chief executive office at _____, _____, is the owner of all right, title and interest in and to the United States copyrights and associated United States copyright registrations and applications for registration set forth in Schedule A attached hereto;

WHEREAS, TC Lending, LLC, as Collateral Agent, having its principal offices at 301 Commerce Street, Suite 3300, Fort Worth, TX 76102 (the "Grantee"), desires to acquire a security interest in said copyrights and copyright registrations and applications therefor; and

WHEREAS, the Grantor is willing to grant to the Grantee a security interest in and lien upon the copyrights and copyright registrations and applications therefor described above.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the terms and conditions of the Pledge and Security Agreement, dated as of October 5, 2015, made by the Grantor, the other Grantors from time to time party thereto and the Grantee (as amended, modified, restated and/or supplemented from time to time, the "Security Agreement"), the Grantor hereby assigns to the Grantee as collateral security, and grants to the Grantee a continuing security interest in, to and under (i) the copyrights and copyright registrations and applications therefore set forth in Schedule A attached hereto (the "Copyrights"), (ii) all proceeds (as such term is defined in the Uniform Commercial Code of the State of New York as in effect from time to time) and products of the Copyrights, and (iii) all causes of action arising prior to or after the date hereof for infringement of any of the Copyrights or unfair competition regarding the same.

Upon the occurrence of the Termination Date (as defined in the Security Agreement), the Grantee shall execute, acknowledge, and deliver to the Grantor an instrument in writing releasing the security interest in the Copyrights acquired under this Grant.

This Grant has been granted in conjunction with the security interest granted to the Grantee under the Security Agreement. The rights and remedies of the Grantee with respect to the security interest granted herein are as set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference. In the event that any provisions of this Grant are deemed to conflict with the Security Agreement, the provisions of the Security Agreement shall govern.

[Remainder of this page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Grant as of the ____ day of _____, ____.

[NAME OF GRANTOR], Grantor

By _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned have executed this Grant as of the ____ day of _____, ____.

TC LENDING, LLC,
as Collateral Agent and Grantee

By _____
Name:
Title:

STATE OF _____)
) ss:
COUNTY OF _____)

On this __ day of _____, ____, before me personally came _____ _____, who being duly sworn, did depose and say that [s]he is _____ of [Name of Grantor], that [s]he is authorized to execute the foregoing Grant on behalf of said corporation and that [s]he did so by authority of the Board of Directors of said corporation.

_____
Notary Public

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of _____, ____, before me personally came _____ _____ who, being by me duly sworn, did state as follows: that [s]he is _____ of TC Lending, LLC, that [s]he is authorized to execute the foregoing Grant on behalf of said TC Lending, LLC and that [s]he did so by authority of the Board of Directors of said TC Lending, LLC.

_____
Notary Public

ANNEX E

FORM OF
PLEDGE AND SECURITY AGREEMENT JOINDER

This SECURITY AGREEMENT JOINDER (as the same may from time to time be amended, restated, supplemented or otherwise modified, this "Agreement"), is made as of the [__] day of [_____, _____] by [_____], a [_____] [_____] ("New Grantor"), in favor of TC Lending, LLC, as the collateral agent ("Collateral Agent"), for the benefit of the Secured Parties (as defined in the Security Agreement).

WHEREAS, Nektar Therapeutics, a Delaware corporation (the "Company") entered into an Indenture, dated as of October 5, 2015 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture"), pursuant to which the Company has issued 7.750% Senior Secured Notes due 2020 in a principal amount of $250,000,000 (and, together with any additional notes that may be issued by the Company from time to time thereunder or exchanged therefor or for such additional notes, the "Notes");

WHEREAS, in connection with the Indenture, certain of the Company's subsidiaries (such subsidiaries, together with the Company, each, a "Grantor" and, collectively, the "Grantors") entered into that certain Pledge and Security Agreement, dated as of October 5, 2015 (as the same may from time to time be amended, restated or otherwise modified, the "Security Agreement"), pursuant to which the Grantors granted to the Collateral Agent, for the benefit of the Secured Party, a security interest in and pledge of substantially all of their assets;

WHEREAS, New Grantor, a subsidiary of the Company, deems it to be in the direct pecuniary and business interests of New Grantor that the Company continue to obtain from the Secured Parties the financial accommodations provided for in the Indenture;

WHEREAS, New Grantor understands that the Secured Parties are willing to continue grant such financial accommodations only upon certain terms and conditions, one of which is that New Grantor grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in and a collateral assignment of New Grantor's Collateral, as hereinafter defined, and this Agreement is being executed and delivered in consideration of each financial accommodation granted to the Company by the Secured Parties, and for other valuable consideration;

WHEREAS, pursuant to Section 4.17 of the Indenture and Section 10(o) of the Security Agreement, New Grantor has agreed that, effective on [_____], [____] (the "Joinder Effective Date"), New Grantor shall become a party to the Security Agreement and shall become a "Grantor" thereunder; and

WHEREAS, except as specifically defined herein, capitalized terms used herein that are defined in the Security Agreement shall have their respective meanings ascribed to them in the Security Agreement;

NOW, THEREFORE, in consideration of the benefits accruing to New Grantor, the receipt and sufficiency of which are hereby acknowledged, New Grantor hereby makes the following representations and warranties to the Collateral Agent and the Secured Parties, covenants to the Collateral Agent and the Secured Parties, and agrees with the Collateral Agent as follows:

Section 1. Assumption and Joinder. On and after the Joinder Effective Date:

(a) New Grantor hereby irrevocably and unconditionally assumes, agrees to be liable for, and agrees to perform and observe, each and every one of the covenants, rights, promises, agreements, terms, conditions, obligations, appointments, duties and liabilities of a "Grantor" under the Security Agreement and all of the other Indenture Documents (as defined in the Indenture) applicable to it as a Grantor under the Security Agreement;

(b) New Grantor shall become bound by all representations, warranties, covenants, provisions and conditions of the Security Agreement and each other Indenture Document applicable to it as a Grantor under the Security Agreement, as if New Grantor had been the original party making such representations, warranties and covenants; and

(c) all references to the term "Grantor" in the Security Agreement or in any other Indenture Document, or in any document or instrument executed and delivered or furnished, or to be executed and delivered or furnished, in connection therewith shall be deemed to be a reference to, and shall include, New Grantor.

Section 2. Grant of Security Interests. In consideration of and as security for the full and complete payment, and performance when due, of all of the Obligations, New Grantor hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest in all of New Grantor's Collateral.

Section 3. Representations and Warranties of New Grantor. New Grantor hereby represents and warrants to Collateral Agent and each Secured Party that:

(a) New Grantor has the requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder and under the Security Agreement and any other Indenture Document to which it is a party. The execution, delivery and performance of this Agreement by New Grantor and the performance of its obligations under this Agreement, the Security Agreement, and any other Indenture Document have been duly authorized by the board of directors of New Grantor and no other corporate proceedings on the part of New Grantor are necessary to authorize the execution, delivery or performance of this Agreement, the transactions contemplated hereby or the performance of its obligations under this Agreement, the Security Agreement or any other Indenture Document. This Agreement has been duly executed and delivered by New Grantor. This Agreement, the Security Agreement and each Indenture Document constitutes the legal, valid and binding obligation of New Grantor enforceable against it in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by general principles of equity, whether such enforceability is considered in a proceeding at law or in equity.

(b) Attached hereto as Exhibit A are supplemental schedules to the Indenture, which schedules set forth the information required by the Indenture with respect to New Grantor.

(c) Each of the representations and warranties set forth in the Security Agreement are true and correct in all material respects on as and as of the date hereof as such representations and warranties apply to New Grantor (except to the extent that any such representations and warranties expressly relate to an earlier date) with the same force and effect as if made on the date hereof.

Section 4. Further Assurances. At any time and from time to time, at the sole expense of New Grantor, New Grantor will promptly and duly execute and deliver to Collateral Agent any and all further instruments and documents and take such further action as may be reasonably necessary or appropriate to effect the purposes of this Agreement.

Section 5. Notice. All notices, requests, demands and other communications to New Grantor provided for under the Security Agreement and any other Indenture Document shall be addressed to New Grantor at the address specified on the signature page of this Agreement, or at such other address as shall be designated by New Grantor in a written notice to Collateral Agent and the Secured Parties.

Section 6. Binding Nature of Agreement. All provisions of the Security Agreement and the other Indenture Documents shall remain in full force and effect and be unaffected hereby. This Agreement shall be binding upon New Grantor and shall inure to the benefit of Collateral Agent and the Secured Parties, and their respective successors and permitted assigns.

Section 7. Miscellaneous. This Agreement may be executed by facsimile signature, that, when so executed and delivered, shall be deemed to be an original.

Section 8. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of New York, without regard to principles of conflicts of laws.

[Remainder of page left intentionally blank]

JURY TRIAL WAIVER. NEW GRANTOR HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG NEW GRANTOR, THE COMPANY, COLLATERAL AGENT AND THE SECURED PARTIES, OR ANY THEREOF, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED THERETO.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Security Agreement Joinder as of the date first written above.

Address: _____

_____

_____

Attention: _____

[NEW GRANTOR]

By: _____

Name: _____

Title: _____

EXHIBIT A

Supplemental Schedules

Exhibit 99.1

Nektar Closes Direct Private Placement with TPG Special Situations Partners of $250 Million of Senior Secured Notes Due in 2020

SAN FRANCISCO, Oct. 6, 2015 /PRNewswire/ -- Nektar Therapeutics (Nasdaq: NKTR) today announced the closing of a direct private placement of $250 million of 7.75% Senior Secured Notes Due in 2020 with investment vehicles managed by affiliates of TPG Special Situations Partners ("TSSP"), the dedicated special situations and credit platform with over $12 billion of assets under management, and part of TPG, a leading global private investment firm. Nektar used a portion of the proceeds from the 7.75% Senior Secured Notes to redeem all of its currently outstanding $125 million of 12.0% Senior Secured Notes due in 2017.

"This transaction significantly reduced our cost of borrowing and avoided the dilutive effect of an equity or convertible debt offering," said Howard Robin, President and CEO. "We have strengthened our financial position and now expect to have greater than $305 million in cash and equivalents at the end of 2015."

Nektar had approximately $280 million in cash and cash equivalents as of June 30, 2015. The company reiterates its financial guidance for 2015 net use of cash of approximately $63 million, excluding this financing transaction.

The 7.75% notes are callable by Nektar beginning in October 2017, subject to certain prepayment premiums and conditions. The Senior Secured Notes are not subject to financial performance targets. The offer and sale of the notes is exempt from the registration requirements of the Securities Act of 1933. For further details on the terms and conditions of the Senior Secured Notes, please refer to the Form 8-K filed today with the Securities and Exchange Commission.

The Senior Secured Notes and related note guarantees have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. This press release shall not constitute an offer to sell or a solicitation of an offer to buy such notes or note guarantees and is issued in accordance Rule 135c under the Securities Act.

Sidley Austin LLP acted as counsel to Nektar. Schulte Roth & Zabel LLP and Mintz Levin Cohn Ferris Glovsky & Popeo PC served as legal advisors to TSSP.

About TPG Special Situations Partners
TSSP, with over $12 billion of assets under management as of June 30, 2015, is the dedicated special situations and credit platform of TPG, a leading global private investment firm with approximately $75 billion of assets under management and 17 offices around the world. TSSP has extensive experience with highly complex, global public and private investments executed through primary originations, secondary market purchases and restructurings. Since its inception, TSSP has invested in the healthcare space including working with companies and academic institutions on royalty monetization transactions, debt financings, late stage clinical trial fundings, and other healthcare related financings.

About Nektar
Nektar Therapeutics has a robust R&D pipeline in pain, oncology, hemophilia and other therapeutic areas. In the area of pain, Nektar has an exclusive worldwide license agreement with AstraZeneca for MOVANTIK™ (naloxegol), the first FDA-approved once-daily oral peripherally-acting mu-opioid receptor antagonist (PAMORA) medication for the treatment of opioid-induced constipation (OIC), in adult patients with chronic, non-cancer pain. The product is also approved in the European Union as MOVENTIG® (naloxegol) and is indicated for adult patients with OIC who have had an inadequate response to laxatives. The AstraZeneca agreement also includes NKTR-119, an earlier stage development program that is a co-formulation of MOVANTIK and an opioid. NKTR-181, a wholly-owned mu-opioid analgesic molecule for chronic pain conditions, is in Phase 3 development. NKTR-171, a wholly-owned new sodium channel blocker being developed as an oral therapy for the treatment of peripheral neuropathic pain, is in Phase 1 clinical development. In hemophilia, ADYNOVATE™ [Antihemophilic Factor (Recombinant)], a longer-acting PEGylated Factor VIII therapeutic has been filed for approval in the U.S. by partner Baxalta Inc. In anti-infectives, Amikacin Inhale is in Phase 3 studies conducted by Bayer Healthcare as an adjunctive treatment for intubated and mechanically ventilated patients with Gram-negative pneumonia.

Nektar's technology has enabled nine approved products in the U.S. or Europe through partnerships with leading biopharmaceutical companies, including AstraZeneca's MOVANTIK™, UCB's Cimzia® for Crohn's disease and rheumatoid arthritis, Roche's PEGASYS® for hepatitis C and Amgen's Neulasta® for neutropenia.

Nektar is headquartered in San Francisco, California, with additional operations in Huntsville, Alabama and Hyderabad, India. Further information about the company and its drug development programs and capabilities may be found online at http://www.nektar.com.

MOVANTIK™ is a trademark and MOVENTIG® is a registered trademark of the AstraZeneca group of companies.

ADYNOVATE is a trademark of Baxalta Inc.

Cautionary Note Regarding Forward-Looking Statements

This press release contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements can be identified by words such as: "anticipate," "intend," "plan," "expect," "may," "will" and similar references to future periods. Examples of forward-looking statements include, among others, statements regarding the strength of our cash position; our financial guidance for 2015; and the value and potential of certain drug candidates being developed by us and our collaboration partners. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based only on information currently available to us and speak only as of today. Because forward-looking statements relate to the future, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and many of which are outside of our control. Our actual results may differ materially from those indicated in the forward-looking statements. Therefore, you should not rely on any of these forward-looking statements. Important factors that could cause our actual results to differ materially from those indicated in the forward-looking statements include, among others, (i) our financial projections for 2015 are subject to the significant risk of unplanned cash receipt short-falls, unplanned or increased expenses, any of which could significantly and adversely affect our actual 2015 net use of cash and year-end cash position, (ii) the 7.75% Senior Secured Notes include a number of covenants and conditions and, in certain cases, if we fail to comply with these covenants and conditions, the maturity date of the Senior Secured Notes could be accelerated and penalties and premiums could apply, (iii) our drug candidates and those of our collaboration partners are in various stages of clinical development and the risk of failure is high and can unexpectedly occur at any stage prior to regulatory approval for numerous reasons including safety and efficacy findings even after positive findings in preclinical and clinical studies, (iv) certain other important risks and uncertainties set forth in our Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on August 6, 2015 and our Form 8-K filed today. We undertake no obligation to update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise.

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