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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of Earliest Event Reported): November 22, 2016

PDL BioPharma, Inc.

(Exact name of Company as specified in its charter)

000-19756
(Commission File Number)

Delaware
(State or Other Jurisdiction of Incorporation)

94-3023969
(I.R.S. Employer Identification No.)

932 Southwood Boulevard
Incline Village, Nevada 89451
(Address of principal executive offices, with zip code)

(775) 832-8500
(Company's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Company under any of the following provisions:

- 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.

Indenture

As previously announced, on November 16, 2016, PDL BioPharma, Inc. (the Company) entered into an underwriting agreement (the Underwriting Agreement) with RBC Capital Markets, LLC (RBC), relating to the issuance and sale of \$150,000,000 aggregate principal amount of the Company's 2.75% Convertible Senior Notes due 2021 (or \$172,500,000 if the Underwriters exercise their overallocation option in full) (the Notes). On November 22, 2016, the Company closed its previously announced public offering of such Notes. In connection with the issuance of the Notes, the Company entered into an Indenture (the Base Indenture) with The Bank of New York Mellon Trust Company, N.A., as trustee (the Trustee), as supplemented by a supplemental indenture thereto, between the same parties, and of even date therewith (the Supplemental Indenture, and together with the Base Indenture, the Indenture).

The terms of the Notes are governed by the Indenture. The Notes bear interest at a rate of 2.75% per annum on the principal amount thereof, payable semi-annually in arrears on June 1 and December 1 of each year, beginning on June 1, 2017, to holders of record at the close of business on the preceding May 15 and November 15, respectively. The Notes will mature on December 1, 2021, unless earlier repurchased or converted. The Company may not redeem the Notes prior to their stated maturity date.

The Notes are the senior unsecured obligations of the Company and will rank equal in right of payment to all of the Company's existing and future senior unsecured indebtedness. The Notes will be senior in right of payment to any existing or future indebtedness which is subordinated by its terms. The Notes will be structurally subordinated to all debt and other liabilities and commitments of the Company's subsidiaries and will be effectively junior to the secured indebtedness of the Company to the extent of the value of the assets securing such indebtedness.

Holders may convert their Notes under the following conditions at any time prior to the close of business on the business day immediately preceding June 1, 2021, in multiples of \$1,000 principal amount, under the following circumstances:

- during any fiscal quarter (and only during such fiscal quarter) commencing after the fiscal quarter ending March 31, 2017, if the last reported sale price of Company common stock for at least 20 trading days (whether or not consecutive), in the period of 30 consecutive trading days, ending on, and including, the last trading day of the immediately preceding fiscal quarter, exceeds 130% of the conversion price for the Notes on each applicable trading day;
- during the five business day period immediately after any five consecutive trading-day period (the measurement period), in which the trading price per \$1,000 principal amount of Notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of Company common stock and the conversion rate for the Notes for each such trading day; or
- upon the occurrence of specified corporate events as described in the Indenture.

In addition, holders may convert their Notes at their option at any time beginning on June 1, 2021, and ending on the close of business on the second scheduled trading day immediately preceding the stated maturity date of the Notes, without regard to the foregoing circumstances.

The Company will settle conversions by paying or delivering, as applicable, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election, based on the applicable conversion rate. The initial conversion rate for the Notes will be 262.2951 shares of the Company's common stock per \$1,000 principal amount of Notes, equivalent to an initial conversion price of approximately \$3.81 per share of common stock, subject to adjustments upon the occurrence of certain specified events as set forth in the Indenture. The conversion rate will be subject to adjustment in certain events.

In addition, upon the occurrence of a fundamental change (as defined in the Indenture), holders of the Notes may require the Company to repurchase their Notes for cash at a price equal to 100% of the principal amount of the Notes to be repurchased, plus any accrued and unpaid interest, if any, including any additional interest, to but excluding, the fundamental change repurchase date.

The events of default, which may result in the acceleration of the maturity of the Notes, include default by the Company in the payment of principal of the Notes, default by the Company in the payment of interest, including any additional interest, on the Notes when due and the continuance of such default for a period of 30 days, failure by the Company to perform certain of its

agreements required under the Indenture if such failure continues for 60 days after notice is given in accordance with the Indenture, failure by the Company to pay the repurchase price of any Note when due upon a fundamental change, failure by the Company to comply with its conversion obligations upon exercise of a holder's conversion right under the Indenture, failure by the Company to provide timely notice of a fundamental change or specified corporate transaction, if required, and such failure continues for 5 business days after notice of such failure is given, failure by the Company to timely discharge certain other indebtedness within 60 days after written notice, entry of certain judgments against the Company which are not paid, discharged or stayed within 30 days, and certain events of bankruptcy or insolvency involving the Company.

If an event of default, other than an event of default involving bankruptcy or insolvency of the Company, occurs and is continuing, either the Trustee or the holders of at least 25% in aggregate principal amount of the Notes then outstanding, by notice to the Company and the Trustee, may declare 100% of the principal amount of, and accrued and unpaid interest (including additional interest, if any) on all the Notes then outstanding, to be due and payable immediately. If an event of default involving bankruptcy or insolvency events with respect to the Company occurs, then 100% of the principal amount of, and all accrued and unpaid interest on, all the Notes, will automatically become immediately due and payable without any notice or other action by the Trustee or any holder. Notwithstanding the foregoing, the Company may elect, at its option, that the sole remedy for an event of default relating to certain failures by the Company to comply with certain reporting covenants in the Indenture consist exclusively of the right of the holders of the Notes to receive additional interest on the Notes.

The foregoing description of the Base Indenture, the Supplemental Indenture and related form of note are qualified by reference to the to the complete text of such documents, which are attached to this Current Report as Exhibits 4.1, 4.2 and 4.3, respectively. The Base Indenture, Supplemental Indenture and form of note are incorporated herein by reference.

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

The disclosure set forth under the heading Indenture in Item 1.01 of this Current Report is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

Exhibit No.	Description
4.1	Indenture between the Company and The Bank of New York Mellon Trust Company, N.A, as trustee, dated November 22, 2016
4.2	Supplemental Indenture between the Company and The Bank of New York Mellon Trust Company, N.A, as trustee, dated November 22, 2016
4.3	Form of 2.75% Convertible Senior Note due 2021

SIGNATURES

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

PDL BIOPHARMA, INC.
(Company)

By: /s/ Peter S. Garcia
Peter S. Garcia
Vice President and Chief Financial Officer

Dated: November 28, 2016

Exhibit Index

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PDL BIOPHARMA, INC.

Debt Securities

Indenture

Dated as of November 22, 2016

The Bank of New York Mellon Trust Company, N.A.,

as Trustee

CROSS-REFERENCE TABLE

This Cross-Reference Table is not a part of the Indenture

TIA Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(b)	7.08; 7.10; 12.02
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)	N.A.
(b)(2)	7.06
(c)	12.02
(d)	7.06
314(a)	4.03; 12.02
(b)	N.A.
(c)(1)	12.04
(c)(2)	12.04
(c)(3)	N.A.
(d)	N.A.
(e)	12.05
315(a)	7.01(b)
(b)	7.05; 12.02
(c)	7.01(a)
(d)	7.01(c)
(e)	6.11
316(a)(last sentence)	12.06
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
317(a)(1)	6.08
(a)(2)	6.09
(b)d	2.04
318(a)	12.01

N.A. means Not Applicable.

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SIGNATURES

EXHIBIT A - Form of Security

INDENTURE dated as of November 22, 2016, (the “**Base Indenture**”), by and among **PDL BIOPHARMA, INC.**, a Delaware corporation (the “**Company**”) and The Bank of New York Mellon Trust Company, N.A., as trustee (the “**Trustee**”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Company’s debt securities issued under this Base Indenture:

ARTICLE ONE
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

“**Affiliate**” means, when used with reference to a specified person, any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Person specified.

“**Agent**” means any Registrar, Paying Agent or co-Registrar or agent for service of notices and demands.

“**Authorizing Resolution**” means a resolution adopted by the Board of Directors or by an Officer or committee of Officers pursuant to Board delegation authorizing a Series of Securities which shall be delivered to the Trustee.

“**Bankruptcy Law**” means Title 11 of the United States Code, as amended, or any similar federal or state law for the relief of debtors.

“**Board of Directors**” means the Board of Directors of the Company or any duly authorized committee thereof.

“**Capital Stock**” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of or in such Person’s capital stock or other equity interests.

“**Capitalized Lease Obligations**” of any Person means, at the time any determination thereof is to be made, the obligations of such Person to pay rent or other amounts under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, and the amount of such obligations will be the capitalized amount thereof determined in accordance with GAAP.

“**Company**” means the party named as such in this Indenture until a successor replaces it pursuant to the Indenture and thereafter means the successor.

“**control**” means, when used with respect to any Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Currency Agreement**” of any Person means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect such Person or any of its Subsidiaries against fluctuations in currency values.

“**Default**” means any event, act or condition that is, or after notice or the passage of time or both would be, an Event of Default.

“**Definitive Security**” means a certificated Security registered in the name of the Securityholder thereof.

“**Depository**” means, with respect to Securities of any Series which the Company shall determine will be issued in whole or in part as a Global Security, DTC, another clearing agency, or any successor registered as a

clearing agency under the Exchange Act, and any other applicable U.S. or foreign statute or regulation, which, in each case, shall be designated by the Company pursuant to Section 2.01.

“**Dollars**” and “**\$**” mean United States Dollars.

“**DTC**” means The Depository Trust Company.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Foreign Currency**” means any currency, currency unit or composite currency, including, without limitation, the euro, issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments and reasonably acceptable to the Trustee.

“**GAAP**” means generally accepted accounting principles set forth in the accounting standards codification of the Financial Accounting Standards Board or in such other statements by such or any other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect on the date of this Base Indenture.

“**Global Security**” means, with respect to any Series of Securities, a Security executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with the Indenture, which shall be registered in the name of the Depository or its nominee.

“**Government Obligations**” means securities which are (i) direct obligations of the United States or the other government or governments in the confederation which issued the Foreign Currency in which the principal of or any interest on the Security of the applicable Series shall be payable, in each case for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States or such other government or governments, in each case the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States or such other government or governments, which, in either case are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligations or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a 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 Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

“**Holder**” or “**Securityholder**” means the Person in whose name a Security is registered on the Registrar’s books.

“**Indebtedness**” means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent:

- (1) in respect of borrowed money;
- (2) evidenced by bonds, notes, debentures or similar instruments;
- (3) in respect of letters of credit (or reimbursement agreements in respect thereof) or banker’s acceptances;
- (4) representing Capitalized Lease Obligations;
- (5) in respect of the balance deferred and unpaid of the purchase price of any property, except (i) any such balance that constitutes an accrued expense or trade payable, or (ii) any obligation to pay a contingent purchase price as long as such obligation remains contingent; or

(6) in respect of any Interest Protection Agreement or Currency Agreement,

if and to the extent any of the preceding items (other than letters of credit and any Interest Protection Agreement or Currency Agreement) 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 such Person of any indebtedness of any other Person.

Except as otherwise expressly provided in this Indenture, the amount of any Indebtedness outstanding as of any date shall be:

- (a) with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation;
- (b) with respect to any Interest Protection Agreement or Currency Agreement, the net amount payable thereunder if such agreement were terminated at that time due to default by such Person;
- (c) the accreted value thereof, in the case of any Indebtedness issued at a discount to par; or
- (d) except as provided above, the principal amount or liquidation preference thereof, in the case of any other Indebtedness.

“**Indenture**” means this Base Indenture as amended or supplemented from time to time, including pursuant to any Authorizing Resolution or supplemental indenture pertaining to any Series, and including, for all purposes of this instrument and any such Authorizing Resolution or supplemental indenture, the provisions of the TIA that are deemed to be a part of and govern this Base Indenture and any such Authorizing Resolution or supplemental indenture, respectively.

“**Interest Protection Agreement**” of any Person means any interest rate swap agreement, interest rate collar agreement, option or futures contract or other similar agreement or arrangement designed to protect such Person or any of its Subsidiaries against fluctuations in interest rates with respect to Indebtedness.

“**Issue Date**” means, with respect to any Series of Securities, the date on which the Securities of such Series are originally issued under this Indenture.

“**Lien**” means, with respect to any Property, any mortgage, deed of trust, lien, pledge, charge, hypothecation, security interest or encumbrance of any kind in respect of such Property. For purposes of this definition, a Person shall be deemed to own, subject to a Lien, any Property which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such Property.

“**Non-Recourse Indebtedness**” with respect to any Person means Indebtedness of such Person for which (i) the sole legal recourse for collection of principal and interest on such Indebtedness is against the specific Property identified in the instruments evidencing or securing such Indebtedness (and any accessions thereto and proceeds thereof) and such Property was acquired with the proceeds of such Indebtedness or such Indebtedness was incurred within 180 days after the acquisition of such Property and (ii) no other assets of such Person may be realized upon in collection of principal or interest on such Indebtedness. Indebtedness which is otherwise Non-Recourse Indebtedness will not lose its character as Non-Recourse Indebtedness because there is recourse to the borrower, any guarantor or any other Person for (i) environmental or tax warranties and indemnities and such other representations, warranties, covenants and indemnities as are customarily required in such transactions, or (ii) indemnities for and liabilities arising from fraud, misrepresentation, misapplication or non-payment of rents, profits, insurance and condemnation proceeds and other sums actually received by the borrower from secured assets to be paid to the lender, waste and mechanics’ liens.

“**NYUCC**” means the New York Uniform Commercial Code, as in effect from time to time.

“**Officer**” means the Chairman of the Board, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company.

“**Officers’ Certificate**” means a certificate signed by two Officers or by an Officer and an Assistant Treasurer or an Assistant Secretary of the Company.

“**Opinion of Counsel**” means a written opinion, in form and substance reasonably satisfactory to the Trustee, from legal counsel. The counsel may be an employee of or counsel to the Company. Each such opinion shall include the statements provided for in Section 12.05 if and to the extent required by the provisions of such Section.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**principal**” of a debt security means the principal of the security *plus*, when appropriate, the premium, if any, on the security.

“**Property**” of any Person means all types of real, personal, tangible, intangible or mixed property owned by such Person, whether or not included in the most recent consolidated balance sheet of such Person and its Subsidiaries under GAAP.

“**Restricted Subsidiary**” means any Subsidiary of the Company which is not an Unrestricted Subsidiary.

“**SEC**” means the Securities and Exchange Commission or any successor agency performing the duties now assigned to it under the TIA.

“**Securities**” means any Securities that are issued under this Base Indenture.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Series**” means a series of Securities established under this Base Indenture.

“**Significant Subsidiary**” means any Subsidiary of the Company which would constitute a “significant subsidiary” as defined in Rule 1.02 of Regulation S-X under the Securities Act and the Exchange Act.

“**Subsidiary**” of any Person means any corporation or other entity of which a majority of the Capital Stock having ordinary voting power to elect a majority of the board of directors of such entity or other persons performing similar functions is at the time directly or indirectly owned or controlled by such Person.

“**TIA**” means the Trust Indenture Act of 1939, as in effect from time to time, except as otherwise provided herein.

“**Trustee**” means the party named as such in this Base Indenture until a successor replaces it pursuant to this Base Indenture and thereafter means the successor serving hereunder; *provided, however*, that if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean only the Trustee with respect to Securities of that Series.

“**Trust Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, senior associate, associate, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“United States” means the United States of America.

“Unrestricted Subsidiary” means, with respect to any Series, any Subsidiary of the Company (1) so designated by a resolution adopted by the Board of Directors of the Company as provided below and (2) any Subsidiary of an Unrestricted Subsidiary, subject, in each case, to such conditions as may be stated in the supplemental indenture or specified in the Authorizing Resolution with respect to such Series.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
Agent Members	2.15
Base Indenture	Preamble
Business Day	12.07
Covenant Defeasance	8.01
Custodian	6.01
Event of Default	6.01
Legal Defeasance	8.01
Legal Holiday	12.07
Paying Agent	2.03
Payment Default	6.01
Registrar	2.03
Security Register	2.03
Successor	5.01

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:

“Commission” means the SEC.

“indenture securities” means the Securities of a particular Series.

“indenture security holder” means a Securityholder.

“indenture to be qualified” means this Indenture.

“indenture trustee” or “institutional trustee” means the Trustee.

“obligor” on the indenture securities means the Company or any other obligor on the Securities of a Series.

All other TIA terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule 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 herein;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP and all accounting determinations shall be made in accordance with GAAP;
- (3) “or” is not exclusive and “including” means “including without limitation”;

- (4) words in the singular include the plural, and in the plural include the singular;
- (5) “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Indenture as a whole (including any Authorizing Resolution or supplemental indenture relating to the relevant Series) and not to any particular Article, Section or other subdivision;
- (6) all exhibits are incorporated by reference herein and expressly made a part of this Indenture; and
- (7) any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” this Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by this Indenture or such provision, as the case may be.

ARTICLE TWO THE SECURITIES

Section 2.01 Form and Dating.

The aggregate principal amount of Securities that may be issued under this Base Indenture is unlimited. The Securities may be issued from time to time in one or more Series. Each Series shall be created by an Authorizing Resolution or a supplemental indenture that establishes the terms of the Series, which may include the following:

- (1) the title of the Series;
- (2) the aggregate principal amount (or any limit on the aggregate principal amount) of the Series and, if any Securities of a Series are to be issued at a discount from their face amount, the method of computing the accretion of such discount;
- (3) the interest rate or method of calculation of the interest rate;
- (4) the date from which interest will accrue;
- (5) the record dates for interest payable on Securities of the Series;
- (6) the dates when, places where and manner in which principal and interest are payable;
- (7) the Registrar and Paying Agent;
- (8) the terms of any mandatory (including any sinking fund requirements) or optional redemption by the Company;
- (9) the terms of any redemption at the option of Holders;
- (10) the permissible denominations in which Securities of such Series are issuable, if different from \$2,000 and multiples of \$1,000 in excess thereof;
- (11) whether Securities of such Series will be issued in registered or bearer form and the terms of any such forms of Securities;
- (12) whether the Securities of the Series shall be issued in whole or in part in the form of a Global Security or Securities, the terms and conditions, if different from those contained in this Base Indenture, upon which such Global Security or Securities may be exchanged in whole or in part for Definitive Securities; the Depositary for such Global Security or Securities; the form of any legend or legends, if any, to be borne by any such Global Security or Securities in addition to or in lieu of the legends referred to in Section 2.15;

- (13) the currency or currencies (including any composite currency) in which principal or interest or both may be paid;
- (14) if payments of principal or interest may be made in a currency other than that in which Securities of such Series are denominated, the manner for determining such payments, including the time and manner of determining the exchange rate between the currency in which such Securities are denominated and the currency in which such Securities or any of them may be paid, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of Securities denominated or payable, at the election of the Company or a Holder thereof or otherwise, in a Foreign Currency;
- (15) provisions for electronic issuance of Securities or issuance of Securities of such Series in uncertificated form;
- (16) any Events of Default, covenants and/or defined terms in addition to or in lieu of those set forth in this Base Indenture;
- (17) whether and upon what terms Securities of such Series may be defeased or discharged if different from the provisions set forth in this Base Indenture;
- (18) the form of the Securities of such Series, which, unless the Authorizing Resolution or supplemental indenture otherwise provides, shall be in the form of Exhibit A;
- (19) any terms that may be required by or advisable under applicable law;
- (20) the percentage of the principal amount of the Securities of such Series which is payable if the maturity of the Securities of such Series is accelerated in the case of Securities issued at a discount from their face amount;
- (21) whether Securities of such Series will or will not have the benefit of guarantees and the Company's Subsidiaries that will be the initial guarantors of such Series and, if applicable, the terms and conditions upon which such guarantees may be subordinated to other indebtedness of the respective guarantors;
- (22) whether the Securities of such Series are senior or subordinated debt securities, and if subordinated debt securities, the terms of such subordination;
- (23) whether the Securities of the Series will be convertible into or exchangeable for other Securities, common shares or other securities of any kind of the Company or another obligor, and, if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, including the initial conversion or exchange price or rate or the method of calculation, how and when the conversion price or exchange ratio may be adjusted, whether conversion or exchange is mandatory, at the option of the holder or at the Company's option, the conversion or exchange period, and any other provision in relation thereto; and
- (24) any other terms in addition to or different from those contained in this Base Indenture applicable to such Series.

All Securities of one Series need not be issued at the same time and, unless otherwise provided, a Series may be reopened for issuances of additional Securities of such Series pursuant to an Authorizing Resolution, an Officers' Certificate or in any indenture supplemental hereto.

The creation and issuance of a Series and the authentication and delivery thereof are not subject to any conditions precedent.

Section 2.02 Execution and Authentication.

One Officer shall sign the Securities for the Company by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall nevertheless be valid.

A Security shall not be valid until the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Base Indenture.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication. Each Security shall be dated the date of its authentication. The Trustee shall authenticate Securities for original issue upon receipt of, and shall be fully protected in relying upon:

(a) An order to the Trustee signed by an officer of the Company directing the Trustee to authenticate the Securities;

(b) a copy of the resolution or resolutions of the Board of Directors in or pursuant to which the terms and form of the Securities were established, certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect as of the date of such certificate, and if the terms and form of such Securities are established by an Officers' Certificate pursuant to general authorization of the Board of Directors, such Officers' Certificate;

(c) an Officers' Certificate of the Company delivered in accordance with Section 12.04; and

(d) an Opinion of Counsel delivered in accordance with Section 12.04, and that states that such Securities, when authenticated and delivered by Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

Section 2.03 Registrar and Paying Agent.

The Company shall maintain an office or agency where Securities may be presented for registration of transfer or where Securities of a Series that are convertible or exchangeable may be surrendered for conversion or exchange ("**Registrar**"), an office or agency where Securities may be presented for payment ("**Paying Agent**") and an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Registrar shall keep a register of the Securities and of their transfer and exchange (the "**Security Register**"). The Company may have one or more co-Registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Base Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall promptly notify the Trustee in writing of the name and address of any such Agent and the Trustee shall have the right to inspect the Securities Register at all reasonable times to obtain copies thereof, and the Trustee shall have the right to rely upon such register as to the names and addresses of the Holders and the principal amounts and certificate numbers thereof. If the Company fails to maintain a Registrar or Paying Agent or fails to give the foregoing notice, the Trustee shall act as such.

The Company initially appoints the Trustee as Registrar and Paying Agent.

Section 2.04 Paying Agent to Hold Money in Trust.

Each Paying Agent shall hold in trust for the benefit of Securityholders and the Trustee all money held by the Paying Agent for the payment of principal of or interest on the Securities, and shall notify the Trustee of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money and hold it as a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon doing so the Paying Agent shall have no further liability for the money.

Section 2.05 Securityholder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least five (5) Business Days before each semiannual 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 Securityholders.

Section 2.06 Transfer and Exchange.

Where a Security is presented to the Registrar or a co-Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the other provisions of this Section 2.06 are satisfied. Where Securities are presented to the Registrar or a co-Registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit transfers and exchanges, the Trustee shall authenticate Securities at the Registrar's request. The Registrar need not transfer or exchange any Security selected for redemption or repurchase, except the unredeemed or repurchased part thereof if the Security is redeemed or repurchased in part, or transfer or exchange any Securities for a period of 15 days before a selection of Securities to be redeemed or repurchased. Any exchange or transfer shall be without charge, except that the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto except in the case of exchanges pursuant to 2.09, 3.06, or 10.05 not involving any transfer.

Any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book entry system maintained by the Holder of such Global Security (or its agent), and that ownership of a beneficial interest in the Security shall be required to be reflected in a book entry.

Section 2.07 Replacement Securities.

If the Holder of a Security claims that the Security has been lost, destroyed, mutilated or wrongfully taken, the Company shall issue and execute a replacement security and, upon written request of any Officer of the Company, the Trustee shall authenticate such replacement Security. If any such lost, destroyed, mutilated or wrongfully taken Security shall have matured or shall be about to mature, the Company may, instead of issuing a substitute Security therefor, pay such Security without requiring (except in the case of a mutilated Security) the surrender thereof. An indemnity bond must be sufficient in the judgment of the Company and the Trustee to protect the Company, the Trustee and any Agent from any loss which any of them may suffer if a Security is replaced, including the acquisition of such Security by a bona fide purchaser. The Company and the Trustee may charge for its expenses in replacing a Security.

Section 2.08 Outstanding Securities.

Securities outstanding at any time are all Securities authenticated by the Trustee except for those cancelled by it and those described in this Section. A Security does not cease to be outstanding because the Company or one of its Affiliates holds the Security.

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to the Company that the replaced Security is held by a “protected purchaser” (as such term is defined in the NYUCC).

If the Paying Agent holds on a redemption date, purchase date or maturity date money sufficient to pay Securities payable on that date, then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 2.09 Temporary Securities.

Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and, upon surrender for cancellation of the temporary Security, the Company shall execute and the Trustee shall authenticate definitive Securities in exchange for temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities authenticated and delivered hereunder.

Section 2.10 Cancellation.

The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, redemption, purchase or payment. The Trustee and no one else shall cancel and dispose of such cancelled or tendered securities, or retain in accordance with its standard retention policy, all Securities surrendered for registration of transfer, exchange, redemption, purchase, payment or cancellation. Unless the Authorizing Resolution or supplemental indenture so provides, the Company may not issue new Securities to replace Securities that it has previously paid or delivered to the Trustee for cancellation.

Section 2.11 Defaulted Interest.

If the Company defaults in a payment of interest on the Securities of any Series, it shall pay the defaulted interest *plus* any interest payable on the defaulted interest to the persons who are Securityholders of such Series on a subsequent special record date. The Company shall fix such special record date and a payment date which shall be reasonably satisfactory to the Trustee. At least 15 days before such special record date, the Company shall send to each Securityholder of the relevant Series a notice that states the record date, the payment date and the amount of defaulted interest to be paid. On or before the date such notice is sent, the Company shall deposit with the Paying Agent money sufficient to pay the amount of defaulted interest to be so paid. The Company may pay defaulted interest in any other lawful manner if, after written notice given by the Company to the Trustee of the proposed payment, such manner of payment shall be deemed practicable by the Trustee.

Section 2.12 Treasury Securities.

In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any direction, waiver, consent or notice, Securities owned by the Company or any of its Affiliates shall be considered as though they are not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so considered.

Section 2.13 CUSIP/ISIN Numbers.

The Company in issuing the Securities of any Series may use a “CUSIP” and/or “ISIN” or other similar number, and if so, the Trustee shall use the CUSIP and/or ISIN or other similar number in notices of redemption or exchange as a convenience to Holders of such Securities; *provided* that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of any such CUSIP and/or ISIN or other similar number printed in the notice or on such Securities, and that reliance may be placed only on the other identification numbers printed on such Securities. The Company shall promptly notify the Trustee in writing of any change in any CUSIP and/or ISIN or other similar number.

Section 2.14 Deposit of Moneys.

Prior to 11:00 a.m. New York City time on each interest payment date and maturity date with respect to each Series of Securities, the Company shall have deposited with the Paying Agent in immediately available funds money in the applicable currency sufficient to make cash payments due on such interest payment date or maturity date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders of such Series on such interest payment date or maturity date, as the case may be.

Section 2.15 Book-Entry Provisions for Global Security.

(a) Any Global Security of a Series initially shall (i) be registered in the name of the Depository or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for such Depository and (iii) bear any required legends.

Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(b) Transfers of any Global Security shall be limited to transfers in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Security may be transferred or exchanged for Definitive Securities in accordance with the rules and procedures of the Depository. In addition, Definitive Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Security if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for the Global Security and a successor depository is not appointed by the Company within 90 days of such notice or (ii) an Event of Default has occurred and is continuing and the Registrar has received a request from the Depository to issue Definitive Securities.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in any Global Security to beneficial owners pursuant to paragraph (b), the Registrar shall (if one or more Definitive Securities are to be issued) reflect on its books and records the date and a decrease in the principal amount of the Global Security in an amount equal to the principal amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Securities of like Series and amount.

(d) In connection with the transfer of an entire Global Security to beneficial owners pursuant to paragraph (b), the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in the Global Security, an equal aggregate principal amount of Definitive Securities of the same Series in authorized denominations.

(e) The Holder of any Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities of such Series.

(f) Unless otherwise provided in the Authorizing Resolution or supplemental indenture for a particular Series of Securities, each Global Security of such Series shall bear legends in substantially the following forms:

“THIS GLOBAL SECURITY IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS SECURITY) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE HOLDERS OF BENEFICIAL INTERESTS HEREIN, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (I) THE TRUSTEE MAY MAKE ANY SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO THE INDENTURE, (II) THIS GLOBAL SECURITY MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06 OF THE INDENTURE, (III) THIS GLOBAL SECURITY MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO THE INDENTURE AND (IV) THIS GLOBAL SECURITY 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 SECURITIES IN DEFINITIVE FORM, THIS SECURITY 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 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. Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to Issuer or its agent for registration of transfer, exchange, or payment, any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is 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, Cede & Co., has an interest herein.”

Section 2.16 No Duty to Monitor.

The Trustee 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 Security (including any transfers between or among Agent Members or beneficial owners of interests in any Global Security) 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.

Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depository.

**ARTICLE THREE
REDEMPTION**

Section 3.01 Notices to Trustee.

Securities of a Series that are redeemable prior to maturity shall be redeemable in accordance with their terms and, unless the Authorizing Resolution or supplemental indenture provides otherwise, in accordance with this Article Three.

If the Company wants to redeem Securities pursuant to Paragraph 4 of the Securities, it shall notify the Trustee in writing of the redemption date and the principal amount of Securities to be redeemed. Any such notice may be cancelled at any time prior to notice of such redemption being sent to Holders. Any such cancelled notice shall be void and of no effect.

If the Company wants to credit any Securities previously redeemed, retired or acquired against any redemption pursuant to Paragraph 5 of the Securities, it shall notify the Trustee of the amount of the credit and it shall deliver any Securities not previously delivered to the Trustee for cancellation with such notice.

The Company shall give each notice provided for in this Section 3.01 at least 15 days before the notice of any such redemption is to be delivered to Holders (unless a shorter notice shall be satisfactory to the Trustee).

Section 3.02 Selection of Securities to be Redeemed.

If fewer than all of the Securities of a Series are to be redeemed, the Securities to be redeemed shall be selected pro rata, by lot, or such other method the Trustee (or depository, as applicable) considers fair and appropriate and, in the case of Global Securities, in a manner that complies with applicable requirements of the Depository. The Trustee (or depository, as applicable) shall make the selection from Securities outstanding not previously called for redemption and shall promptly notify the Company of the serial numbers or other identifying attributes of the Securities so selected. The Trustee (or depository, as applicable) may select for redemption portions of the principal of Securities that have denominations larger than the minimum denomination for the Series. Securities and portions of them it selects shall be in amounts equal to a permissible denomination for the Series. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

Unless otherwise provided in the Authorizing Resolution or supplemental indenture relating to a Series, if any Security selected for partial redemption is converted into or exchanged for Common Stock or other securities, cash or other property in part before termination of the conversion or exchange right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted or exchanged during a selection of Securities to be redeemed shall be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.03 Notice of Redemption.

At least 30 days but not more than 60 days before a redemption date, the Company shall mail a notice of redemption by first-class mail, postage prepaid (or in the case of Global Securities, deliver electronically in accordance with the applicable procedures of the Depository), to each Holder of Securities to be redeemed.

The notice shall identify the Securities to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price or the formula pursuant to which such price will be calculated;
- (3) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date, upon surrender of such Security, a new Security

or Securities in principal amount equal to the unredeemed portion shall be issued upon cancellation of the original Security;

- (4) in the case of Securities of a Series that are convertible or exchangeable into shares of the Company's common stock or other securities, cash or other property, the conversion or exchange price or rate, the date or dates on which the right to convert or exchange the principal of the Securities of such Series to be redeemed will commence or terminate and the place or places where such Securities may be surrendered for conversion or exchange;
- (5) the name and address of the Paying Agent;
- (6) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (7) that interest on Securities called for redemption ceases to accrue on and after the redemption date;
- (8) that the Securities are being redeemed pursuant to the mandatory redemption or the optional redemption provisions, as applicable; and
- (9) the CUSIP number and that no representation is hereby deemed to be made by the Trustee as to the correctness or accuracy of any such CUSIP and/or ISIN or other similar number printed in the notice or on such Securities, and that reliance may be placed only on the other identification numbers printed on such Securities.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company shall deliver to the Trustee at least 15 days prior to the date on which notice of redemption is to be sent or such shorter period as may be satisfactory to the Trustee, an Officers' 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 sent, Securities called for redemption become due and payable on the redemption date and at the redemption price as set forth in the notice of redemption. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price, *plus* accrued and unpaid interest to the redemption date. Notices of redemption may be subject to one or more conditions. In the event that any such conditions are not satisfied the Company may amend or revoke such notice of redemption by sending notice to Securityholders (with a copy to the Trustee) in accordance with the applicable procedures of the Depository.

Section 3.05 Deposit of Redemption Price.

On or before the redemption date, the Company shall deposit with the Paying Agent immediately available funds in the applicable currency sufficient to pay the redemption price of and accrued interest on all Securities to be redeemed on that date.

Section 3.06 Securities Redeemed in Part.

Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate for each Holder a new Security of the same Series equal in principal amount to the unredeemed portion of the Security surrendered.

ARTICLE FOUR COVENANTS

Section 4.01 Payment of Securities.

The Company shall pay the principal of and interest on a Series on the dates, in the currency and in the manner provided in the Securities of the Series. An installment of principal or interest shall be considered paid on the date it is due if the Paying Agent holds on that date money in the applicable currency designated for and sufficient to pay the installment.

The Company shall pay interest on overdue principal at the rate borne by the Series; it shall pay interest on overdue installments of interest at the same rate.

Section 4.02 Maintenance of Office or Agency.

The Company shall maintain the office or agency required under Section 2.03. The Company shall give prior 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 shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee.

Section 4.03 Compliance Certificate.

The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate stating whether or not the signers know of any continuing Default by the Company in performing any of its obligations under this Indenture. If they do know of such a Default, the certificate shall describe the Default. In addition, the Company will notify the Trustee within 5 business days upon the Company's knowledge of a Default.

Section 4.04 Waiver of Stay, Extension or Usury Laws.

The Company 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 or extension law or any usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Securities of any Series as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that it may lawfully do so) the Company expressly waives all benefit or advantage of any such law, and covenants that it will not 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 had been enacted.

ARTICLE FIVE CORPORATION

Section 5.01 When Company May Merge, etc.

The Company will not consolidate or merge with or into, or sell, lease, convey or otherwise dispose of all or substantially all of its assets (including by way of liquidation or dissolution) to, any Person (in each case other than in a transaction in which the Company is the survivor of a consolidation or merger, or the transferee in a sale, lease, conveyance or other disposition) unless:

- (1) the Person formed by or surviving such consolidation or merger (if other than the Company), or to which such sale, lease, conveyance or other disposition will be made (collectively, the "**Successor**"), is a corporation or other legal entity organized and existing under the laws of the United States or any state thereof or the District of Columbia, and the Successor assumes by

supplemental indenture in a form reasonably satisfactory to the Trustee all of the obligations of the Company under the Securities, as the case may be, and the Indenture, and

- (2) immediately after giving effect to such transaction, no Default or Event of Default has occurred and is continuing.

The foregoing provisions shall not apply to a transaction the purpose of which is to change the state of incorporation of the Company.

Upon any such consolidation, merger, sale, lease, conveyance or other disposition, the Successor will be substituted for the Company under the Indenture. The Successor may then exercise every power and right of the Company under this Indenture, and except in the case of a lease, the Company will be released from all of its liabilities and obligations in respect of the Securities and the Indenture. If the Company leases all or substantially all of its assets the Company will not be released from its obligations to pay the principal of and interest, if any, on the Securities.

ARTICLE SIX DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

An “**Event of Default**” on a Series occurs if, voluntarily or involuntarily, whether by operation of law or otherwise, any of the following occurs:

- (1) the failure by the Company to pay interest on any Security of such Series when the same becomes due and payable and the continuance of any such failure for a period of 30 days;
- (2) the failure by the Company to pay the principal of any Security of such Series when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise;
- (3) the failure by the Company or any Restricted Subsidiary to comply with any of its agreements or covenants in, or provisions of, the Securities of such Series or this Indenture (as they relate thereto) and such failure continues for the period and after the notice specified below (except in the case of a default with respect to Article Five (or any other provision specified in the applicable supplemental indenture or Authorizing Resolution), which will constitute Events of Default with notice but without passage of time);
- (4) 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 Non-Recourse Indebtedness) 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 Issue Date, if that default:
 - (A) is caused by a failure to pay at final stated maturity the principal amount of such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a “Payment Default”); or
 - (B) results in the acceleration of such Indebtedness prior to its express maturity without such Indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled for the period and after the notice specified below,

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 \$50 million or more;

- (5) the Company or any Restricted Subsidiary that is a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
 - (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, or
 - (D) makes a general assignment for the benefit of its creditors;
- (6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
 - (A) is for relief against the Company or any Restricted Subsidiary that is a Significant Subsidiary as debtor in an involuntary case,
 - (B) appoints a Custodian of the Company or any Restricted Subsidiary that is a Significant Subsidiary or a Custodian for all or substantially all of the Property of the Company, or
 - (C) orders the liquidation of the Company or any Restricted Subsidiary that is a Significant Subsidiary, and the order or decree remains unstayed and in effect for 60 days.

A Default as described in subclause (3) or (4)(B) above will not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25 percent in principal amount of the then outstanding Securities of the applicable Series notify the Company and the Trustee, of the Default and (except in the case of a default with respect to Article Five (or any other provision specified in the applicable supplemental indenture or Authorizing Resolution)) the Company does not cure the Default within (a) with respect to in subclause (3), 60 days after receipt of the notice and (b) with respect to subclause (4)(B), 30 days after receipt of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a “Notice of Default.” If such a Default is cured within such time period, it ceases to exist, without any action by the Trustee or any other Person.

The term “**Custodian**” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Section 6.02 Acceleration.

If an Event of Default (other than an Event of Default with respect to the Company resulting from subclause (5) or (6) above), shall have occurred and be continuing under the Indenture, the Trustee by notice to the Company, or the Holders of at least 25 percent in principal amount of the Securities of the applicable Series then outstanding by notice to the Company and the Trustee, may declare all Securities of such Series to be due and payable immediately. Upon such declaration of acceleration, the amounts due and payable on the Securities of such Series will be due and payable immediately. If an Event of Default with respect to the Company specified in subclauses (5) or (6) above occurs, all amounts due and payable on the Securities of such Series will ipso facto become and be immediately due and payable without any declaration, notice or other act on the part of the Trustee and the Company or any Holder.

Holders of a majority in principal amount of the then outstanding Securities of such Series may rescind an acceleration with respect to such Series and its consequence (except an acceleration due to nonpayment of principal or interest) if the rescission would not conflict with any judgment or decree and if all existing Events of Default (other than the non-payment of accelerated principal) have been cured or waived.

No such rescission shall extend to or shall affect any subsequent Event of Default, or shall impair any right or power consequent thereon.

Section 6.03 Other Remedies.

If an Event of Default on a Series occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of or interest on the Series or to enforce the performance of any provision in the Securities or this Indenture applicable to the Series.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder 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. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 Waiver of Existing Defaults.

Subject to Section 10.02, the Holders of a majority in principal amount of the outstanding Securities of a Series on behalf of all the Holders of the Series by written notice to the Trustee may waive an existing Default on such Series and its consequences. When a Default is waived, it is cured and stops continuing, and any Event of Default arising therefrom shall be deemed to have been cured; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

The Holders of a majority in principal amount of the outstanding Securities of a Series may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on it with respect to such Series. The Trustee, however, may refuse to follow any direction (i) that conflicts with law or this Indenture, (ii) that, subject to Section 7.01, the Trustee determines is unduly prejudicial to the rights of other Securityholders, (iii) that would involve the Trustee in personal liability, or (iv) if the Trustee shall not have been provided with indemnity satisfactory to it.

Section 6.06 Limitation on Suits.

A Securityholder of a Series may not pursue any remedy with respect to this Indenture or the Series unless:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default on the Series;
- (2) the Holders of at least a majority in principal amount of the outstanding Securities of the Series make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee 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 indemnity; and
- (5) no written request inconsistent with such written request shall have been given to the Trustee pursuant to this Section 6.06.

A Securityholder may not use this Indenture to prejudice the rights of another Holder of Securities of the same Series or to obtain a preference or priority over another Holder of Securities of the same Series (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances by such Holder are unduly prejudicial to another Holder).

Section 6.07 Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on any Security, on or after the respective due dates expressed in the Security, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default in payment of interest or principal specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal and interest remaining unpaid.

Section 6.09 Trustee May File Proofs of Claim.

The Trustee may 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 Securityholders allowed in any judicial proceedings relative to the Company or its creditors or Property, and unless prohibited by applicable law or regulation, may vote on behalf of the Holders in any election of a Custodian, and shall be entitled and empowered to collect and receive any moneys or other Property payable or deliverable on any such claims and to distribute the same and any Custodian in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder or to authorize the Trustee to vote in respect of the claim of any Securityholder except as aforesaid for the election of the Custodian.

Section 6.10 Priorities.

If the Trustee collects any money pursuant to this Article with respect to Securities of any Series, it shall pay out the money in the following order:

First: to the Trustee for amounts due under Section 7.07;

Second: to Securityholders of the Series for amounts due and unpaid on the Series for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Series for principal and interest, respectively; and

Third: to the Company or as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Securityholders 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 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 and expenses, against any party litigant in the suit, having the due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Series.

**ARTICLE SEVEN
TRUSTEE**

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing with respect to Securities of any Series, the Trustee shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(1) 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.

(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 certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee, however, in the case of certificates or opinions specifically required by any provision hereof to be furnished to it, shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture but need not confirm or investigate the accuracy of mathematical calculations or other facts or matters stated therein.

(c) The Trustee may not be relieved from liability 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.

(2) The Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(3) The Trustee shall 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 or any other direction of the Holders permitted hereunder.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section.

(e) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

Section 7.02 Rights of Trustee.

Subject to Section 7.01:

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting on any document, resolution, certificate, instrument, report, or direction 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, resolution, certificate, instrument, report, or direction.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both, which shall conform to Sections 12.04 and 12.05 hereof and containing such other statements as the Trustee reasonably deems necessary to perform its duties hereunder. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officers' Certificate, Opinion of Counsel or any other direction of the Company permitted hereunder.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee may consult with counsel of its selection, and the advice of such counsel or any Opinion of Counsel as to matters of law shall be full and complete authorization and protection in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) Unless otherwise specifically provided in the Indenture, any demand, request, direction or notice from the Company shall be sufficient if signed by an Officer of the Company.

(g) For all purposes under this Indenture, the Trustee shall not be deemed to have notice or knowledge of any Event of Default unless written notice of any Event of Default is received by the Trustee at its address specified in Section 12.02 hereof and such notice references the Securities generally, the Company and this Indenture.

(h) The Trustee shall 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 pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(i) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) 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 of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(k) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(l) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(m) 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 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, must comply with Sections 7.10 and 7.11.

Section 7.04 Trustee's Disclaimer.

The Trustee makes no representation as to the validity or adequacy of this Indenture, the Securities or of any prospectus used to sell the Securities of any Series; it shall not be accountable for the Company's use of the proceeds from the Securities; it shall not be accountable for any money paid to the Company, or upon the Company's direction, if made under and in accordance with any provision of this Indenture; it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee; and it shall not be responsible for any statement of the Company in this Indenture or in the Securities other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default on a Series occurs and is continuing and if a responsible officer of the Trustee has actual knowledge of such Default, the Trustee shall deliver to each Securityholder of the Series notice of the Default (which shall specify any uncured Default known to it) within 90 days after the Trustee obtains such knowledge. Except in the case of a default in payment of principal of or interest on a Series, the Trustee may withhold the notice if and so long as the board of directors of the Trustee, the executive or any trust committee of such directors and/or responsible officers of the Trustee in good faith determine(s) that withholding the notice is in the interests of Holders of the Series.

Section 7.06 Reports by Trustee to Holders.

Within 60 days after each May 15 beginning with the May 15 following the date of this Base Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such May 15 that complies with TIA § 313(a) (but if no event described in TIA § 313(1) through (8) has occurred within the twelve months preceding the reporting date no report in relation thereto need be transmitted). The Trustee also shall comply with TIA § 313(b).

A copy of each report at the time of its mailing to Securityholders shall be delivered to the Company and filed by the Trustee with the SEC and each national securities exchange on which the Securities are listed. The Company agrees to notify the Trustee of each national securities exchange on which the Securities are listed.

Section 7.07 Compensation and Indemnity.

The Company shall pay to the Trustee from time to time reasonable compensation for its services subject to any written agreement between the Trustee and the Company (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust). The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel. The Company shall indemnify the Trustee, its officers, directors, employees and agents and hold it harmless against any loss, liability, claim, damage or expense incurred or made by or on behalf of it in connection with the administration of this Indenture or the trust hereunder and its duties hereunder including the costs and expenses of defending itself against or investigating any claim in the premises. The Trustee shall notify the Company promptly of any claim of which it has received written notice and for which it may seek indemnity. The Company need not reimburse any expense or indemnify against

any loss or liability incurred by the Trustee through the Trustee's, or its officers', directors', or employees' negligence or willful misconduct.

Unless otherwise provided in any supplemental indenture or Authorizing Resolution relating to any Series, to ensure the Company's payment obligations in this Section, the Trustee shall have a lien prior to the Securities of all Series on all money or Property held or collected by the Trustee, except that held in trust to pay principal of or interest on particular Securities. When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 6.01 or in connection with Article Six hereof, the expenses (including the reasonable fees and expenses of its counsel) and the compensation for services in connection therewith are to constitute expenses of administration under any Bankruptcy Law. Section 7.07 shall survive the discharge of the Indenture or resignation or removal of Trustee.

Section 7.08 Replacement of Trustee.

The Trustee may resign with respect to Securities of any or all Series by so notifying the Company. The Holders of a majority in principal amount of the outstanding Securities (or of the relevant Series) may remove the Trustee by so notifying the removed Trustee in writing (at any time when the Trustee holds funds on behalf of the Company, upon 30 days' prior written notice) and may appoint a successor trustee with the Company's consent. Such resignation or removal shall not take effect until the appointment by the Securityholders of the relevant Series or the Company as hereinafter provided of a successor trustee and the acceptance of such appointment by such successor trustee. The Company (at any time when the Trustee holds funds on behalf of the Company, upon 30 days' prior written notice) may remove the Trustee and any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee for any or no reason, including if:

- (1) the Trustee fails to comply with Section 7.10 after written request by the Company or any bona fide Securityholder who has been a Securityholder for at least six months;
- (2) the Trustee is adjudged a bankrupt or an insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its Property; or
- (4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor trustee with respect to the Securities of the relevant Series. If a successor trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee at the expense of the Company, the Company or any Holder may petition any court of competent jurisdiction for the appointment of a successor trustee.

A successor trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall, upon payment of its fees and expenses (including, without limitation, reasonable fees and expenses of counsel) hereunder, transfer all Property held by it as Trustee to the successor trustee, the resignation or removal of the retiring Trustee shall become effective, and the successor trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor trustee shall mail notice of its succession to each Securityholder.

Section 7.09 Successor Trustee by Merger, etc.

If the Trustee consolidates with, merges with or into or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor trustee.

Section 7.10 Eligibility; Disqualification.

This Indenture shall always have a Trustee who satisfies the requirements of TIA § 310(a)(1). The Trustee shall have a combined capital and surplus of at least \$10,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b).

Section 7.11 Preferential Collection of Claims Against Company.

The Trustee shall comply with 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.

**ARTICLE 8
DISCHARGE OF INDENTURE**

Section 8.01 Defeasance upon Deposit of Moneys or Government Obligations.

(a) The Company may, at its option and at any time, elect to have either paragraph (b) or paragraph (c) below be applied to the outstanding Securities of any Series upon compliance with the applicable conditions set forth in paragraph (d).

(b) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (b) with respect to any Series, the Company shall be deemed to have been released and discharged from its obligations with respect to the outstanding Securities of the Series on the date the applicable conditions set forth below are satisfied (hereinafter, "**Legal Defeasance**"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Securities of a Series, which shall thereafter be deemed to be "outstanding" only for the purposes of the Sections and matters under this Indenture referred to in (i) and (ii) below, and the Company shall be deemed to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned, except for the following which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of outstanding Securities of a Series to receive solely from the trust fund described in paragraph (d) below and as more fully set forth in such paragraph, payments in respect of the principal of and interest on such Securities when such payments are due and (ii) obligations listed in Section 8.02, subject to compliance with this Section 8.01. The Company may exercise its option under this paragraph (b) with respect to a Series notwithstanding the prior exercise of its option under paragraph (c) below with respect to the Securities of the Series.

(c) Upon the Company's exercise under paragraph (a) of the option applicable to this paragraph (c) with respect to a Series, the Company shall be released and discharged from the obligations under any covenant contained in Articles Four and Five and any other covenant contained in or referenced in the Authorizing Resolution or supplemental indenture relating to such Series (to the extent such release and discharge shall not be prohibited thereby), on and after the date the conditions set forth below are satisfied (hereinafter, "**Covenant Defeasance**"), and the Securities of such Series shall thereafter be deemed to be not "outstanding" for the purpose of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, such Covenant Defeasance means that, with respect to the outstanding Securities of a Series, the Company may omit to comply with and shall 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 shall not constitute a Default or an Event of Default under Section 6.01(3) or otherwise, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

(d) The following shall be the conditions to application of either paragraph (b) or paragraph (c) above to the outstanding Securities of the applicable Series:

(1) The Company shall have irrevocably deposited in trust with the Trustee (or another qualifying trustee), money in the currency in which the Securities of such Series are payable or Government

Obligations or a combination thereof in such amounts and at such times as are sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of and interest on the outstanding Securities of such Series to maturity or redemption; *provided, however*, that the Trustee (or other qualifying trustee) shall have received an irrevocable written order from the Company instructing the Trustee (or other qualifying trustee) to apply such money or the proceeds of such Government Obligations to said payments with respect to the Securities of such Series to maturity or redemption;

(2) No Default or Event of Default (other than a Default or Event of Default resulting from non-compliance with any covenant from which the Company is released upon effectiveness of such Legal Defeasance or Covenant Defeasance pursuant to paragraph (b) or (c) hereof, as applicable) shall have occurred and be continuing on the date of such deposit or result therefrom;

(3) Such deposit will not result in a breach or violation of, or constitute a default under, any other material instrument or agreement to which the Company or any of its Restricted Subsidiaries is a party or by which it or any of their Property is bound;

(4) (i) In the event the Company elects paragraph (b) hereof, the Company shall deliver to the Trustee an Opinion of Counsel in the United States, in form and substance reasonably satisfactory to the Trustee, to the effect that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the Issue Date pertaining to such Series, 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 state that, or (ii) in the event the Company elects paragraph (c) hereof, the Company shall deliver to the Trustee an Opinion of Counsel in the United States, in form and substance reasonably satisfactory to the Trustee, to the effect that, in the case of clauses (i) and (ii), and subject to customary assumptions and exclusions, Holders of the Securities of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and the defeasance contemplated hereby and will be subject to federal income tax in the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(5) The Company shall have delivered to the Trustee an Officers' Certificate, stating that the deposit under clause (1) was not made by the Company with the intent of preferring the Holders of the Securities of such Series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others; and

(6) The Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent specified herein relating to the defeasance contemplated by this Section 8.01 have been complied with.

In the event all or any portion of the Securities of a Series are to be redeemed through such irrevocable trust, the Company must make arrangements satisfactory to the Trustee, at the time of such deposit, for the giving of the notice of such redemption or redemptions by the Trustee in the name and at the expense of the Company.

(e) In addition to the Company's rights above under this Section 8.01, the Company may terminate all of its obligations under this Indenture with respect to a Series, when:

(1) All Securities of such Series theretofore authenticated and delivered (other than Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07 and Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation or all such Securities not theretofore delivered to the Trustee for cancellation (A) have become due and payable, (B) will become due and payable at maturity within one year or (C) 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, and in each such case, the Company has irrevocably deposited or caused to be deposited with the Trustee (or another qualifying trustee) as trust funds in trust solely for that purpose an amount of money in the currency in which the Securities of such Series are payable or Government Obligations or a combination thereof sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay and discharge the entire Indebtedness on the Securities of such Series not theretofore delivered

to the Trustee for cancellation, for principal of and interest on the Securities of such Series, on the date of such deposit or to the maturity or redemption date, as the case may be;

(2) The Company has paid or caused to be paid all other sums payable hereunder by the Company;

(3) The Company has delivered irrevocable instructions to the Trustee (or such other qualifying trustee), to apply the deposited money toward the payment of the Securities of such Series at maturity or redemption, as the case may be; and

(4) The Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, stating that all conditions precedent specified in this Section 8.01(e) relating to the satisfaction and discharge of this Indenture have been complied with.

Section 8.02 Survival of the Company's Obligations.

Notwithstanding the satisfaction and discharge of this Indenture under Section 8.01, the Company's obligations in Paragraph 8 of the Securities and Sections 2.03 through 2.07, 4.01, 7.07, 7.08, 8.04 and 8.05, however, shall survive until the Securities of an applicable Series are no longer outstanding. Thereafter, the Company's obligations in Paragraph 8 of the Securities of such Series and Sections 7.02, 7.07, 8.04 and 8.05 shall survive (as they relate to such Series) such satisfaction and discharge.

Section 8.03 Application of Trust Money.

The Trustee shall hold in trust money or Government Obligations deposited with it pursuant to Section 8.01. It shall apply the deposited money and the money from Government Obligations in accordance with this Indenture to the payment of principal of and interest on the Securities of the defeased Series.

Section 8.04 Repayment to the Company.

The Trustee and the Paying Agent shall promptly pay to the Company upon request any excess money or securities held by them at any time. The Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for two years, *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 a newspaper of general circulation in the City of New York or send to each such Holder notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing, any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Securityholders entitled to the money must look to the Company for payment as general creditors unless applicable abandoned property law designates another person and all liability of the Trustee or such Paying Agent with respect to such money shall cease.

Section 8.05 Reinstatement.

If the Trustee is unable to apply any money or Government Obligations in accordance with Section 8.01 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 obligations under this Indenture and the Securities relating to the Series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee is permitted to apply all such money or Government Obligations in accordance with Section 8.01; *provided, however*, that (a) if the Company has made any payment of interest on or principal of any Securities of the Series because of the reinstatement of its obligations hereunder, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Obligations held by the Trustee and (b) unless otherwise required by any legal proceeding or any order or judgment of any court or governmental authority, the Trustee shall return all such money or Government

Obligations to the Company promptly after receiving a written request therefor at any time, if such reinstatement of the Company's obligations has occurred and continues to be in effect.

**ARTICLE NINE
RESERVED**

**ARTICLE TEN
AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Section 10.01 Without Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Securities of a Series without notice to or consent of any Securityholder of such Series:

- (1) to cure any ambiguity, omission, defect or inconsistency;
- (2) to comply with Article Five;
- (3) to provide that specific provisions of this Indenture shall not apply to a Series not previously issued or to make a change to specific provisions of this Indenture that only applies to any Series not previously issued or to additional Securities of a Series not previously issued;
- (4) to create a Series and establish its terms;
- (5) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (6) to release a guarantor in respect of any Series which, in accordance with the terms of this Indenture applicable to the particular Series, ceases to be liable in respect of its guarantee;
- (7) to add a guarantor in respect of any Series;
- (8) to secure any Series;
- (9) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;
- (10) to make any other change that does not adversely affect the rights of Securityholders; and
- (11) to conform the provisions of the Indenture to the final offering memorandum in respect of any Series.

After an amendment under this Section 10.01 becomes effective, the Company shall deliver notice of such amendment to the Securityholders.

Section 10.02 With Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Securities of a Series without notice to any Securityholder of such Series but with the written consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by the amendment (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). Each such Series shall vote as a separate class. The Holders of a majority in principal amount of the outstanding Securities of any Series may waive compliance by the Company with any provision of the Securities of such Series or of this Indenture relating to such Series without notice to any Securityholder (including any waiver granted in

connection with a purchase of, or tender offer or exchange offer for, Securities of such Series). Without the consent of each Holder of a Security affected thereby, however, an amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may not:

- (1) reduce the amount of Securities of the relevant Series whose Holders must consent to an amendment, supplement or waiver;
- (2) reduce the rate of or extend the time for payment of interest, including defaulted interest, on any Security;
- (3) reduce the principal of or extend the fixed maturity of any Security or alter the provisions (including related definitions) with respect to redemption of any Security pursuant to Article Three hereof or with respect to any obligations on the part of the Company to offer to purchase or to redeem Securities of a Series pursuant to the Authorizing Resolution or supplemental indenture pertaining to such Series (it being understood that only the consent of the Holders of a majority of the principal amount of the applicable Series of Securities will be required in connection with the waiver or modification of any obligation by the Company to make an offer to purchase the Securities of such Series as a result of a change of control prior to the occurrence of a change of control);
- (4) make any change that adversely affects any right of a Holder to convert or exchange any Security into or for shares of the Company's common stock or other securities, cash or other property in accordance with the terms of such Security;
- (5) modify the ranking or priority of the Securities of the relevant Series or any guarantee thereof;
- (6) release any guarantor of any Series from any of its obligations under its guarantee or this Indenture otherwise than in accordance with the terms of this Indenture;
- (7) make any change in Sections 6.04, 6.07 or this Section 10.02;
- (8) waive a continuing Default or Event of Default in the payment of the principal of or interest on any Security; or
- (9) make any Security payable at a place or in money other than that stated in the Security, or impair the right of any Securityholder to bring suit as permitted by Section 6.07.

An amendment of a provision included solely for the benefit of one or more Series does not affect the interests of Securityholders of any other Series.

It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed supplement, but it shall be sufficient if such consent approves the substance thereof.

Section 10.03 Compliance with Trust Indenture Act.

Every amendment to or supplement of this Indenture or any Securities shall comply with the TIA as then in effect.

Section 10.04 Revocation and Effect of Consents.

A consent to an amendment, supplement or waiver by a Holder shall bind the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. Unless otherwise provided in the consent or the consent solicitation statement or other document describing the terms of the consent, any Holder or subsequent Holder may revoke the consent as to its Security or portion of a Security. Any revocation of a consent by the Holder of a

Security or any such subsequent Holder shall be effective only if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officers' Certificate from the Company certifying that the requisite number of consents have been received.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders of Securities of any Series entitled to consent to any amendment, supplement or waiver, which record date shall be at least 10 days prior to the first solicitation of such consent. If a record date is fixed, and if Holders otherwise have a right to revoke their consent under the consent or the consent solicitation statement or other document describing the terms of the consent, then notwithstanding the second to last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

An amendment, supplement or waiver with respect to a Series becomes effective upon the (i) receipt by the Company or the Trustee of the requisite consents, (ii) satisfaction of any conditions to effectiveness as set forth in this Indenture or any indenture supplemental hereto containing such amendment, supplement or waiver and (iii) execution of such amendment, supplement or waiver (or the related supplemental indenture) by the Company and the Trustee. After an amendment, supplement or waiver with respect to a Series becomes effective, it shall bind every Holder of such Series, unless it makes a change described in any of clauses (1) through (9) of Section 10.02, in which case, the amendment, supplement or waiver shall bind a Holder of a Security who is affected thereby only if it has consented to such amendment, supplement or waiver and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; *provided* that no such waiver shall impair or affect the right of any Holder to receive payment of principal of and interest on a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

Section 10.05 Notation on or Exchange of Securities.

If an amendment, supplement or waiver changes the terms of a Security, the Company may require the Holder of the Security to deliver it to the Trustee, at which time the Trustee shall place an appropriate notation on the Security about the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms.

Section 10.06 Trustee to Sign Amendments, etc.

Subject to Section 7.02(b), the Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing or refusing to sign such amendment or supplemental indenture, the Trustee shall be provided with and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that such amendment, supplement or waiver is authorized or permitted by this Indenture, and (solely with respect to such Opinion of Counsel) that it will be valid and binding upon the Company and enforceable in accordance with its terms.

ARTICLE ELEVEN SECURITIES IN FOREIGN CURRENCIES

Section 11.01 Applicability of Article.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any Series in which not all of such Securities are denominated in the same currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary pursuant to this Indenture or the Securities of any particular Series, any amount in respect of any Security denominated in a Foreign Currency shall be treated for any such action or distribution as that amount of Dollars that could be obtained for such amount on

such reasonable basis of exchange and as of the record date with respect to Securities of such Series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Company may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

ARTICLE 12 MISCELLANEOUS

Section 12.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 12.02 Notices.

Any order, consent, notice or communication shall be sufficiently given if in writing and delivered in person or mailed by first class mail, postage prepaid, or delivered by commercial courier service, addressed as follows:

if to the Company:

PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer

if to the Trustee:

The Bank of New York Mellon Trust Company, N.A.
400 South Hope Street, Suite 500
Los Angeles, California 90071
Attention: Corporate Trust Administration

The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Securityholder shall be mailed to him by first class mail, or delivered by commercial courier service, at his address as it appears on the registration books of the Registrar, or, in the case of Global Securities sent electronically in accordance with the procedures of the Depository, and shall be sufficiently given to him if so sent within the time prescribed.

Failure to send a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is sent in the manner provided above, it is duly given, whether or not the addressee receives it except that notice to the Trustee shall only be effective upon receipt thereof by the Trustee.

If the Company sends notice or communications to the Securityholders, it shall send a copy to the Trustee at the same time.

In addition to the foregoing, the Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic

instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee.

Section 12.03 Communications by Holders with Other Holders.

Securityholders may communicate pursuant to TIA § 312(b) with other Securityholders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 12.04 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 Officers' Certificate (which shall include the statements set forth in Section 12.05) stating that, in the opinion of the signers (who may rely upon an Opinion of Counsel with respect to matters of law), all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel (which shall include the statements set forth in Section 12.05) stating that, in the opinion of such counsel (who may rely upon an Officers' Certificate or certificates of public officials as to matters of fact), all such conditions precedent and covenants, compliance with which constitutes a condition precedent, if any, provided for in this Indenture relating to the proposed action or inaction, have been complied with.

Section 12.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall 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 has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 12.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar or Paying Agent may make reasonable rules for its functions.

Section 12.07 Legal Holidays.

A “**Legal Holiday**” is a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York or in the place of payment are not required to be open. If a payment date is a Legal Holiday, payment may be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If this Indenture provides for a time period that ends or requires performance of any non-payment obligation by a day that is not a Business Day, then such time period shall instead be deemed to end on, and such obligation shall instead be performed by, the next succeeding Business Day. A “**Business Day**” is any day other than a Legal Holiday.

Section 12.08 Governing Law.

The laws of the State of New York shall govern this Indenture and the Securities of each Series.

Section 12.09 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.10 No Recourse Against Others.

All liability described in Paragraph 12 of the Securities of any director, officer, employee or stockholder, as such, of the Company is, to the fullest extent permitted by applicable law, waived and released.

Section 12.11 Successors and Assigns.

All covenants and agreements of the Company in this Indenture and the Securities shall bind its successors and assigns. All agreements of the Trustee in this Indenture shall bind its successors and assigns.

Section 12.12 Duplicate Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Signatures of the parties hereto transmitted by facsimile or other electronic transmission shall be deemed to be their original signatures for all purposes.

Section 12.13 Severability.

In case any one or more of the provisions contained in this Indenture or in the Securities of a Series shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture or of such Securities.

Section 12.14 Waiver of Jury Trial.

EACH OF THE COMPANY AND THE TRUSTEE (AND EACH HOLDER BY ITS ACCEPTANCE OF ANY NOTE) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 12.15 Submission to Jurisdiction.

The Company and the Trustee irrevocably submit to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, City of New York, over any suit, action or proceeding arising out of or relating to this Indenture. To the fullest extent permitted by applicable law, the parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the

jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 12.16 Tax Withholding

In order to comply with applicable tax laws, rules and regulations (inclusive of directives, guidelines and interpretations promulgated by competent authorities) in effect from time to time (“**Applicable Tax Law**”) a foreign financial institution, issuer, trustee, paying agent, holder or other institution which has agreed to be subject to or related to this Agreement agrees to provide to The Bank of New York Mellon Trust Company, N.A. upon request reasonably available information about holders or other applicable parties and/or transactions (including any modification to the terms of such transactions) so that The Bank of New York Mellon Trust Company, N.A. can determine whether it has tax related obligations under Applicable Tax Law. The Company agrees that the Trustee shall be entitled to make any withholding or deduction from payment to the extent necessary to comply with Applicable Tax Law for which the Trustee shall have no liability.

SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed, all as of the date first above written.

PDL BIOPHARMA, INC.

By: /s/ Peter S. Garcia

Name: Peter S. Garcia

Title: CFO

The Bank of New York Mellon Trust Company, N.A., as Trustee

By: /s/ Lawrence M. Kusch

Name: Lawrence M. Kusch

Title: Vice President

EXHIBIT A

No. _____ CUSIP/ISIN No.: _____

[Title of Security]

PDL BIOPHARMA, INC.

a Delaware corporation

promises to pay to _____ or registered assigns the principal sum of _____ [Dollars]* on _____.

Interest Payment Dates: _____ and _____

Record Dates: _____ and _____

Authenticated: _____ Dated: _____

PDL BIOPHARMA, INC.

By:

Name:

Title:

[_____],

as Trustee, certifies that this is one of the Securities referred to in the within mentioned Indenture.

By:

Authorized Signatory

* Or other currency. Insert corresponding provisions on reverse side of Security in respect of foreign currency denomination or interest payment requirement.

PDL BIOPHARMA, INC.

[Title of Security]

PDL BIOPHARMA, INC., a Delaware corporation (together with its successors and assigns, the “**Company**”), issued this Security under an Indenture dated as of November 22, 2016, (as amended, modified or supplemented from time to time in accordance therewith, the “**Base Indenture**”), as supplemented by the Supplemental Indenture dated as of _____, (the “**Supplemental Indenture**” and together with the Base Indenture, the “**Indenture**”), by and among the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity, the “**Trustee**”), to which reference is hereby made for a statement of the respective rights, obligations, duties and immunities thereunder of the Company, the Trustee and the Holders and of the terms upon which the Securities are, and are to be, authorized and delivered. All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them therein.

1. Interest. The Company promises to pay interest on the principal amount of this Security at the rate per annum shown above. The Company will pay interest semiannually on _____ and _____ of each year, commencing _____, _____, until the principal is paid or made available for payment. Interest on the Securities will accrue from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid, from _____, _____, *provided* that, if there is no existing default in the payment of interest, and if this Security is authenticated between a record date referred to on the face hereof and the next succeeding interest payment date, interest shall accrue from such interest payment date. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment. The Company will pay interest on the Securities (except defaulted interest, if any, which will be paid on such special payment date to Holders of record on such special record date as may be fixed by the Company or otherwise in accordance with the Indenture) to the persons who are registered Holders of Securities at the close of business on the [Insert record dates] immediately preceding the interest payment date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of [Insert applicable country or currency] that at the time of payment is legal tender for payment of public and private debts.

3. Paying Agent and Registrar. Initially, the Trustee will act as Paying Agent and Registrar. The Company may change or appoint any Paying Agent, Registrar or co-Registrar without notice. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Registrar or co-Registrar.

4. Optional Redemption.¹ The Company may redeem the Securities at any time on or after _____, in whole or in part, at the following redemption prices (expressed as a percentage of their principal amount) together with interest accrued and unpaid to the date fixed for redemption:

If redeemed during the twelve-month period commencing on _____ and ending on _____ in each of the following years	Percentage

[Insert provisions relating to redemption at option of Holders, if any]

Notice of redemption will be sent at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed at its registered address. Securities in denominations larger than _____² may be redeemed in part. On and after the redemption date interest ceases to accrue on

¹ If applicable.

² Insert applicable denominations and multiples.

Securities or portions of them called for redemption, *provided* that if the Company shall default in the payment of such Securities at the redemption price together with accrued interest, interest shall continue to accrue at the rate borne by the Securities.

5. **Mandatory Redemption.**³ The Company shall redeem [_____] % of the aggregate principal amount of Securities originally issued under the Indenture on each of [_____] , which redemptions are calculated to retire [_____] % of the Securities originally issued prior to maturity. Such redemptions shall be made at a redemption price equal to 100% of the principal amount thereof, together with accrued interest to the redemption date. The Company may reduce the principal amount of Securities to be redeemed pursuant to this Paragraph 5 by the principal amount of any Securities previously redeemed, retired or acquired, otherwise than pursuant to this Paragraph 5, that the Company has delivered to the Trustee for cancellation and not previously credited to the Company's obligations under this Paragraph 5. Each such Security shall be received and credited for such purpose by the Trustee at the redemption price and the amount of such mandatory redemption payment shall be reduced accordingly.

6. **Denominations, Transfer, Exchange.** The Securities are in registered form only without coupons in denominations of _____⁴ and integral multiples of _____ in excess thereof.⁵ A Holder may transfer or exchange Securities by presentation of such Securities to the Registrar or a co-Registrar with a request to register the transfer or to exchange them for an equal principal amount of Securities of other denominations. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Security selected for redemption or purchase, except the unredeemed or unpurchased part thereof if the Security is redeemed or purchased in part, or transfer or exchange any Securities for a period of 15 days before a selection of Securities to be redeemed or purchased.

7. **Persons Deemed Owners.** The registered Holder of this Security shall be treated as the owner of it for all purposes.

8. **Unclaimed Money.** Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and thereafter, Holders entitled to the money must look to the Company for payment as general creditors.

9. **Amendment, Supplement, Waiver.** Subject to certain exceptions, the Indenture or the Securities may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by the amendment and any past default or compliance with any provision relating to any Series of the Securities may be waived in a particular instance with the consent of the Holders of a majority in principal amount of the outstanding Securities of such Series.⁶ Without the consent of any Securityholder, the Company and the Trustee may amend or supplement the Indenture or the Securities in certain respects as specified in the Indenture.

10. **Successor Corporation.** When a successor corporation assumes all the obligations of its predecessor under the Securities and the Indenture, the predecessor corporation will be released from those obligations.

11. **Trustee Dealings With Company.** Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may make loans to, accept deposits from, and perform

³ If applicable.

⁴ Insert applicable denominations and multiples.

⁵ Insert applicable denominations and multiples.

⁶ If different terms apply, insert a brief summary thereof.

services for the Company or its affiliates, and may otherwise deal with the Company or its affiliates, as if it were not Trustee, including owning or pledging the Securities.

12. No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

13. Discharge of Indenture. The Indenture contains certain provisions pertaining to defeasance and discharge, which provisions shall for all purposes have the same effect as if set forth herein.

14. Authentication. This Security shall not be valid until an authorized signatory of the Trustee signs the certificate of authentication on the other side of this Security.

15. 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 Gift to Minors Act).

16. GOVERNING LAW. THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

17. CUSIP and ISIN Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Securities and has directed the Trustee to use CUSIP and ISIN numbers in notices of repurchase as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice of repurchase and reliance may be placed only on the other identification numbers placed thereon.

18. Copies. The Company will furnish to any Holder upon written request and without charge a copy of the Indenture and the applicable Authorizing Resolution or supplemental indenture. Requests may be made to: PDL BioPharma, Inc., 932 Southwood Boulevard, Incline Village, Nevada 89451, Attention: [Chief Financial Officer].

ASSIGNMENT FORM

If you the Holder want to assign this Security, fill in the form below:

I or we assign and transfer this Security to _____ (insert assignee's social security or tax ID number)

(Print or type assignee's name, address, and zip code)

and irrevocably appoint _____ agent to transfer this Security 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 other side of this Security)

Signature Guarantee:

PDL BIOPHARMA, INC.

as Issuer

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

as Trustee

SUPPLEMENTAL INDENTURE

Dated as of November 22, 2016

2.75% Convertible Senior Notes due 2021

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SUPPLEMENTAL INDENTURE, dated as of November 22, 2016 (this “**Supplemental Indenture**”), between PDL BioPharma, Inc., a Delaware corporation (the “**Company**”), and The Bank of New York Mellon Trust Company, N.A, as trustee (the “**Trustee**”) under the Indenture dated as of November 22, 2016, between the Company and the Trustee (as amended or supplemented from time to time in accordance with the terms thereof, the “**Base Indenture**”).

RECITALS OF THE COMPANY

WHEREAS, the Base Indenture provides, among other things, for the issuance, from time to time, of the Company’s unsecured Securities, in an unlimited aggregate principal amount, in one or more series to be established by the Company under, and authenticated and delivered as provided in, the Base Indenture;

WHEREAS, Section 10.01 of the Base Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Base Indenture to establish the form and terms of Securities of any series as contemplated by Section 2.01 of the Base Indenture;

WHEREAS, the Board of Directors has duly adopted resolutions authorizing the Company to execute and deliver this Supplemental Indenture;

WHEREAS, pursuant to the terms of the Base Indenture, the Company desires to establish a new series of its Securities to be known as its “2.75% Convertible Senior Notes due 2021” (the “**Notes**”), the form and substance of such Notes and the terms, provisions and conditions thereof to be set forth as provided in the Base Indenture and this Supplemental Indenture;

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note and the Form of Notice of Conversion, Form of Fundamental Change Repurchase Notice and Form of Assignment and Transfer contemplated under the terms of the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture, and all requirements necessary to make (i) this Supplemental Indenture a valid instrument in accordance with its terms, and (ii) the Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, have been performed, and the execution and delivery of this Supplemental Indenture by the Company have been duly authorized in all respects.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the Company and the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Scope of Supplemental Indenture.

The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and shall only govern the terms of, the Notes, which may be issued from time to time, and shall not apply to any other Securities that may be issued under the Base Indenture unless a supplemental indenture with respect to such other Securities specifically incorporates such changes, modifications and supplements. The provisions of this Supplemental Indenture shall supersede any corresponding provisions in the Base Indenture.

Section 1.02 Definitions.

Except as otherwise provided in this Supplemental Indenture, all words, terms and phrases defined in the Base Indenture (but not otherwise defined herein) shall have the same meaning herein as in the Base Indenture. To the extent terms defined herein differ from terms defined in the Base Indenture the terms defined herein will govern for purposes of this Supplemental Indenture and the Notes. For all purposes of this Supplemental Indenture and the Notes, except as otherwise expressly provided or unless the context otherwise requires:

“**1% Exception**” has the meaning specified in Section 4.04(k)

“**Additional Interest**” has the meaning specified in Section 5.02.

“**Additional Notes**” has the meaning specified in Section 2.01.

“**Additional Shares**” has the meaning specified in Section 4.06(a).

“**Base Indenture**” has the meaning specified in the first paragraph of this Supplemental Indenture.

“**Bid Solicitation Agent**” means the Company or an investment bank as may be appointed, from time to time, by the Company to solicit market bid quotations for the Notes in accordance with Section 4.01(a)(ii).

“**Business Day**” means, with respect to any Note, each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the banking institutions in New York City are authorized or obligated by law or executive order to close or be closed.

“**Capital Stock**” means (a) in the case of a corporation, corporate stock, (b) in the case of an association or business entity, shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (d) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distribution of the assets of, the issuing person.

“**Cash Settlement**” has the meaning specified in Section 4.03(a).

“**close of business**” means 5:00 p.m. (New York City time).

“**Combination Settlement**” has the meaning specified in Section 4.03(a).

“**Common Stock**” means the shares of common stock, par value \$0.01 per share, of the Company as such shares of common stock exist on the date of this Supplemental Indenture, subject to Section 4.07.

“**Common Stock Change Event**” has the meaning specified in Section 4.07(a).

“**Conversion Agent**” means the Trustee or such other office or agency designated by the Company where Notes may be presented for conversion. The Conversion Agent shall initially be the Trustee.

“**Conversion Date**” has the meaning specified in Section 4.02(b).

“**Conversion Notice**” has the meaning specified in Section 4.02(b).

“**Conversion Obligation**” has the meaning specified in Section 4.01(a).

“**Conversion Price**” means, in respect of each Note, as of any date, \$1,000, divided by the Conversion Rate as of such date.

“**Conversion Rate**” means, initially, 262.2951 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment as set forth herein.

“**Conversion Settlement Date**” means, with respect to a conversion of any Note, the date the consideration for such conversion is required to be paid or delivered, as applicable, pursuant to this Indenture.

“**Custodian**” has the meaning specified in Section 5.01.

“**Daily Cash Amount**,” for each of the 60 consecutive VWAP Trading Days during the Observation Period for the conversion of any Note, means cash equal to the lesser of (x) the Daily Specified Dollar Amount applicable to such conversion and (y) the Daily Conversion Value for such VWAP Trading Day.

“**Daily Conversion Value**,” for each of the 60 consecutive VWAP Trading Days during the Observation Period, means one-sixtieth (1/60th) of the product of (i) the Conversion Rate on such VWAP Trading Day *multiplied by* (ii) the Daily VWAP of the Common Stock on such Trading Day.

“**Daily Share Amount**,” for each of the 60 consecutive VWAP Trading Days during the Observation Period for the conversion of any Note, means a number of shares of Common Stock equal to (i) the excess, if any, of (x) the Daily Conversion Value for such VWAP Trading Day over (y) the Daily Specified Dollar Amount applicable to such conversion, *divided by* (ii) the Daily VWAP of the Common Stock for such VWAP Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such VWAP Trading Day if such Daily Conversion Value does not exceed such Daily Specified Dollar Amount.

“Daily Specified Dollar Amount” means, with respect to the conversion of any Note, an amount equal to one-sixtieth (1/60th) of the Specified Dollar Amount applicable to such conversion.

“Daily VWAP” of the Common Stock, in respect of any VWAP Trading Day, means the per share volume-weighted average price on the Relevant Exchange as displayed under the heading “Bloomberg VWAP” on Bloomberg page “PDLI <EQUITY> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such VWAP Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such VWAP Trading Day as determined in a commercially reasonable manner by a nationally recognized independent investment banking firm retained for the purpose by the Company, using a volume-weighted average price method). The Daily VWAP shall be determined without regard to after-hours trading or any other trading outside of the regular trading session.

“Default Settlement Method” means initially Combination Settlement with a Specified Dollar Amount of \$1,000 per \$1,000 principal amount of Notes. However, the Company may, from time to time, change the Default Settlement Method by sending notice of the new Default Settlement Method to the Holders.

“Definitive Notes” means Notes that are Definitive Securities and not a Global Security or otherwise in global form.

“Depositary” or **“Depository”** has the meaning set forth in the Base Indenture, which shall initially be DTC until a successor Depositary shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Depositary” shall mean such successor Depositary.

“Effective Date” means (i) with respect to a Make-Whole Fundamental Change or a Fundamental Change (but without regard to the exclusion of transactions involving Publicly Traded Securities in the paragraph following clause (4) of the definition thereof), the date on which such Make-Whole Fundamental Change or Fundamental Change, as the case may be, occurs or becomes effective and (ii) as used in Section 4.04, the first date on which the shares of the Common Stock trade on the applicable exchange or in the applicable market (used to determine the Last Reported Sale Price), regular way, reflecting the relevant share split or share combination, as applicable.

“Ex-Dividend Date” means the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market (used to determine the Last Reported Sale Price), regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Expiration Date**” has the meaning specified in Section 4.04(e).

“**Expiration Time**” has the meaning specified in Section 4.04(e).

“**Extension Period**” has the meaning specified in Section 5.02.

“**Filing Failure**” has the meaning specified in Section 5.02.

A “**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued that any of the following occurs:

(1) the Common Stock is not traded or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors); or

(2) any person, including any syndicate or group deemed to be a “person” under Section 13(d) of the Exchange Act, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Company’s common equity representing more than 50% of the total voting power of all shares of the Company’s Capital Stock entitled to vote generally in elections of directors (or the Company becomes aware that such a filing is required but has not been made), other than a filing by the Company, any of the Company’s wholly owned Subsidiaries or any of the Company’s employee benefit plans; or

(3) consummation of any binding share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which shares of the Company’s Capital Stock shall be converted into, or exchanged for, cash, securities or other property, or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than the Company or one or more of the Company’s wholly owned Subsidiaries (any such exchange, offer, consolidation, merger, transaction or series of transactions being referred to in this Supplemental Indenture as an “**event**”) other than any transaction:

(a) that does not result in a reclassification, conversion, exchange or cancellation of the outstanding Common Stock; or

(b) pursuant to which the holders of the Common Stock immediately prior to such transaction have the entitlement to exercise, directly or indirectly, 50% or more of the voting power of all shares of Capital Stock entitled to vote generally in the election of directors of the continuing or surviving corporation immediately after the transaction with such holders’ proportional voting power immediately after such event being in substantially the same proportions as their respective voting power before such event; or

(c) which is effected solely to change the Company’s jurisdiction of incorporation to another U.S. jurisdiction and results in a reclassification, conversion or

exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity; or

(4) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company;

Notwithstanding the foregoing, a Fundamental Change under clause (2) or clause (3) above shall not be deemed to have occurred (and the Company shall not be required to deliver the Fundamental Change Company Notice incidental thereto), as a result of a transaction described in clause (3) in which at least 90% of the consideration paid for the Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in the exchange, merger, consolidation, sale, lease or other transfer otherwise constituting a Fundamental Change under clause (3) above consists of Publicly Traded Securities and such exchange, merger, consolidation, sale, lease or other transfer constitutes a Common Stock Change Event for which the Reference Property consists of such consideration.

"Fundamental Change Company Notice" has the meaning specified in Section 3.01(b).

"Fundamental Change Repurchase Date" has the meaning specified in Section 3.01(a).

"Fundamental Change Repurchase Notice" has the meaning specified in Section 3.01(a)(1).

"Fundamental Change Repurchase Price" has the meaning specified in Section 3.01(a).

"Global Note" means any Note that is a Global Security.

"Indenture" means the Base Indenture, as originally executed and as amended or supplemented from time to time by one or more indentures supplemental thereto applicable to the Notes, including this Supplemental Indenture, entered into pursuant to the applicable provisions of the Indenture, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the TIA that are deemed to be a part of and govern the Base Indenture, this Supplemental Indenture and any other such supplemental indenture, respectively.

"Initial Notes" has the meaning specified in Section 2.01.

"Interest Payment Date" means, with respect to the payment of interest on any Notes, each June 1 and December 1 of each year, beginning on the date set forth in the certificate for such Note.

"Last Reported Sale Price" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the Relevant Exchange. The Last Reported Sale Price shall be determined without reference to after-hours or extended market trading. If the Common Stock is not listed for trading on the Relevant Exchange on the relevant date, the "Last

Reported Sale Price” of the Common Stock shall be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the “Last Reported Sale Price” of the Common Stock shall be the average of the midpoint of the last bid and ask prices for the Common Stock on the relevant date from each of three U.S. nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Make-Whole Fundamental Change**” means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition (including, for the avoidance of doubt, after giving effect to the paragraph immediately succeeding clause (4) of such definition), but without regard to subclause (3)(b) of such definition).

“**Measurement Period**” has the meaning specified in Section 4.01(a)(ii).

“**Note**” or “**Notes**” has the meaning specified in the fourth paragraph of the recitals of this Supplemental Indenture, and shall include any Additional Notes issued pursuant to Section 2.01 hereof.

“**Observation Period**,” with respect to any Note, means the 60 consecutive VWAP Trading Day period beginning on, and including, the second VWAP Trading Day immediately following the related Conversion Date, except that “Observation Period” means, with respect to any Note the Conversion Date for which occurs during the period beginning on, and including, June 1, 2021 and ending on, and including, the second Scheduled Trading Day immediately preceding the Stated Maturity, the 60 consecutive VWAP Trading Day period beginning on, and including, the 62nd (or, if the T+2 Effective Date has occurred by such date, or, by such date, the Relevant Exchange or other relevant authority has announced that the T+2 Effective Date will occur within the next 59 Trading Days, the 61st) Scheduled Trading Day immediately preceding the Stated Maturity.

“**open of business**” means 9:00 a.m. (New York City time).

“**Paying Agent**” has the meaning set forth in the Base Indenture, which shall initially be the Trustee, and shall be the Person authorized by the Company to pay the principal amount of, interest on, or Fundamental Change Repurchase Price of, any Notes on behalf of the Company.

“**Physical Settlement**” has the meaning specified in Section 4.03(a).

“**Publicly Traded Securities**” means, in respect of a transaction or transactions described in clause (2) or clause (3) of the definition of Fundamental Change, shares of common stock traded on the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors), or which shall be so traded when issued or exchanged in connection with such transaction or transactions.

“**Reference Property**” has the meaning specified in Section 4.07(a).

“**Reference Property Unit**” has the meaning specified in Section 4.07(a).

“**Regular Record Date**” means, with respect to the payment of interest on the Notes, the May 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on June 1 and the November 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on December 1.

“**Relevant Exchange**” means the NASDAQ Global Select Market or, if the Common Stock is not then listed on the NASDAQ Global Select Market, the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading.

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, “Scheduled Trading Day” means a Business Day.

“**Settlement Method**” means Cash Settlement, Physical Settlement or Combination Settlement.

“**Shoe Option**” means the Underwriters’ option to purchase up to \$22,500,000 aggregate principal amount of additional Notes as provided for in the Underwriting Agreement.

“**Specified Dollar Amount**” means, with respect to the conversion of a Note to which Combination Settlement applies, the maximum cash amount per \$1,000 principal amount of such Note deliverable upon such conversion (excluding cash in lieu of any fractional share of Common Stock), subject to Section 4.03(b)(v).

“**Spin-Off**” has the meaning specified in Section 4.04(c).

“**Spin-Off Valuation Period**” has the meaning specified in Section 4.04(c).

“**Stated Maturity**” means, with respect to any Note and the payment of the principal amount thereof, December 1, 2021.

“**Stock Price**” has the meaning specified in Section 4.06(b).

“**T+2 Effective Date**” means the date, if at all, the Relevant Exchange has adopted a normal settlement cycle of two Business Days for trading in the Common Stock, and the T+2 Effective Date will be the first date for which trades executed on that date are subject to such new cycle.

“**Tender/Exchange Offer Valuation Period**” has the meaning specified in Section 4.04(e).

“**Trading Day**” means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on the Relevant Exchange or, if the Common Stock (or such other security) is not then listed on the Relevant Exchange, on the principal other market on which the Common Stock (or such other security) is then traded, and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided*, that if the Common Stock

(or other such security) is not so listed or admitted for trading, “Trading Day” means a Business Day.

“**Trading Price**” per \$1,000 principal amount of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for \$2,000,000 principal amount of the Notes at approximately 3:30 p.m. (New York City time) on such determination date from three independent U.S. nationally recognized securities dealers selected by the Company for this purpose; *provided* that, if three such bids cannot reasonably be obtained by the Bid Solicitation Agent, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$2,000,000 principal amount of the Notes from a U.S. nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate.

“**Trading Price Condition**” has the meaning specified in Section 4.01(a)(ii).

“**U.S.**” means the United States of America.

“**Underwriters**” has the meaning specified in the Underwriting Agreement.

“**Underwriting Agreement**” means that certain underwriting agreement, dated November 16, 2016, between the Company and, as representatives of the several Underwriters, RBC Capital Markets, LLC.

“**VWAP Market Disruption Event**” means, on any day, (i) a failure by the Relevant Exchange to open for trading during its regular trading session on such day or (ii) the occurrence or existence, prior to 1:00 p.m. (New York City time) on such day, of an aggregate one half-hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Relevant Exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**VWAP Trading Day**” means a day on which (i) there is no VWAP Market Disruption Event and (ii) trading in the Common Stock generally occurs on the Relevant Exchange or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, “VWAP Trading Day” means a Business Day.

Section 1.03 Rules of Construction.

Unless the context otherwise requires:

(1) a term has the meaning assigned to it herein and all terms defined in the Base Indenture (but not otherwise defined herein) have the meanings assigned to them therein;

- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP and all accounting determinations shall be made in accordance with GAAP;
- (3) “or” is not exclusive and “including” means “including without limitation”;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Supplemental Indenture as a whole (including any Authorizing Resolution or supplemental indenture relating to the relevant Series) and not to any particular Article, Section or other subdivision;
- (6) all exhibits are incorporated by reference herein and expressly made a part of the Indenture;
- (7) any transaction or event shall be considered “permitted by” or made “in accordance with” or “in compliance with” the Indenture or any particular provision thereof if such transaction or event is not expressly prohibited by the Indenture or such provision, as the case may be; and
- (8) any reference to interest on, or in respect of, any Note in the Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 5.02 and any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE II THE SECURITIES

Section 2.01 Title and Terms; Payments; Denomination.

There is hereby established pursuant to Sections 2.01 and 2.02 of the Base Indenture a series of Securities designated the “2.75% Convertible Senior Notes due 2021” initially limited in aggregate principal amount to \$150,000,000. If the Underwriters exercise the Shoe Option, then there will be originally issued up to an additional \$22,500,000 principal amount of Additional Notes pursuant to such exercise, subject to the provisions of this Indenture. Without limiting the generality of the foregoing, Additional Notes may be issued pursuant to the provisions below in this Section 2.01. The aggregate principal amount of Notes outstanding at any time will exclude Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to this Indenture.

The principal amount of Notes then outstanding shall be payable at the Stated Maturity.

Interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months.

The Company may, without the consent of the Holders of the Notes, hereafter issue additional notes (“**Additional Notes**”) under the Indenture having the same ranking and the same interest rate, maturity and other terms (except, to the extent applicable, with respect to the date as of which interest begins to accrue on such Additional Notes and the first Interest Payment Date of such Additional Notes) as the Notes issued on the date of this Supplemental Indenture (the “**Initial Notes**”) in an unlimited aggregate principal amount; *provided* that no such Additional Notes shall be issued with the same CUSIP number unless they will be fungible with the Initial Notes for United States federal income tax and securities law purposes. Any such Additional Notes shall constitute a single series together with the Initial Notes for all purposes hereunder, including, without limitation, for purposes of any waivers, supplements or amendments to the Indenture requiring the approval of Holders of the Notes and any offers to purchase the Notes. Holders of such Additional Notes shall vote together with the Holders of the Notes as one class. In addition, the Company may, to the extent permitted by law, purchase Notes in the open market or by tender offer at any price or by private agreement. The Company shall cause all Notes surrendered for the purpose of payment, repurchase (including as described above), registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company’s Agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation in accordance with Section 2.10 of the Base Indenture. Any Notes repurchased by the Company or one of its Subsidiaries shall no longer be considered “outstanding” under the Indenture.

The Form of Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer shall be substantially as set forth in Exhibits A, B, C and D, respectively, hereto, which are incorporated into and shall be deemed a part of this Supplemental Indenture, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined to be necessary or appropriate by the officers of the Company executing such Notes, as evidenced by their execution of the Notes. In the case of any conflict between any of such documents and the express provisions of the Indenture, such express provisions of the Indenture shall control.

The Company shall pay the principal of and interest on any Global Note in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Global Note. The Company shall pay the principal of any Definitive Notes at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer. The Company may, however, change the Paying Agent or Registrar for the Notes without prior notice to the Holders thereof, and the Company may act as Paying Agent or Registrar for the Notes. Interest on any Definitive Notes shall be payable (i) to Holders of Definitive Notes having an aggregate principal amount of Notes of \$5,000,000 or less, by check mailed to the Holders of such Notes at their address in the Security Register and (ii) to Holders having an aggregate principal amount of Definitive Notes in excess of \$5,000,000, either by check mailed to each Holder at its address in the Security Register or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds

to that Holder's account within the United States, which application shall remain in effect until that Holder notifies, in writing, the Registrar to the contrary.

The Notes will be issued only in denominations having a principal amount of \$1,000 or any integral multiple of \$1,000 in excess thereof.

Section 2.02 Book-Entry Provisions for Global Notes.

(a) The Notes initially shall be issued in the form of one or more Global Notes without interest coupons (i) registered in the name of Cede & Co., as nominee of the Depository, and (ii) delivered to the Trustee as custodian for the Depository.

(b) Definitive Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in a Global Note if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for the Global Note and a successor depository is not appointed by the Company within 90 days of such notice, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed by the Company within 90 days of such cessation, or (iii) an Event of Default has occurred and is continuing and the Company, the Trustee or the Registrar has received a written request from the Depository, or from a Holder of a beneficial interest in a Global Note, to exchange such Global Note or beneficial interest, as applicable, for one or more Definitive Notes. Definitive Notes shall not be otherwise issuable. For the avoidance of doubt, this Section 2.02 supersedes the provisions of Section 2.15 of the Base Indenture to the extent inconsistent therewith.

Section 2.03 Reporting Requirement.

The Company shall deliver to the Trustee within 15 days after the same is required to be filed with the SEC (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act or any successor thereto), copies of the quarterly and annual reports and of the information, documents and other reports, if any, that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, and the Company shall otherwise comply with the requirements of TIA Section 314(a). Any quarterly or annual report or other information, document or other report that the Company files with the SEC pursuant to Section 13 or 15(d) of the Exchange Act on the SEC's EDGAR system (or any successor thereto) shall be deemed to constitute delivery of such filing to the Trustee as of the time of such filing. The Trustee does not have the duty to review such information, documents or reports, is not considered to have notice of the content of such information, documents or reports and does not have a duty to verify the accuracy of such information, documents or reports.

**ARTICLE III
FUNDAMENTAL CHANGES AND REPURCHASES THEREUPON**

Section 3.01 Repurchase at Option of Holders Upon a Fundamental Change.

(a) Generally. If a Fundamental Change occurs at any time prior to the Stated Maturity, then each Holder of Notes shall have the right, at such Holder's option, to require the

Company to repurchase for cash any or all of such Holder's Notes, or any portion of the principal amount thereof that is equal to \$1,000 or an integral multiple of \$1,000, on a date specified by the Company that is not less than 20 nor more than 35 Business Days after the date of delivery of the Fundamental Change Company Notice (such specified date of repurchase, the "**Fundamental Change Repurchase Date**"), at a purchase price equal to 100% of the principal amount of the Notes to be repurchased plus accrued and unpaid interest thereon, including any Additional Interest, to, but not including, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"); *provided, however*, that if a Fundamental Change Repurchase Date falls after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Company shall instead pay the full amount of accrued and unpaid interest, including any Additional Interest, payable on such Interest Payment Date to the Holders of record as of the corresponding Regular Record Date and the "**Fundamental Change Repurchase Price**" shall be equal to 100% of the principal amount of the Notes subject to repurchase pursuant to this Article III and shall not include any accrued and unpaid interest, including any Additional Interest. The requirement for the Company to repurchase any Notes on the Fundamental Change Repurchase Date shall be subject to extension to comply with applicable law.

Repurchases of Notes under this Section 3.01 shall be made, at the option of the Holder thereof, upon:

(1) delivery to the Paying Agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Note as Exhibit C thereto, if the Notes are Definitive Notes, or in compliance with the Depository's procedures for tendering interests in Global Notes, if the Notes are not Definitive Notes, in each case prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(2) delivery of the Notes, in the case of Definitive Notes, to the Paying Agent appointed by the Company (together with all necessary endorsements for transfer), or book-entry transfer of the Notes, in compliance with the procedures of the Depository, such delivery or transfer being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

(1) if such Notes are Definitive Notes, the certificate numbers of such Notes to be repurchased;

(2) the portion of the principal amount of such Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and

(3) that such Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture;

provided, however, that if such Notes are not Definitive Notes, the Fundamental Change Repurchase Notice must comply with appropriate procedures of the Depository.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 3.01 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.03.

Notwithstanding the foregoing, the Company shall not be required to repurchase the Notes in accordance with this Section 3.01 if a third party makes a Fundamental Change repurchase offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Article III and purchases all Notes validly tendered and not withdrawn under such Fundamental Change repurchase offer.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(b) Fundamental Change Company Notice. On or before the 15th day after the occurrence of a Fundamental Change, the Company shall provide to all Holders of record of the Notes, the Trustee and the Paying Agent (in the case of any Paying Agent other than the Trustee) a notice (the “**Fundamental Change Company Notice**”) of the occurrence of such Fundamental Change and of the resulting repurchase right. Such Fundamental Change Company Notice shall be given pursuant to 12.02 of the Base Indenture, in the case of any Global Notes, in accordance with the procedures of the Depositary for providing notices. Simultaneously with providing such Fundamental Change Company Notice, the Company shall issue a press release, publish such information through a public medium customary for such press releases and make the Fundamental Change Company Notice available on its website.

Each Fundamental Change Company Notice shall specify:

- (i) the events causing a Fundamental Change;
- (ii) whether such Fundamental Change is a Make-Whole Fundamental Change, in which case the provisions set forth in Section 4.06 shall be applicable;
- (iii) the date of the occurrence of the Fundamental Change;
- (iv) the last date on which a Holder of Notes may exercise the repurchase right pursuant to this Article III;
- (v) the Fundamental Change Repurchase Price;
- (vi) the Fundamental Change Repurchase Date;
- (vii) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (viii) the Conversion Rate and any adjustments to the Conversion Rate;

(ix) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of the Indenture; and

(x) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the repurchase rights of the Holders of Notes or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 3.01.

(c) **No Payment During Events of Default.** There shall be no repurchase of any Notes pursuant to this Section 3.01 if there has occurred and is continuing an Event of Default with respect to the Notes (other than an Event of Default that is cured by the payment of the Fundamental Change Repurchase Price of the Notes). The Paying Agent shall promptly return to the respective Holders thereof any Definitive Notes held by it during the continuance of an Event of Default (other than an Event of Default that is cured by the payment of the Fundamental Change Repurchase Price with respect to the Notes) and shall deem canceled any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depositary, in which case, upon such return and cancelation, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.02 Effect of Fundamental Change Repurchase Notice.

Upon receipt by the Paying Agent of the Fundamental Change Repurchase Notice specified in Section 3.01 hereof, the Holder of the Note in respect of which such Fundamental Change Repurchase Notice was given shall (unless such Fundamental Change Repurchase Notice is withdrawn in accordance with Section 3.03 hereof) thereafter be entitled to receive solely the Fundamental Change Repurchase Price in money or securities with respect to such Note. Such Fundamental Change Repurchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, promptly following the later of (x) the Fundamental Change Repurchase Date with respect to such Note (provided the conditions in Section 3.01 hereof have been satisfied) and (y) the time of delivery or book-entry transfer of such Note to the Paying Agent by the Holder thereof in the manner required by Section 3.01 hereof.

Section 3.03 Withdrawal of Fundamental Change Repurchase Notice.

A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Company Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted, which must be \$1,000 or an integral multiple thereof;

(ii) if Definitive Notes have been issued, the certificate numbers of the withdrawn Notes; and

(iii) the principal amount, if any, of such Notes that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of an integral multiple of \$1,000;

provided, however, that if such Notes are not Definitive Notes, the notice must comply with appropriate procedures of the Depository.

The Paying Agent shall promptly return to the respective Holders thereof any Definitive Notes with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with the provisions of this Section 3.03.

Section 3.04 Deposit of Fundamental Change Repurchase Price.

Prior to 11:00 a.m. New York City time) on the Fundamental Change Repurchase Date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the Fundamental Change Repurchase Price of all the Notes or portions thereof that are to be repurchased as of the Fundamental Change Repurchase Date. If the Paying Agent has paid or holds on the Business Day following the Fundamental Change Repurchase Date money or securities sufficient to pay the Fundamental Change Repurchase Price of the Notes for which a Fundamental Change Repurchase Notice has been tendered and not withdrawn in accordance with this Supplemental Indenture on the Fundamental Change Repurchase Date, then as of such Fundamental Change Repurchase Date, (a) such Notes shall cease to be outstanding and, subject to the right of Holders as of the close of business on a Regular Record Date to receive the related interest payment, interest (including Additional Interest, if any) shall cease to accrue thereon (whether or not book-entry transfer of such Notes is made or such Notes have been delivered to the Paying Agent) and (b) all other rights of the Holders in respect thereof shall terminate (other than the right to receive the Fundamental Change Repurchase Price and accrued and unpaid interest (including Additional Interest, if any) upon delivery or book-entry transfer of such Notes or on the applicable Interest Payment Date, as applicable).

Section 3.05 Notes Repurchased in Whole or in Part.

Any Note that is to be repurchased, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires in the case of Definitive Notes, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note so surrendered that is not repurchased.

Section 3.06 Covenant to Comply With Applicable Laws Upon Repurchase of Notes.

In connection with any offer to repurchase Notes under Section 3.01 hereof, the Company shall (i) comply with the provisions of Rule 13e-4, Rule 14e-1 or any other tender offer rules under the Exchange Act, if applicable, (ii) file a Schedule TO or any successor or similar schedule under the Exchange Act, if required, and (iii) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase Notes upon a Fundamental Change under Section 3.01.

Section 3.07 Repayment to the Company.

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.04 exceeds the aggregate Fundamental Change Repurchase Price of the Notes or portions thereof that the Company is obligated to repurchase as of the Fundamental Change Repurchase Date, then, following the Fundamental Change Repurchase Date, upon written request by the Company with wiring instructions, the Paying Agent shall promptly return any such excess to the Company.

**ARTICLE IV
CONVERSION**

Section 4.01 Right to Convert.

(a) Subject to and upon compliance with the provisions of this Supplemental Indenture, each Holder of Notes shall have the right, at such Holder's option, to convert the principal amount of any such Notes, or any portion of such principal amount equal to \$1,000 or an integral multiple of \$1,000, at the Conversion Rate in effect on the Conversion Date for such Notes (subject to, and in accordance with, the settlement provisions of Section 4.02, the "**Conversion Obligation**"), (x) prior to the close of business on the Business Day immediately preceding June 1, 2021, only upon satisfaction of one or more of the conditions described in clauses (i) through (iv) below and (y) on or after June 1, 2021, at any time prior to the close of business on the second Scheduled Trading Day immediately preceding the Stated Maturity irrespective of the conditions described in clauses (i) through (iv) below:

(i) Prior to the close of business on the Business Day immediately preceding June 1, 2021, a Holder of Notes may surrender all or any portion of its Notes for conversion at any time during any fiscal quarter (and only during such fiscal quarter) after the fiscal quarter ending on March 31, 2017 if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) in the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding fiscal quarter exceeds 130% of the Conversion Price on each applicable Trading Day.

(ii) Prior to the close of business on the Business Day immediately preceding June 1, 2021, a Holder of Notes may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes (as determined following a request by a

Holder of Notes in accordance with the procedures set forth in this Section 4.01(a)(ii) for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each such Trading Day (the “**Trading Price Condition**”), subject to compliance with the procedures and conditions set forth in this Section 4.01(a)(ii) concerning the obligation to make a Trading Price determination, in which event the Trading Price Condition shall be met.

The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price of the Notes in accordance with this Section 4.01(a)(ii) unless requested by the Company, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price of the Notes in accordance with this Section 4.01(a)(ii)) unless a Holder of Notes provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes is or would be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. Promptly following receipt of such evidence, the Company shall instruct the Bid Solicitation Agent to determine (or, if the Company is then acting as Bid Solicitation Agent, the Company shall determine) the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until such Trading Day on which the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. If, upon presentation of such reasonable evidence by the Holder, the Company does not cause the Bid Solicitation Agent to make such determination (or, if the Company is then acting as Bid Solicitation Agent, the Company does not make such determination), the Trading Price per \$1,000 principal amount of the Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each Trading Day the Company does not make such determination or cause the Bid Solicitation Agent to make such determination.

If the Trading Price Condition has been met, the Company shall, as soon as practicable following the condition being met, so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee). If, at any time after the Trading Price Condition has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such day, the Company shall so notify, in writing, the holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) of the same.

(iii) If, prior to the close of business on the Business Day immediately preceding June 1, 2021, the Company elects to:

(A) distribute to all or substantially all holders of Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of Common Stock at a price per share less than the average of the

Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution; or

(B) distribute to all or substantially all holders of Common Stock assets, securities or rights, options or warrants to purchase securities of the Company not otherwise covered by clause (A) above, which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such distribution,

then, in either case, the Company shall notify the Holders of the Notes at least 70 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender all or any portion of their Notes for conversion at any time from, and including, the date the Company sends such notice until the earlier of the close of business on the Business Day immediately preceding such Ex-Dividend Date or the date of the Company's announcement that such distribution shall not take place, even if the Notes are not otherwise convertible at such time. No Holder may exercise its right to convert its Notes under the provisions of this Section 4.01(a)(iii) if such Holder otherwise may participate in any such distribution described above without conversion (based upon the Conversion Rate and upon the same terms as holders of the Common Stock).

(iv) Prior to the close of business on the Business Day immediately preceding June 1, 2021, if a transaction or event that constitutes a Fundamental Change (but without regard to the exclusion of transactions involving Publicly Traded Securities in the paragraph following clause (4) of that definition) or a Make-Whole Fundamental Change occurs, Holders may surrender Notes for conversion at any time from, and including, the Effective Date of such transaction until the 45th day following the actual Effective Date (or, if earlier and to the extent applicable, the close of business on the Business Day immediately preceding the related Fundamental Change Repurchase Date). No later than such Effective Date, the Company shall notify Holders of such transaction and the related right to convert the Notes.

(b) Notwithstanding anything herein to the contrary, Holders may surrender all or any portion of their Notes for conversion at any time beginning on June 1, 2021, until the close of business on the second Scheduled Trading Day immediately preceding the Stated Maturity irrespective of the conditions set forth in Section 4.01(a).

(c) If the Notes are subject to repurchase following a Fundamental Change, the right of Holders to convert their Notes so subject to repurchase will expire at the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, unless the Company defaults in the payment of the Fundamental Change Repurchase Price, in which case, the conversion right will terminate at the close of business on the date the default is cured and the Notes are repurchased. If a Holder has submitted a Fundamental Change Repurchase Notice for any Notes to be repurchased upon a Fundamental Change, such Holder may convert such Notes

only to the extent such Fundamental Change Repurchase Notice has been withdrawn in accordance with Section 3.03.

Section 4.02 Conversion Procedures.

(a) Each Note shall be convertible at the office of the Conversion Agent and, if applicable, in accordance with the procedures of the Depository.

(b) In order to exercise the conversion privilege with respect to any beneficial interest in a Global Note, the Holder must complete the appropriate instruction form for conversion pursuant to the Depository's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company or the Conversion Agent, and pay the funds, if any, required by Section 4.03(f) and all transfer or similar taxes if required pursuant to Section 4.08, and the Conversion Agent must be informed of the conversion in accordance with the customary practice of the Depository. In order to exercise the conversion privilege with respect to any Definitive Notes, the Holder of any such Notes to be converted, in whole or in part, shall:

- (i) complete and manually sign the conversion notice provided on the back of the Note (the "**Conversion Notice**"), or a facsimile of the Conversion Notice;
- (ii) deliver the Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;
- (iii) if required, furnish appropriate endorsements and transfer documents;
- (iv) if required, pay all transfer or similar taxes as set forth in Section 4.08; and
- (v) pay the funds, if any, required under Section 4.03(f).

The date on which the Holder satisfies all of the applicable requirements set forth in this Section 4.02(b) with respect to a Note is the "**Conversion Date**" for such Note. The Conversion Agent shall, as promptly as possible, and in any event within two (2) Business Days of the receipt thereof, provide the Company with notice of any conversion by a Holder of the Notes.

(c) Each Conversion Notice shall state the name or names (with address or addresses) in which any certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued. All such Notes surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Notes, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or his duly authorized attorney.

(d) In case any Notes of a denomination greater than \$1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Notes so surrendered, without charge, new Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Notes.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion immediately prior to the close of business on the relevant Conversion Date; *provided, however*, that the person in whose name any share of Common Stock is issuable upon conversion of any Note will be deemed to become the holder of record of that share of Common Stock as of the close of business on (i) the Conversion Date for such conversion, in the case of Physical Settlement; or (ii) the last VWAP Trading Day of the related Observation Period for such conversion, in the case of Combination Settlement.

(e) Upon the conversion of an interest in Global Notes, the Trustee (or other Conversion Agent appointed by the Company) shall make a notation on such Global Notes as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

(f) Notwithstanding the foregoing, a Note in respect of which a Holder has delivered a Fundamental Change Repurchase Notice exercising such Holder's option to require the Company to repurchase such Note may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with Article III hereof prior to the close of business on the Business Day immediately preceding the relevant Fundamental Change Repurchase Date.

Section 4.03 Settlement Upon Conversion.

(a) Upon the conversion of any Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this Article IV, (x) shares of Common Stock as provided in Section 4.03(c)(i), together, if applicable, with cash in lieu of fractional shares (a "**Physical Settlement**"); (y) solely cash as provided in Section 4.03(c)(ii) (a "**Cash Settlement**"); or (z) a combination of cash and shares of Common Stock as provided in Section 4.03(c)(iii), together, if applicable, with cash in lieu of fractional shares (a "**Combination Settlement**").

(b) The Company shall have the right to elect the Settlement Method applicable to any conversion of a Note; *provided, however*, that:

(i) except as described in this Section 4.03(b), the Company shall use the same Settlement Method for all conversions of Notes with the same Conversion Date, but the Company shall not be obligated to use the same Settlement Method for Conversion Dates that occur on different days;

(ii) all conversions of Notes with a Conversion Date that occurs on or after the 125th Scheduled Trading Day immediately before the Stated Maturity shall be settled using the same Settlement Method, and the Company shall send notice of such Settlement Method to Holders and the Trustee no later than the close of business on the 125th Scheduled Trading Day immediately before the Stated Maturity;

(iii) if the Company elects a Settlement Method for a conversion of Notes with a Conversion Date that occurs before the 125th Scheduled Trading Day immediately before the Stated Maturity, then the Company will send notice of such Settlement Method

to the converting Holder no later than the close of business on the Business Day immediately after the Conversion Date;

(iv) if the Company does not timely elect a Settlement Method with respect to any conversion, then the Company shall be deemed to have elected the Default Settlement Method;

(v) if the Company timely elects Combination Settlement with respect to a conversion of Notes but does not timely notify the converting Holder of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be \$1,000 per \$1,000 principal amount of Notes; and

(vi) for the avoidance of doubt, the Company's failure to timely elect a Settlement Method or specify the applicable Specified Dollar Amount will not constitute an Event of Default.

(c) The consideration due upon conversion of each \$1,000 principal amount of Notes will be as follows:

(i) if Physical Settlement applies, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(ii) if Cash Settlement applies, cash in an amount equal to the sum of the Daily Conversion Values for each VWAP Trading Day in the Observation Period for such conversion; or

(iii) if Combination Settlement applies, (i) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each VWAP Trading Day in the Observation Period for such conversion; and (ii) an amount of cash equal to the sum of the Daily Cash Amounts for each VWAP Trading Day in such Observation Period;

provided, however, that, in lieu of delivering any fractional share of Common Stock otherwise due upon conversion, the Company shall pay cash based on (i) the Daily VWAP on the applicable Conversion Date (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day), in the case of Physical Settlement; or (ii) the Daily VWAP on the last VWAP Trading Day of the applicable Observation Period, in the case of Combination Settlement.

If a Holder converts more than one Note on a Conversion Date, then the consideration due upon such conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the procedures and policies of the Depositary) be computed based on the total principal amount of Notes converted on such Conversion Date by that Holder.

(d) If Cash Settlement or Combination Settlement applies to the conversion of any Note, then the Company will determine the consideration due upon conversion thereupon promptly following the last VWAP Trading Day of the applicable Observation Period and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the

calculation thereof in reasonable detail. Neither the Trustee nor the Conversion Agent will have any duty to make any such determination.

(e) Except as set forth in Section 4.04, 4.06 and 4.07, the Company shall deliver the consideration due upon conversion in respect of any Notes as follows: (i) if Cash Settlement or Combination Settlement applies, on or before the third (or, if the T+2 Effective Date has occurred by the last VWAP Trading Day of the Observation Period for such conversion, the second) Business Day immediately after the last VWAP Trading Day of such Observation Period; and (ii) if Physical Settlement applies, on or before the third (or, if the T+2 Effective Date has occurred by the Conversion Date for such conversion, the second) Business Day immediately after such Conversion Date for such conversion. However, if Physical Settlement applies to the conversion of any Note with a Conversion Date that is after the Regular Record Date immediately before the Stated Maturity, then the Company shall pay or deliver, as applicable, the consideration due upon such conversion no later than the Stated Maturity.

(f) Upon the conversion of any Notes, the Holder shall not be entitled to receive any separate cash payment for accrued and unpaid interest and Additional Interest, if any, except to the extent specified below. The Company's payment or delivery, as the case may be, to such Holder of the consideration due upon conversion of such Notes shall be deemed to satisfy in full the Company's obligation to pay (i) the principal amount of the Notes so converted and (ii) accrued and unpaid interest and Additional Interest, if any, to, but not including, the Conversion Date. As a result, accrued and unpaid interest and Additional Interest, if any, to, but not including, the Conversion Date shall be deemed, except to the extent specified below, to be paid in full rather than cancelled, extinguished or forfeited. In addition, if the consideration due upon conversion consists of both cash and shares of Common Stock, then accrued and unpaid interest that is deemed to be paid therewith shall be deemed to be paid first out of such cash. Notwithstanding the foregoing, if Notes are submitted for conversion after the close of business on a Regular Record Date for the payment of interest, Holders of such Notes at the close of business on such Regular Record Date shall receive the full amount of interest and Additional Interest, if any, payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes submitted for conversion between the close of business on any Regular Record Date and the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest and Additional Interest, if any, payable on the next Interest Payment Date on the principal amount of Notes to be converted; *provided* that no such payment need be made (i) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (ii) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such Note or (iii) if the Notes are surrendered for conversion on or after the Regular Record Date immediately preceding the Stated Maturity.

If the exceptions described in the immediately preceding sentence do not apply and a Holder surrenders its Notes for conversion on a date that is not an Interest Payment Date, such Holder shall not receive any interest for the period from the Interest Payment Date immediately preceding the Conversion Date or for any later period. The Company shall pay interest and Additional Interest, if any, at the Stated Maturity on all Notes converted after the Regular Record

Date immediately preceding the Stated Maturity, and converting Holders shall not be required to pay to the Company equivalent interest (and Additional Interest, if any) amounts.

Section 4.04 Adjustment of Conversion Rate.

The Conversion Rate shall be adjusted from time to time by the Company if any of the events set forth in this Section 4.04 occurs, without duplication, except that the Company shall not make any adjustment to the Conversion Rate if Holders of Notes participate, at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described under Section 4.04(b), Section 4.04(c), and Section 4.04(d), as if such Holders held a number of shares of Common Stock equal to the Conversion Rate, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Holder, without having to convert their Notes.

Except as set forth in this Section 4.04 and in Sections 4.06 and 4.12, the Company shall not adjust the Conversion Rate.

(a) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a share split or share combination of the Common Stock, then the Conversion Rate shall be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as the case may be;

CR = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as the case may be; and

OS = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as the case may be.

Any adjustment to the Conversion Rate pursuant to this Section 4.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 4.04(a) is declared but not so paid or made, or any share split or combination of the type

described in this Section 4.04(a) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of the Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or such share split or combination had not been announced.

(b) If the Company distributes to all or substantially all holders of the Common Stock any rights, options or warrants entitling them for a period of not more than 60 calendar days from the record date for such distribution to subscribe for or purchase shares of the Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution.

Any increase to the Conversion Rate pursuant to this Section 4.04(b) shall be made successively whenever any such rights, options, or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of Common Stock are not delivered pursuant to such rights, options or warrants, after the expiration or redemption of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of the delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, options or warrants. To the extent such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if

such Ex-Dividend Date for such issuance had not occurred. For the purposes of this Section 4.04(b) and for the purpose of clause (A) of Section 4.01(a)(iii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on the exercise or conversion thereof, with the value of such consideration, if other than cash, as shall be determined by the Board of Directors.

(c) If the Company distributes shares of any class of Capital Stock of the Company, evidences of the Company's indebtedness or other assets or property of the Company, or rights, options or warrants to acquire shares of any class of Capital Stock or other securities of the Company, to all or substantially all holders of the Common Stock of the Company, excluding:

(i) dividends or distributions (including share splits) as to which an adjustment is required to be effected (without regard to the 1% Exception) pursuant to Section 4.04(a), Section 4.04(b) or Section 4.04(e);

(ii) dividends or distributions paid exclusively in cash as to which an adjustment is required to be effected (without regard to the 1% Exception) pursuant to Section 4.04(d); and

(iii) Spin-Offs as to which the provisions set forth in this Section 4.04(c) shall apply;

then the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Any increase to the Conversion Rate pursuant the preceding paragraph of this Section 4.04(c) shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants so distributed with respect to one share of Common Stock as of the open of business on the Ex-Dividend Date for such distribution is equal to or greater than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution, then, in lieu of the foregoing adjustment, each Holder of a Note shall receive, in respect of each \$1,000 principal amount of Notes held by such Holder, at the same time and upon the same terms as holders of the Common Stock, without having to convert its Notes, the amount and kind of the shares of Capital Stock of the Company, evidences of the Company's indebtedness or other assets or property of the Company, or rights, options or warrants to acquire shares of Capital Stock or other securities of the Company or other securities that such Holder would have received had such Holder already owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution. If such distribution is not so paid or made, no such delivery of such Capital Stock, evidences of indebtedness, other assets, property or rights, options or warrants shall be made.

With respect to an adjustment to the Conversion Rate pursuant to this Section 4.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, where such Capital Stock or equity interest is listed or quoted (or shall be listed or quoted upon consummation of the Spin-Off) on a U.S. national securities exchange (a "Spin-Off"), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;

CR = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;

FMV = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock (determined by reference to the definition of Last Reported Sale Price as if such Capital Stock or similar equity interest were the Common Stock) over the first 10 consecutive Trading Day period

immediately following, and including, the Ex-Dividend Date for the Spin-Off (such period, the “**Spin-Off Valuation Period**”); and

MP_0 = the average of the Last Reported Sale Prices of Common Stock over the Spin-Off Valuation Period.

The adjustment to the Conversion Rate pursuant to the preceding paragraph of this Section 4.04(c) shall be determined at the end of the Spin-Off Valuation Period, but shall be given effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off. Notwithstanding anything to the contrary, (i) if the Conversion Settlement Date for a Note the conversion of which is to be settled pursuant to Cash Settlement or Combination Settlement occurs on or before the last Trading Day in the Spin-Off Valuation Period for any Spin-Off and any VWAP Trading Day in the Observation Period for such conversion occurs on any Trading Day within such Spin-Off Valuation Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Spin-Off Valuation Period will be deemed to be the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, the last VWAP Trading Day in such Observation Period (or, if such VWAP Trading Day is not a Trading Day, the immediately preceding Trading Day); and (ii) if the Conversion Settlement Date for a Note the conversion of which is to be settled pursuant to Physical Settlement occurs on or before the last Trading Day in the Spin-Off Valuation Period for a Spin-Off and the Conversion Date for such conversion occurs on any Trading Day within such Spin-Off Valuation Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Spin-Off Valuation Period will be deemed to be the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day). If such Spin-Off is not consummated, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such Spin-Off had not been declared.

(d) If the Company makes or pays any cash dividend or distribution to all, or substantially all, holders of the outstanding Common Stock (other than distributions pursuant to Section 4.04(e)), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company pays or distributes to all or substantially all holders of the Common Stock.

The adjustment to the Conversion Rate pursuant to this Section 4.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for the relevant dividend or distribution. If any dividend or distribution described in this Section 4.04(d) is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if the amount in cash per share the Company pays or distributes to holders of its Common Stock is equal to or greater than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution, in lieu of the foregoing adjustment, each Holder of a Note shall receive, in respect of each \$1,000 principal amount of Notes held by such Holder, at the same time and upon the same terms as holders of the Common Stock, without having to convert its Notes, the amount in cash per share such Holder would have received had such Holder already owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock (subject to the tender offer rules under the Exchange Act then applicable), if the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period (the “**Tender/Exchange Offer Valuation Period**”) commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “**Expiration Date**”), the Conversion Rate shall be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the Expiration Date;

CR = the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the time (the “**Expiration Time**”) such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer);

OS = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices of Common Stock over the Tender/Exchange Offer Valuation Period.

The adjustment to the Conversion Rate pursuant to this Section 4.04(e) shall be determined at the end of the Tender/Exchange Offer Valuation Period, but shall be given effect immediately after the open of business on the Trading Day next succeeding the Expiration Date. Notwithstanding anything to the contrary, (i) if the Conversion Settlement Date for a Note whose conversion is to be settled pursuant to Cash Settlement or Combination Settlement occurs on or before the last Trading Day in the Tender/Exchange Offer Valuation Period for such tender or exchange offer and any VWAP Trading Day in the Observation Period for such conversion occurs on any Trading Day within such Tender/Exchange Offer Valuation Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Tender/Exchange Offer Valuation Period will be deemed to be the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, the last VWAP Trading Day in such Observation Period (or, if such VWAP Trading Day is not a Trading Day, the immediately preceding Trading Day); and (ii) if the Conversion Settlement Date for a Note whose conversion is to be settled pursuant to Physical Settlement occurs on or before the last Trading Day in the Tender/Exchange Offer Valuation Period for such tender or exchange offer and the Conversion Date for such conversion occurs on any Trading Day within such Tender/Exchange Offer Valuation Period, then, solely for purposes of determining the consideration due in respect of such conversion, such Tender/Exchange Offer Valuation Period will be deemed to be the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(f) The Company from time to time is permitted (but not required) to increase the Conversion Rate by any amount for any period of time of at least 20 Business Days if the Board of Directors shall have made a determination that such increase would be in the best interests of the Company. The Company may also (but shall not be required to) increase the Conversion Rate, in addition to any adjustments pursuant to Sections 4.04(a), 4.04(b), 4.04(c), 4.04(d), 4.04(e) or this 4.04(f), to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event. The Company shall not take any action that would result in adjustment of the Conversion Rate, pursuant to Sections 4.04(a), 4.04(b), 4.04(c), 4.04(d), 4.04(e) or this 4.04(f), in such a manner as to result in the reduction of the Conversion Price to less than the par value per share of the Common Stock. Whenever the Conversion Rate is increased pursuant to this Section 4.04(f), the Company shall, as soon as practicable following the adjustment, notify, in writing, the Holders of the Notes.

(g) Adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th of a share. No adjustment to the Conversion Rate shall be required to be made for the Company's issuance of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right, option or warrant to purchase shares of Common Stock or such

convertible or exchangeable securities, other than as provided in this Section 4.04 and in Section 4.12 hereof.

(h) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent (if other than the Trustee) an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. As soon as practicable following the adjustment, the Company shall notify the Holders of the Notes of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(i) For purposes of this Section 4.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(j) Notwithstanding anything to the contrary in this Article IV, no adjustment to the Conversion Rate shall be made:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of its Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the date the Notes were first issued;

(iv) solely for a change in the par value of the Common Stock; or

(v) for accrued and unpaid interest and Additional Interest, if any, on the Notes.

(k) The Company shall not be required to make an adjustment in the Conversion Rate unless the adjustment would require a change of at least 1% in the Conversion Rate. However, the Company shall carry forward and take into account in any future adjustment any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustment, regardless of whether the aggregate adjustment is less than 1%, (i) upon any required purchases of Notes in connection with a Fundamental Change, (ii) upon any Conversion Date of Notes and

(iii) on each VWAP Trading Day of any Observation Period (such deferral provisions in this Section 4.04(k), the “1% Exception”).

(l) Notwithstanding anything to the contrary, if:

(i) a Note is to be converted;

(ii) the record date, Effective Date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to this Section 4.04 has occurred on or before the Conversion Date for such conversion (in the case of Physical Settlement) or on any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement), but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date or VWAP Trading Day, as applicable;

(iii) the consideration due upon such conversion (in the case of Physical Settlement) or due in respect of such VWAP Trading Day (in the case of Combination Settlement) includes any whole shares of Common Stock; and

(iv) such shares of Common Stock are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such conversion, the Company shall, without duplication, give effect to such adjustment on such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement). In such case, if the date the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company shall (i) deliver, on such date the Company is otherwise required by this Indenture, the consideration due upon such conversion based on the applicable unadjusted Conversion Rate(s); and (ii) deliver, on the Business Day immediately after such first date, any additional consideration arising from giving effect to such adjustment to the applicable Conversion Rate(s).

(m) Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Conversion Rate adjustment for any event becomes effective on any Ex-Dividend Date pursuant to the provisions described in this Section 4.04;

(ii) a Note is to be converted pursuant to Physical Settlement or Combination Settlement;

(iii) the Conversion Date for such conversion (in the case of Physical Settlement) or any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the consideration due upon such conversion (in the case of Physical Settlement) or due with respect to such VWAP Trading Day (in the case of Combination Settlement) includes any whole shares of Common Stock; and

(v) the Holder of such Note would be treated, on such record date, as the record holder of such shares of Common Stock based on a Conversion Rate that is adjusted for such event,

then (x) such Conversion Rate adjustment will not be given effect for such conversion (in the case of Physical Settlement) or for such VWAP Trading Day (in the case of Combination Settlement); and (y) such Holder will be treated as if such Holder were, as of such record date, the record owner of such shares of Common Stock on an unadjusted basis and will participate in such event.

Section 4.05 Adjustments of Prices.

Whenever any provision of the Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs of the Common Stock, the Daily Conversion Values, the Daily Cash Amounts or the Daily Share Amounts over a span of multiple days (including an Observation Period and the Stock Price for purposes of a Make-Whole Fundamental Change), the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, at any time during the period when such Last Reported Sale Prices, Daily VWAPs of the Common Stock, Daily Conversion Values, Daily Cash Amounts or Daily Share Amounts are to be calculated.

Section 4.06 Increase in Conversion Rate Upon a Make-Whole Fundamental Change.

(a) If and only to the extent that a Holder elects to convert its Notes in connection with a Make-Whole Fundamental Change the Effective Date of which occurs prior to the Stated Maturity, the Company shall, to the extent provided in this Section 4.06, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the “**Additional Shares**”) as set forth in this Section 4.06. A conversion of Notes by a Holder shall be deemed for these purposes to be “in connection with” a Make-Whole Fundamental Change if the relevant Conversion Notice is received by the Conversion Agent on or subsequent to the Effective Date of the Make-Whole Fundamental Change and prior to the 45th day following the Effective Date of the Make-Whole Fundamental Change (or if earlier, and to the extent applicable, the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date as specified in the Fundamental Change Company Notice).

(b) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table attached as Schedule A hereto, based on the Effective Date of the Make-Whole Fundamental Change and the price (the “**Stock Price**”) paid or deemed to be paid per share of the Common Stock in the Make-Whole Fundamental Change. If the holders of the Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (3) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share of the Common Stock. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Days prior to, but not including, the Effective Date of such Make-Whole Fundamental Change.

The exact Stock Price and Effective Date may not be set forth in the table in Schedule A, in which case, if the Stock Price is:

(i) between two Stock Prices in the table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365- or 366-day year, as applicable.

(ii) more than \$17.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate.

(iii) less than \$3.05 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to subsection (c) below), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate, as increased by any Additional Shares applicable, exceed 327.8688 per \$1,000 principal amount of Notes, subject to adjustment in the same manner and for the same events as the Conversion Rate as set forth in Section 4.04.

(c) The Stock Prices set forth in the first row of the table in Schedule A hereto (*i.e.*, the column headers) shall be adjusted as of any date on which the Conversion Rate is otherwise adjusted, as set forth in Section 4.04. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table in Schedule A hereto shall be adjusted in the same manner and for the same events as the Conversion Rate as set forth in Section 4.04.

(d) The Company shall notify the Holders of Notes of the anticipated Effective Date of any Make-Whole Fundamental Change by issuing a press release (and shall make the press release available on the Company's website) announcing such anticipated Effective Date as soon as practicable and in any event no later than one Business Day after the Effective Date of such Make-Whole Fundamental Change.

(e) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall pay or deliver, as the case may be, the consideration due in respect of such converted Notes, based on the Conversion Rate as increased to reflect the Additional Shares pursuant to the table set forth in Schedule A hereto, in accordance with Section 4.03; *provided, however*, that if the consideration for the Common Stock in any Make-Whole Fundamental Change described in clause (3) of the definition of Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per \$1,000 principal amount of converted Notes equal to the Conversion Rate (including any increase to

reflect the Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be determined and paid to Holders in cash on the third Business Day following the Conversion Date.

Section 4.07 Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.

- (a) In the event of:
- (i) any reclassification of the Common Stock;
 - (ii) a consolidation, merger, combination or binding share exchange involving the Company; or
 - (iii) a sale or conveyance to another Person of all or substantially all of the Company's property and assets;

in each case, as a result of which the outstanding Common Stock would be converted into, or exchanged for shares of stock, other securities or other property or assets (including cash or any combination thereof) (such an event, a "**Common Stock Change Event**," and such shares of stock, securities or other property, including cash or any combination thereof, the "**Reference Property**," and the amount and kind of reference property that a holder of one share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue fractional shares of securities or other property), a "**Reference Property Unit**"), then, at and after the effective time of the Common Stock Change Event, (x) the consideration due upon conversion of any Note, and the conditions to any such conversion, will be determined in the same manner as if each reference to any number of shares of Common Stock in the provisions described under this Article IV (or in any related definitions in Section 1.02) were instead a reference to the same number of Reference Property Units; (ii) for purposes of the definition of "Fundamental Change" and "Make-Whole Fundamental Change," the term "Common Stock" will be deemed to mean the common equity (which, for the avoidance of doubt, may include American Depositary Shares representing common equity), if any, forming part of such Reference Property; and (iii) for these purposes, the Daily VWAP and Last Reported Sale Price will be calculated based on the value of a Reference Property Unit, and for any Reference Property Unit or portion thereof that does not consist of a class of securities, the Daily VWAP and or Last Reported Sale Price, as applicable, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

For purposes of the foregoing, if the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the Reference Property shall be deemed to be (i) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (ii) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock. The Company shall notify Holders of the weighted average as soon as practicable after such determination is made. If the holders of Common Stock receive only cash in such Common Stock Change Event, then

for all conversions that occur after the effective date of such transaction (x) the consideration due upon conversion of each \$1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased pursuant to Section 4.06), *multiplied by* the price paid per share of Common Stock in such transaction and (y) the Company shall be deemed to elect Cash Settlement and shall satisfy its Conversion Obligation by paying cash to converting Holders on the 10th Business Day immediately following the Conversion Date.

(b) The Company shall not become a party to any such Common Stock Change Event unless its terms are consistent with this Section 4.07.

(c) The above provisions of this Section 4.07 shall similarly apply to successive Common Stock Change Events.

Section 4.08 Taxes on Shares Issued.

The Company shall pay any documentary, stamp or similar issue or transfer tax due on any issuance or delivery of shares of Common Stock upon conversion of Notes pursuant hereto; *provided, however*, that if such documentary, stamp or similar issue or transfer tax is due because the Holder of such Notes has requested that any such shares of Common Stock be issued in a name other than that of the Holder of the Notes converted, then such tax shall be paid by the Holder, and the Company shall not be required to issue or deliver any stock certificate evidencing such shares unless and until the Holder shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 4.09 Reservation of Shares; Shares to be Fully Paid; Compliance With Governmental Requirements; Listing of Common Stock.

The Company shall reserve, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to satisfy conversion of the Notes from time to time as such Notes are presented for conversion (including the maximum increase in the Conversion Rate in connection with a Make-Whole Fundamental Change and assuming that, at the time of the computation of such number of shares or securities, all such Notes would be converted by a single Holder).

The Company covenants that all shares of Common Stock that may be issued upon conversion of Notes shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder).

The Company shall list or cause to have quoted any shares of Common Stock to be issued upon conversion of Notes on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

Section 4.10 Responsibility of Trustee.

The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder of Notes to determine or calculate the Conversion Rate, to determine

whether any facts exist which may require any adjustment of the Conversion Rate, or to confirm the accuracy of any such adjustment when made or the appropriateness of the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any other securities or property that may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and the Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article IV. The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including its capacity as Conversion Agent.

Section 4.11 Notice to Holders Prior to Certain Actions.

In case:

- (a) the Company shall declare a dividend (or any other distribution) on the Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 4.04; or
 - (b) the Company shall authorize the granting to the holders of all or substantially all of the Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants that would require an adjustment in the Conversion Rate pursuant to Section 4.04 or Section 4.12 hereof; or
 - (c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale, lease or transfer of all or substantially all of the assets of the Company and its consolidated Subsidiaries; or
 - (d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Subsidiaries;
- then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Supplemental Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent and to be delivered to each Holder of Notes at such Holder's address appearing on a list of Holders of Notes, which the Company shall provide to the Trustee, as promptly as practicable but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend (or any other distribution) or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights, options or warrants are to be determined, or (y) the date on which

such reclassification, consolidation, merger, sale, lease, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend (or any other distribution), reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up; *provided*, that any notice required under this Section 4.11 in respect of any regular cash dividend consistent in amount with the Company's historical practice may be made through the issuance of a press release containing the stipulated information rather than through the procedures otherwise provided for in this Section 4.11.

Section 4.12 Stockholder Rights Plan.

Each share of Common Stock issued upon conversion of Notes pursuant to this Article IV shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any stockholder rights plan adopted by the Company in effect at the time of such conversion, as the same may be amended from time to time. Notwithstanding the foregoing, if prior to any conversion such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement, the Conversion Rate shall be adjusted at the time of separation as if the Company had distributed to all or substantially all holders of the Common Stock, shares of the Company's Capital Stock, evidences of indebtedness, or other of the Company's assets or property, rights, options or warrants as set forth in Section 4.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

ARTICLE V REMEDIES

Section 5.01 Events of Default.

The Notes shall not be subject to Section 6.01 of the Base Indenture. In lieu thereof, the Notes shall be subject to the following provisions of Section 5.01 of this Supplemental Indenture. All references in the Base Indenture to Section 6.01 thereof and the provisions thereof, as the case may be, shall, with respect to the Notes, be deemed to be references to this Section 5.01 and the provisions herein.

An "**Event of Default**" on the Notes occurs if, voluntarily or involuntarily, whether by operation of law or otherwise, any of the following shall occur:

- (a) failure by the Company to pay principal on any Note when due;
- (b) failure by the Company to pay any interest, including any Additional Interest, on any Note when due if such failure continues for 30 days;

- (c) failure by the Company to perform any other agreement required of the Company in the Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (a), (b), (d), (e), (f) or (g) in this definition hereof) if such failure continues for 60 days after notice is given in accordance with the notice provisions in this Section 5.01;
- (d) failure by the Company to pay the Fundamental Change Repurchase Price of any Note when due;
- (e) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right in accordance with Article IV hereof;
- (f) failure by the Company to provide a timely Fundamental Change Company Notice pursuant to Section 3.01(b) or notice of a specified corporate transaction pursuant to Section 4.01(a)(iii) or Section 4.01(a)(iv), in each case, in accordance with the Indenture, and, in each case, such failure continues for a period of five Business Days;
- (g) failure by the Company to comply with its obligations under Article IX;
- (h) Indebtedness for money borrowed by the Company or one of its Significant Subsidiaries (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) whether such Indebtedness now exists or shall hereafter be created, in an aggregate outstanding principal amount in excess of \$25 million is not paid at final maturity or upon acceleration and such Indebtedness is not discharged, or such acceleration is not cured or rescinded, within 60 days after written notice as provided in this Section 5.01;
- (i) the Company or any Subsidiary that is a Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) fails to pay one or more final and non-appealable judgments entered by a court or courts of competent jurisdiction, the aggregate uninsured or unbonded portion of which is in excess of \$25 million, if the judgments are not paid, discharged or stayed within 30 days;
- (j) the Company or any Subsidiary that is a Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) pursuant to or within the meaning of any Bankruptcy Law:
 - (i) commences a voluntary case,
 - (ii) consents to the entry of an order for relief against it in an involuntary case,
 - (iii) consents to the appointment of a Custodian of it or for all or substantially all of its Property, or
 - (iv) makes a general assignment for the benefit of its creditors; or
- (k) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (i) is for relief against the Company or any Subsidiary that is a Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) as debtor in an involuntary case,
- (ii) appoints a Custodian of the Company or any Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary) or a Custodian for all or substantially all of the Property of the Company, or
- (iii) orders the liquidation of the Company or any Significant Subsidiary (or any group of Subsidiaries that, taken together, would constitute a Significant Subsidiary),

and the order or decree remains unstayed and in effect for 60 days.

A Default as set forth in subclause (c) or (h) above shall not be deemed an Event of Default until the Trustee notifies the Company, or the Holders of at least 25 percent in principal amount of the then outstanding Notes notify the Company and the Trustee, of the Default and (except in the case of a default with respect to Article Five of the Base Indenture (as modified by Article IX of this Supplemental Indenture)) the Company does not cure the Default within 60 days after written notice is given. The notice must specify the Default, demand that it be remedied and state that the notice is a "Notice of Default." If such a Default is cured within such time period, it ceases to exist, without any action by the Trustee or any other Person.

The term "**Custodian**" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

Section 5.02 Additional Interest.

Notwithstanding any provisions of the Indenture to the contrary, the Company may elect, at its option, that the sole remedy for an Event of Default relating to (i) the Company's failure to file with the Trustee as required by Section 314(a)(1) of the TIA any documents or reports that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, or (ii) the Company's failure to file reports in accordance with Section 2.03 of this Supplemental Indenture (in either case, a "**Filing Failure**"), shall for the first one hundred eighty (180) days following the occurrence of such Event of Default (the "**Extension Period**") consist exclusively of the right of Holders to receive additional interest on the Notes accruing at the rate of (x) 0.25% per annum of the aggregate principal amount of Notes that are then outstanding for each day during the 90-day period beginning on, and including, the date such Event of Default occurs and during which such Event of Default is continuing and (y) 0.50% per annum of the aggregate principal amount of the Notes that are then outstanding for each day during the 90-day period beginning on, and including, the 91st day following, and including, the date such Event of Default occurs and during which such Event of Default is continuing, on the terms and in the manner set forth in this Section 5.02 ("**Additional Interest**").

Any Additional Interest shall be paid at the same times and in the same manner as regular interest shall be paid in accordance with Section 2.01. Additional Interest shall accrue on the Notes that are then outstanding from the first day of the Event of Default to, but excluding, the earlier of (i) the date on which the Company has made the filings initially giving rise to the Filing Failure and (ii) the date that is one hundred eighty-one (181) days after the date the Event

of Default occurs. In order to elect to pay Additional Interest as the sole remedy during the first one hundred eighty (180) days after the occurrence of an Event of Default described in the preceding sentence, the Company must give written notice to Holders of the Notes, the Trustee and the Paying Agent of such election prior to the occurrence of such Event of Default. Upon the failure to timely give all Holders, the Trustee and the Paying Agent notice of such election or to pay such Additional Interest on a timely basis after electing to do so, the Notes shall be subject to immediate acceleration as provided in Section 6.02 of the Base Indenture. On the 181st day after such Event of Default occurs (if such Event of Default is not cured or waived prior to such 181st day), the Notes shall be subject to acceleration as provided in Section 6.02 of the Base Indenture. Notwithstanding the foregoing, if an additional Filing Failure occurs during an Extension Period, the Notes shall be subject to acceleration for such additional Filing Failure at the end of the Extension Period for the first Filing Failure to the extent it has not been remedied before the end of the first Extension Period; *provided, however*, that to the extent the Company has agreed to pay Additional Interest as to such additional Filing Failure, and the first Filing Failure has been remedied before the end of the first Extension Period, the Notes shall not be subject to acceleration until the end of the additional Extension Period as to such additional Filing Failure. For the avoidance of doubt, notwithstanding the occurrence of multiple overlapping Filing Failures, the aggregate amount of all Additional Interest paid in a year shall not exceed 0.50% per annum of the aggregate principal amount of the Notes that are outstanding as of the beginning of such year. This Section 5.02 shall not affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default. Whenever in the Indenture there is mentioned, in any context, the payment of interest on, or in respect of, any Note, such mention shall be deemed to include mention of the payment of Additional Interest provided for in this Section 5.02 to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of this Section 5.02, and express mention of the payment of Additional Interest (if applicable) in any provision shall not be construed as excluding Additional Interest in those provisions where such express mention is not made.

Section 5.03 Acceleration.

References in Section 6.02 of the Base Indenture to subclauses (5) or (6) of Section 6.01 shall be replaced by reference to subclauses (j) or (k) of Section 5.01 of this Supplemental Indenture for purposes of the Notes.

Section 5.04 Limitation on Suits.

References in clause (2) of Section 6.06 of the Base Indenture to “a majority” shall be replaced with “25%” for purposes of the Notes. In addition, the limitations on suits do not apply to a suit instituted by a Holder of the Notes for the enforcement of payment of the principal of or interest (including Additional Interest) on any Note or payment or delivery, as the case may be, of the consideration due upon conversion of any Note, on or after the applicable due date or the right to convert the Note in accordance with the Indenture.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the

respective due dates expressed or provided for in such Note or in this Supplemental Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, shall not be impaired or affected without the consent of such Holder.

Section 5.05 Collection Suit by Trustee.

References in Section 6.08 of the Base Indenture to subclauses (1) or (2) of Section 6.01 shall be replaced by references to subclauses (a) or (b) of Section 5.01 of this Supplemental Indenture for purposes of the Notes.

**ARTICLE VI
SATISFACTION AND DISCHARGE**

Section 6.01 Satisfaction and Discharge of the Supplemental Indenture.

(a) The satisfaction and discharge provisions set forth in this Section 6.01 shall, with respect to the Notes, supersede in their entirety those in Section 8.01 of the Base Indenture, and all references in the Base Indenture to Section 8.01 thereof and satisfaction and discharge provisions therein, as the case may be, shall, with respect to the Notes, be deemed to be references to this Section 6.01 and the satisfaction and discharge provisions set forth in this Section 6.01, respectively. When (i) the Company shall deliver to the Registrar for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (ii) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable (whether at the Stated Maturity for the payment of the principal amount thereof, on any Fundamental Change Repurchase Date or following the last day of the applicable Observation Period upon conversion or otherwise) and the Company shall deposit with the Trustee, in trust, or deliver to the Holders, as applicable, cash (or, with respect to Notes to be converted, other consideration due upon such conversion), sufficient to pay all amounts due (and shares of Common Stock deliverable following conversion, if applicable) on all of such Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest due, accompanied by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Supplemental Indenture shall cease to be of further effect (except as to (A) rights hereunder of Holders of the Notes to receive all amounts owing upon the Notes and the other rights, duties and obligations of Holders of the Notes, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (B) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 7.02(b) of the Base Indenture and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Supplemental Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably incurred by the Trustee, including the fees and expenses of its

counsel, and to compensate the Trustee for any services thereafter reasonably rendered by the Trustee in connection with this Supplemental Indenture or the Notes.

ARTICLE VII SUPPLEMENTAL INDENTURES

Section 7.01 Amendments or Supplements Without Consent of Holders.

(a) In addition to any permitted amendment or supplement to the Indenture pursuant to Section 10.01 of the Base Indenture, the Company and the Trustee may amend or supplement the Indenture or the Notes without notice to or the consent of any Holder of the Notes:

- (i) to add to the covenants of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (ii) to appoint a successor trustee with respect to the Notes;
- (iii) to provide for the assumption by a Successor of the Company's obligations under the Indenture as described under Section 5.01 of the Base Indenture or Section 4.07 of this Supplemental Indenture, including to give effect to the change to the Conversion Rate as set forth in Section 4.07 of this Supplemental Indenture; or
- (iv) irrevocably elect a Settlement Method or a Specified Dollar Amount.

(b) The below specified subclauses of Section 10.01 of the Base Indenture shall be modified in their application to the Notes as follows:

(i) the phrase "in this Indenture or the Notes in a manner that does not adversely affect to a material extent the rights of any Holder" shall be added after "cure any ambiguity, omission, defect or inconsistency" in subclause (1) of Section 10.01 of the Base Indenture; and

(ii) in applying subclause (11) of Section 10.01 of the Base Indenture to the Notes, the reference therein to the "final offering memorandum" shall be deemed to be to the prospectus dated June 28, 2016, as supplemented by the Preliminary Prospectus Supplement dated November 15, 2016 and the related Pricing Term Sheet, dated November 16, 2016 with respect to the Notes.

Section 7.02 Amendments, Supplements or Waivers With Consent of Holders.

The Company and the Trustee may amend the Indenture with respect to the Notes as provided in Section 10.02 of the Base Indenture. Notwithstanding the foregoing provision and in addition to the provisions of Section 10.01 of the Base Indenture, without the consent of each Holder of an outstanding Note affected thereby, no amendment or waiver, including a waiver in relation to a past Event of Default, may:

- (a) reduce the amount of principal payable upon acceleration of the maturity of the Notes; or
- (b) change the maturity of the principal of, or interest on, any Note.

Subclause (3) of Section 10.02 of the Base Indenture shall be amended and restated in its entirety for purposes of the Notes as follows: “(a) reduce the principal amount of any Note, (b) extend the Stated Maturity or (c) modify the provisions with respect to the repurchase right of the Holders upon a Fundamental Change (including, without limitation, the Fundamental Change Repurchase Price) in a manner adverse to Holders.” In addition, the following language shall be added to the end of subclause (7) of Section 10.02 of the Base Indenture for purposes of the Notes: “except to increase the percentage required for modification or waiver or to provide for consent of each affected Holder of Notes”.

For the avoidance of doubt, the above-referenced provisions shall be deemed included in the cross reference to clauses (1) through (9) of Section 10.02 of the Base Indenture found in Section 10.04 of the Base Indenture.

Section 7.03 Notice of Amendment or Supplement.

After any amendment or supplement to the Indenture or the Notes becomes effective, the Company shall provide to Holders, pursuant to the procedures set forth in Section 12.02 of the Base Indenture, a notice briefly describing such amendment or supplement and shall make such notice available on the Company’s website; *provided* that any failure to give such notice to all the Holders, or any defect in such notice, shall not impair or affect the validity of such amendment or supplement.

**ARTICLE VIII
INAPPLICABLE PROVISIONS OF THE BASE INDENTURE**

Section 8.01 Redemption.

The provisions of Article Three of the Base Indenture shall not apply to the Notes. The Notes will not be subject to redemption at the option of the Company.

**ARTICLE IX
SUCCESSOR CORPORATION**

Section 9.01 When Company May Merge, etc.

The Notes shall be subject to Article Five of the Base Indenture; provided that the words “or other legal entity” in clause (1) thereof shall be deleted for purposes of the Notes. The penultimate paragraph of Section 5.01 of the Base Indenture shall not apply to the Notes.

**ARTICLE X
MISCELLANEOUS**

Section 10.01 Governing Law.

THIS SUPPLEMENTAL INDENTURE AND EACH OF THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE OR THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 10.02 Payments on Business Days.

If the Company is required to make any payment on the Notes on a day that is not a Business Day, the required payment shall be made on the next succeeding Business Day. The payment made on the next Business Day shall be treated as though it was paid on the original due date and no interest on such payment shall accrue for the additional period of time.

Section 10.03 No Security Interest Created.

Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 10.04 Trust Indenture Act.

This Supplemental Indenture is hereby made subject to, and shall be governed by, the provisions of the TIA required to be part of and to govern indentures qualified under the TIA. If any provision hereof limits, qualifies or conflicts with another provision hereof or the Base Indenture that is required to be included in an indenture qualified under the TIA, such required provision shall control.

Section 10.05 Benefits of Indenture.

Nothing in this Supplemental Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Conversion Agent, any Bid Solicitation Agent, any authenticating agent, any Registrar and their successors hereunder or the Holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

Section 10.06 Calculations.

The Company and its agents shall be responsible for making all calculations called for under this Supplemental Indenture and the Notes. These calculations include, but are not limited to, determinations of any Last Reported Sale Prices of the Common Stock, the Daily VWAPs of the Common Stock, the Daily Conversion Values, the Daily Cash Amounts, the Daily Share Amounts, accrued interest payable on the Notes and the Conversion Rate. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations

shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent (if different than the Trustee), and each of the Trustee and the Conversion Agent (if different than the Trustee) is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee shall forward the Company's calculations to any Holder of Notes upon the request of that Holder at the sole cost and expense of the Company. Neither the Trustee nor the Conversion Agent shall be responsible for making any calculations for determining amounts to be paid or for monitoring any stock price.

Section 10.07 Table of Contents, Headings, Etc.

The table of contents and the titles and headings of the articles and sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 10.08 Execution in Counterparts.

This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.09 Severability.

In the event any provision of this Supplemental Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 10.10 Trustee Disclaimer.

The Trustee shall not be responsible for the validity or sufficiency of this Supplemental Indenture, nor for the recitals contained herein, all of which are taken to be statements of the Company.

Section 10.11 Withholding Taxes.

If the Company or other applicable withholding agent pays withholding taxes or backup withholding on behalf of the Holder or beneficial owner as a result of an adjustment to the Conversion Rate, the Company or other applicable withholding agent may, at its option, set off such payments against payments of cash and shares of Common Stock on the Note (or any payments on the Common Stock) or sales proceeds received by or other funds or assets of the Holder or beneficial owner.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

PDL BIOPHARMA, INC.

By: /s/ Peter S. Garcia
Name: Peter S. Garcia
Title: CFO

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By: /s/ Lawrence M. Kusch
Name: Lawrence M. Kusch
Title: Vice President

[Trustee Signature Follows]

SCHEDULE A

The following table sets forth the number of Additional Shares, if any, by which the Conversion Rate shall be increased per \$1,000 initial principal amount of Notes pursuant to Section 4.06 of this Supplemental Indenture for each Stock Price and Effective Date set forth below.

<u>Effective Date</u>	<u>Stock Price</u>									
	<u>\$3.05</u>	<u>\$3.50</u>	<u>\$3.81</u>	<u>\$4.50</u>	<u>\$5.00</u>	<u>\$7.50</u>	<u>\$10.00</u>	<u>\$12.50</u>	<u>\$15.00</u>	<u>\$17.50</u>
November 22, 2016	65.5737	49.2143	41.0131	28.3311	22.2200	7.9747	3.2550	1.2456	0.3093	0.0000
December 1, 2017	65.5737	47.8057	39.2467	26.2911	20.2180	6.7800	2.6560	0.9720	0.2193	0.0000
December 1, 2018	65.5737	45.8886	36.8268	23.5267	17.5520	5.3360	1.9880	0.6824	0.1227	0.0000
December 1, 2019	65.5737	42.9514	33.1365	19.4511	13.7500	3.6093	1.2900	0.4072	0.0420	0.0000
December 1, 2020	65.5737	37.4657	26.3911	12.6333	7.8880	1.7000	0.6290	0.1832	0.0080	0.0000
December 1, 2021	65.5737	23.4200	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

Sc. A-1

EXHIBIT A

[Form of Note]

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE 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) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS 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, CEDE & CO., HAS AN INTEREST HEREIN.

Ex. A-1

PDL BIOPHARMA, INC.

2.75% Convertible Senior Note due 2021

No. []

Initially \$[]

CUSIP No. 69329Y AG9

PDL BioPharma, Inc., a Delaware corporation (herein called the “**Company**”, which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay CEDE & CO., or registered assigns, [] (\$[]) (or such lesser principal amount as shall be specified in the “Schedule of Exchanges of Securities” attached hereto) on December 1, 2021 unless earlier converted or repurchased, and to pay interest thereon as set forth in the manner, at the rates and to the Persons set forth in the Indenture.

Interest Payment Dates: June 1 and December 1, commencing [].

Regular Record Dates: May 15 and November 15.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[Remainder of page intentionally left blank]

Ex. 1

IN WITNESS WHEREOF, PDL BIOPHARMA, INC. has caused this instrument to be signed manually or by facsimile by its duly authorized officers.

Dated:

PDL BIOPHARMA, INC.

By: _____

Name:

Title:

Attest

By: _____

Name:

Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

Dated:

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By: _____

Name:

Title:

Ex. 2

[FORM OF REVERSE OF NOTE]

PDL BIOPHARMA, INC.

2.75% Convertible Senior Note due 2021

This Note is one of a duly authorized issue of Securities of the Company (herein called the “**Notes**”), issued under an Indenture dated as of November 22, 2016, as amended and supplemented from time to time in accordance with the terms thereof (herein called the “**Base Indenture**”) and as further supplemented by the Supplemental Indenture dated as of November 22, 2016 (herein called the “**Supplemental Indenture**” and the Base Indenture, as supplemented by the Supplemental Indenture, the “**Indenture**”) by and between the Company and The Bank of New York Mellon Trust Company, N.A., herein called the “**Trustee**”, and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. Additional Notes may be issued in an unlimited aggregate principal amount, subject to conditions specified in the Indenture.

1. INTEREST

This Note shall bear interest at a rate of 2.75% per annum from [] or from the most recent date to which interest had been paid or provided to, but excluding, the next scheduled Interest Payment Date, until the principal hereof shall be repaid. Interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months. Interest is payable semi-annually in arrears on each June 1 and December 1, commencing on [], to the Person in whose name this Note (or one or more predecessor securities) is registered at the close of business on the Regular Record Date for such interest. Additional Interest shall be payable at the option of the Company on the terms set forth in Section 5.02 of the within-mentioned Supplemental Indenture.

The Company shall pay interest on overdue principal, and, to the extent lawful, on overdue interest, in each case at a rate of 2.75% per annum. Interest not paid when due and any interest on principal or interest not paid when due will be paid to Holders on a special record date, which will be the 15th day preceding the date fixed by the Company for the payment of such interest, whether or not such day is a Business Day. At least 15 days before a special record date, the Company will send to each Holder and to the Trustee a notice that sets forth the special record date, the payment date and the amount of interest to be paid.

2. MATURITY DATE

The Notes shall mature on December 1, 2021.

3. METHOD OF PAYMENT

The Company shall pay the principal of and interest on any Global Note in immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Global Note. The Company shall pay the principal of any Definitive Notes at the office or

agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer. The Company may, however, change the Paying Agent or Registrar for the Notes without prior notice to the Holders thereof, and the Company may act as Paying Agent or Registrar for the Notes. Interest on any Definitive Notes shall be payable (i) to Holders of Definitive Notes having an aggregate principal amount of Notes of \$5,000,000 or less, by check mailed to the Holders of such Notes at their address in the Security Register and (ii) to Holders having an aggregate principal amount of Definitive Notes in excess of \$5,000,000, either by check mailed to each Holder at its address in the Security Register or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until that Holder notifies, in writing, the Registrar to the contrary.

As provided in and subject to the provisions of the Indenture, the Company shall make all payments and deliveries in respect of the Fundamental Change Repurchase Price and the principal amount on the Stated Maturity thereof, as the case may be, to the holder who surrenders a Note to the Paying Agent to collect such payments in respect of the Note. The Company shall pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

4. PAYING AGENT, REGISTRAR, CONVERSION AGENT.

Initially, The Bank of New York Mellon Trust Company, N.A. (the "Trustee") shall act as Paying Agent, Registrar and Conversion Agent. The Issuer may change Paying Agent, Registrar or Conversion Agent without prior notice.

5. NO REDEMPTION

This Note is not subject to redemption at the option of the Company and, for the avoidance of doubt, this Note is not subject to the provisions of Article Three of the Base Indenture.

6. FUNDAMENTAL CHANGES AND REPURCHASES THEREUPON

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

7. CONVERSION

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during periods and upon the occurrence of conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding December 1, 2021, to convert this Note or a portion thereof that is \$1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares

of Common Stock, at the Company's election, at the applicable Conversion Rate(s) specified in the Indenture, as adjusted from time to time as provided in the Indenture.

8. SATISFACTION AND DISCHARGE

The provisions in Section 6.01 of the Supplemental Indenture supersede the entirety of Section 8.01 of the Base Indenture with respect to this Note.

9. DENOMINATIONS, TRANSFER, EXCHANGE

As provided in the Indenture and subject to limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, shall be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in denominations of \$1,000 and in integral multiples of \$1,000 in excess thereof. As provided in the Indenture and subject to limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

10. DEFAULTS AND REMEDIES

As provided in and subject to the provisions of the Indenture, in case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of and interest on all Notes may be declared due and payable, by either the Trustee or Holders of not less than 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture; *provided* that upon the occurrence of an Event of Default specified in Section 5.01(j) or (k) of the Supplemental Indenture, the principal amount of, and interest on, all the Notes shall automatically become due and payable.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, any premium and interest on and any consideration due upon conversion of this Note at the time, place and rate, and in the coin and currency, herein prescribed.

11. AMENDMENT, SUPPLEMENT AND WAIVER

The Indenture permits, with exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of at least a majority in principal amount of the Notes at the time outstanding.

The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

12. PERSONS DEEMED OWNERS

The Holder of a Note may be treated as the owner of it for all purposes.

13. DEFINITIONS

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

14. AUTHENTICATION

Unless the certificate of authentication hereon has been executed by the Trustee or an authenticating agent by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

15. INDENTURE TO CONTROL; GOVERNING LAW

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control. This Note and any claim, controversy or dispute arising under or related to this Note, for all purposes, shall be governed by, and construed in accordance with, the laws of the State of New York.

16. ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= as joint tenants with right of Survivorship and not as tenants in common), UGMA (= Uniform Gifts to Minors Act), CUST (= Custodian).

Additional abbreviations may also be used though not in the above list.

SCHEDULE A

SCHEDULES OF EXCHANGES OF NOTES

PDL BIOPHARMA, INC.

2.75% Convertible Senior Notes due 2021

The initial principal amount of this Global Note is _____ DOLLARS (\$[_____]). The following, exchanges, repurchases or conversions of a part of this Global Security have been made:

Date of Exchange, Repurchase or Conversion	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 Each Increase of Decrease	Signature of Authorized Officer of Trustee
--	--	--	--	--

EXHIBIT B

[Form of Notice of Conversion]

To: PDL BioPharma, Inc.
The Bank of New York Mellon Trust Company, N.A., as Conversion Agent

The undersigned owner of this Note hereby irrevocably exercises the option to convert this Note, or a portion hereof (which is \$1,000 or an integral multiple hereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, in accordance with the terms of the Indenture referred to in this Note, and directs that such cash, shares of Common Stock or combination of cash and shares of Common Stock, as applicable, issuable and deliverable upon conversion, together, if applicable, with any payment for fractional shares of Common Stock, and any Notes representing any unconverted principal amount hereof, be paid or issued and delivered, as the case may be, to the registered Holder hereof unless a different name has been indicated below. Subject to exceptions set forth in the Indenture, if this notice is being delivered on a date after the close of business on a Regular Record Date and prior to the open of business on the related Interest Payment Date, this notice is accompanied by payment of an amount equal to the interest payable on such Interest Payment Date of the principal of this Note to be converted. If any shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect hereto. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Principal amount to be converted (in an integral multiple of \$1,000, if less than all):

Date: _____ Your Signature: _____
(Sign exactly as your name appears on the other side of this Security)

*Signature guaranteed by:

By: _____

* This signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

Signature Guarantee

Fill in for registration of any shares of Common Stock and Notes if to be issued otherwise than to the registered Holder.

Agents to transfer this Security on the books of the Company. The Agent may substitute another to act for him or her.

(Name)

(Address)

Please print Name and Address
(including zip code numbers)

(Social Security or other Taxpayer
Identifying Number)

Ex. B-2

EXHIBIT C

[Form of Fundamental Change Repurchase Notice]

To: PDL BioPharma, Inc.
The Bank of New York Mellon Trust Company, N.A., as Paying Agent

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from PDL BioPharma, Inc. (the “**Company**”) as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of this Note and the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of certificated Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

Signature(s)

Signature(s) must be guaranteed by a qualified guarantor institution with membership in an approved signature guarantee program pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

Signature Guaranty

Social Security or Other Taxpayer Identification Number

Principal amount to be repurchased (in an integral multiple of \$1,000, if less than all):

\$ _____, 000

NOTICE: The signature on the Fundamental Change Repurchase Notice must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT D

[Form of Assignment and Transfer]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Date: _____ Your Signature: _____
(Sign exactly as your name appears on the other side of this Security)

*Signature guaranteed by:

By: _____

* This signature must be guaranteed by an institution which is a member of one of the following recognized signature guaranty programs: (i) the Securities Transfer Agent Medallion Program (STAMP); (ii) the New York Stock Exchange Medallion Program (MSP); (iii) the Stock Exchange Medallion Program (SEMP); or (iv) such other guaranty program acceptable to the Trustee.

PDL BIOPHARMA, INC.

2.75% Convertible Senior Note due 2021

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE 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) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS 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, CEDE & CO., HAS AN INTEREST HEREIN.

PDL BIOPHARMA, INC.

2.75% Convertible Senior Note due 2021

No. 2021-A1

Initially \$150,000,000.00

CUSIP No. 69329Y AG9

PDL BioPharma, Inc., a Delaware corporation (herein called the “**Company**”, which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay CEDE & CO., or registered assigns, ONE HUNDRED FIFTY MILLION DOLLARS (\$150,000,000.00) (or such lesser principal amount as shall be specified in the “Schedule of Exchanges of Securities” attached hereto) on December 1, 2021 unless earlier converted or repurchased, and to pay interest thereon as set forth in the manner, at the rates and to the Persons set forth in the Indenture.

Interest Payment Dates: June 1 and December 1, commencing June 1, 2017.

Regular Record Dates: May 15 and November 15.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, PDL BIOPHARMA, INC. has caused this instrument to be signed manually or by facsimile by its duly authorized officers.

Dated: November 22, 2016

PDL BIOPHARMA, INC.

By: /s/ Peter S. Garcia
Name: Peter S. Garcia
Title: CFO

Attest

By: /s/ John McLaughlin
Name: John McLaughlin
Title: CEO

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

Dated: November 22, 2016

**THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A., as Trustee**

By /s/ Lawrence M. Kusch
Name: Lawrence M. Kusch
Title Vice President

PDL BIOPHARMA, INC.

2.75% Convertible Senior Note due 2021

This Note is one of a duly authorized issue of Securities of the Company (herein called the “**Notes**”), issued under an Indenture dated as of November 22, 2016, as amended and supplemented from time to time in accordance with the terms thereof (herein called the “**Base Indenture**”) and as further supplemented by the Supplemental Indenture dated as of November 22, 2016 (herein called the “**Supplemental Indenture**” and the Base Indenture, as supplemented by the Supplemental Indenture, the “**Indenture**”) by and between the Company and The Bank of New York Mellon Trust Company, N.A., herein called the “**Trustee**”, and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. Additional Notes may be issued in an unlimited aggregate principal amount, subject to conditions specified in the Indenture.

1. INTEREST

This Note shall bear interest at a rate of 2.75% per annum from November 22, 2016 or from the most recent date to which interest had been paid or provided to, but excluding, the next scheduled Interest Payment Date, until the principal hereof shall be repaid. Interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months. Interest is payable semi-annually in arrears on each June 1 and December 1, commencing on June 1, 2017, to the Person in whose name this Note (or one or more predecessor securities) is registered at the close of business on the Regular Record Date for such interest. Additional Interest shall be payable at the option of the Company on the terms set forth in Section 5.02 of the within-mentioned Supplemental Indenture.

The Company shall pay interest on overdue principal, and, to the extent lawful, on overdue interest, in each case at a rate of 2.75% per annum. Interest not paid when due and any interest on principal or interest not paid when due will be paid to Holders on a special record date, which will be the 15th day preceding the date fixed by the Company for the payment of such interest, whether or not such day is a Business Day. At least 15 days before a special record date, the Company will send to each Holder and to the Trustee a notice that sets forth the special record date, the payment date and the amount of interest to be paid.

2. MATURITY DATE

The Notes shall mature on December 1, 2021.

3. METHOD OF PAYMENT

The Company shall pay the principal of and interest on any Global Note in immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Global Note. The Company shall pay the principal of any Definitive Notes at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Registrar in respect of the Notes and its agency in New York, New York as a place where Notes may be presented for payment or for registration of transfer. The Company may, however, change the Paying Agent or Registrar for the Notes without prior notice to the Holders thereof, and the Company may act as Paying Agent or Registrar for the Notes. Interest on any Definitive Notes shall be payable (i) to Holders of Definitive Notes having an aggregate principal amount of Notes of \$5,000,000 or less, by check mailed to

the Holders of such Notes at their address in the Security Register and (ii) to Holders having an aggregate principal amount of Definitive Notes in excess of \$5,000,000, either by check mailed to each Holder at its address in the Security Register or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until that Holder notifies, in writing, the Registrar to the contrary.

As provided in and subject to the provisions of the Indenture, the Company shall make all payments and deliveries in respect of the Fundamental Change Repurchase Price and the principal amount on the Stated Maturity thereof, as the case may be, to the holder who surrenders a Note to the Paying Agent to collect such payments in respect of the Note. The Company shall pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

4. PAYING AGENT, REGISTRAR, CONVERSION AGENT.

Initially, The Bank of New York Mellon Trust Company, N.A. (the "Trustee") shall act as Paying Agent, Registrar and Conversion Agent. The Issuer may change Paying Agent, Registrar or Conversion Agent without prior notice.

5. NO REDEMPTION

This Note is not subject to redemption at the option of the Company and, for the avoidance of doubt, this Note is not subject to the provisions of Article Three of the Base Indenture.

6. FUNDAMENTAL CHANGES AND REPURCHASES THEREUPON

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase all of such Holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

7. CONVERSION

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during periods and upon the occurrence of conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding December 1, 2021, to convert this Note or a portion thereof that is \$1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, at the Company's election, at the applicable Conversion Rate(s) specified in the Indenture, as adjusted from time to time as provided in the Indenture.

8. SATISFACTION AND DISCHARGE

The provisions in Section 6.01 of the Supplemental Indenture supersede the entirety of Section 8.01 of the Base Indenture with respect to this Note.

9. DENOMINATIONS, TRANSFER, EXCHANGE

As provided in the Indenture and subject to limitations therein set forth, the transfer of this Note is registrable in the Security Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and interest on this Note are payable, duly

endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, shall be issued to the designated transferee or transferees.

The Notes are issuable only in registered form without coupons in denominations of \$1,000 and in integral multiples of \$1,000 in excess thereof. As provided in the Indenture and subject to limitations therein set forth, the Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

10. DEFAULTS AND REMEDIES

As provided in and subject to the provisions of the Indenture, in case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of and interest on all Notes may be declared due and payable, by either the Trustee or Holders of not less than 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture; *provided* that upon the occurrence of an Event of Default specified in Section 5.01(j) or (k) of the Supplemental Indenture, the principal amount of, and interest on, all the Notes shall automatically become due and payable.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, any premium and interest on and any consideration due upon conversion of this Note at the time, place and rate, and in the coin and currency, herein prescribed.

11. AMENDMENT, SUPPLEMENT AND WAIVER

The Indenture permits, with exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes to be effected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of at least a majority in principal amount of the Notes at the time outstanding.

The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time outstanding, on behalf of the Holders of all Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

12. PERSONS DEEMED OWNERS

The Holder of a Note may be treated as the owner of it for all purposes.

13. DEFINITIONS

All defined terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

14. AUTHENTICATION

Unless the certificate of authentication hereon has been executed by the Trustee or an authenticating agent by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

15. INDENTURE TO CONTROL; GOVERNING LAW

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control. This Note and any claim, controversy or dispute arising under or related to this Note, for all purposes, shall be governed by, and construed in accordance with, the laws of the State of New York.

16. ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= as joint tenants with right of Survivorship and not as tenants in common), UGMA (= Uniform Gifts to Minors Act), CUST (= Custodian).

Additional abbreviations may also be used though not in the above list.

SCHEDULE A

SCHEDULES OF EXCHANGES OF NOTES

PDL BIOPHARMA, INC.

2.75% Convertible Senior Notes due 2021

The initial principal amount of this Global Note is ONE HUNDRED FIFTY MILLION DOLLARS (\$150,000,000.00). The following, exchanges, repurchases or conversions of a part of this Global Security have been made:

Date of Exchange, Repurchase or Conversion	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 Each Increase of Decrease	Signature of Authorized Officer of Trustee
---	--	--	---	---