
**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 2, 2009

PDL BioPharma, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-19756
(Commission
File No.)

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

**932 Southwood Boulevard
Incline Village, Nevada 89451**
(Address of principal executive offices)

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

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

- 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.

On November 2, 2009, PDL BioPharma, Inc. (“PDL”) and its newly-formed wholly-owned subsidiary QHP Royalty Sub LLC (“QHP”) closed a securitization transaction pursuant to which PDL raised gross proceeds of \$300 million.

Pursuant to the transaction, QHP issued, in a non-registered offering pursuant to Rule 144A and Regulation S, \$300 million in aggregate principal amount of its QHP PhaRMASM Senior Secured Notes due 2015 (the “Notes”) pursuant to an indenture (the “Indenture”) dated November 2, 2009 between QHP and U.S. Bank National Association as trustee (the “Trustee”). QHP used the gross proceeds from the issuance of the Notes to purchase from PDL, pursuant to a Purchase and Sale Agreement dated November 2, 2009 between QHP and PDL (the “Purchase and Sale Agreement”), certain rights under PDL’s non-exclusive license agreements with Genentech, Inc., a wholly-owned subsidiary of Roche Holding, Ltd., including the right to receive 60% of the royalties from sales of Avastin[®] (Bevacizumab), Herceptin[®] (Trastuzumab), Lucentis[®] (Ranibizumab) and Xolair[®] (Omalizumab) and from sales of future products, if any, for which Genentech may take a license under the related agreements with Genentech.

The Notes bear an interest rate of 10.25% per annum. The royalties and other payments, if any, that QHP will be entitled to receive under the agreements with Genentech, together with any funds made available from certain accounts of QHP, will be the sole source of payment of principal of, and interest and premium on, the Notes, which will be secured by (i) a continuing security interest granted by QHP in its rights to receive payments under such agreements and all of its other assets and (ii) a pledge by PDL of its equity ownership interest in QHP pursuant to a Pledge and Security Agreement dated November 2, 2009 between PDL and the Trustee (the “Pledge and Security Agreement”). The Notes may be redeemed at any time prior to maturity, in whole or in part, at the option of QHP at a make-whole redemption price.

After payment of fees and expenses associated with the transaction, PDL intends to use a sizable portion of the remaining net offering proceeds to pay a special cash dividend to its stockholders. The total and per share amount of the dividend, together with the record and payment dates, will be decided by the PDL Board of Directors at its upcoming meeting on November 11, 2009 and will be announced the following day.

Morgan Stanley & Co. Incorporated acted as initial purchaser (the “Initial Purchaser”) in connection with the purchase and sale of the Notes. In the ordinary course of their respective businesses, the Initial Purchaser and/or certain of its affiliates have in the past and/or may in the future engage in commercial banking, investment banking or other transactions with PDL and its affiliates, including the provision of certain advisory services to PDL and/or its affiliates, for which they have received or will receive customary compensation. In addition, the Initial Purchaser may retain some of the initially offered Notes, and may from time to time effect transactions for its own account or the account of customers, and hold on behalf of itself or its customers long or short positions in the debt securities of PDL or QHP.

Copies of the Indenture, the Purchase and Sale Agreement, the Pledge and Security Agreement and Bill of Sale are filed as Exhibits 99.1, 99.2, 99.3 and 99.4 hereto, respectively.

Item 2.01 Significant Acquisitions or Dispositions.

The information under Item 1.01 with respect to the Purchase and Sale Agreement is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
99.1	Indenture dated November 2, 2009 between QHP Royalty Sub LLC and U.S. Bank National Association as trustee.
99.2	Purchase and Sale Agreement dated November 2, 2009 between QHP Royalty Sub LLC and PDL BioPharma, Inc.
99.3	Pledge and Security Agreement dated November 2, 2009 between PDL BioPharma, Inc. and U.S. Bank National Association as trustee.
99.4	Bill of Sale dated November 2, 2009 between QHP Royalty Sub LLC and PDL BioPharma, Inc.

SIGNATURE

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

Date: November 6, 2009

PDL BioPharma, Inc.

By: _____ /s/ CHRISTOPHER STONE
Christopher Stone
Vice President, General Counsel and Secretary

EXHIBIT INDEX

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INDENTURE

dated as of November 2, 2009

by and between

**QHP ROYALTY SUB LLC,
a Delaware limited liability company,
as issuer of the Notes described herein,**

and

**U.S. BANK NATIONAL ASSOCIATION,
as initial trustee of the Notes described herein**

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INDENTURE

This INDENTURE, dated as of November 2, 2009, is by and between QHP ROYALTY SUB LLC, a Delaware limited liability company, as issuer of the Notes described herein, and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as initial trustee of the Notes described herein.

GRANTING CLAUSE

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Notes by the Noteholders, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure (i) the prompt payment of the principal of, Premium (if any) and interest on, and all other amounts due with respect to, the Notes from time to time Outstanding hereunder, (ii) the payment of any fees, expenses or other amounts that the Issuer is obligated to pay under or in respect of the Notes, this Indenture or any other Transaction Document to which the Issuer is a party, (iii) the payment and performance of all the obligations of the Issuer in respect of any amendment, modification, extension, renewal or refinancing of the Notes and (iv) the performance and observance by the Issuer of all the agreements, covenants and provisions expressed or implied herein and in the Notes for the benefit of the Noteholders (collectively, the "Secured Obligations") and for the uses and purposes and subject to the terms and provisions hereof, the Issuer does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm unto the Trustee, its successors and assigns, for the security and benefit of the Trustee and the Noteholders from time to time, a security interest in all right, title and interest of the Issuer in, to and under the following described property, rights and privileges (such property, rights and privileges, including all other property, rights and privileges hereafter specifically subjected to the lien of this Indenture or any indenture supplemental hereto, being the "Collateral" and, collectively, including all other property hereafter specifically subjected to the lien of this Indenture or any indenture supplemental hereto, are included within and defined as the "Indenture Estate"):

(1) the Purchased Assets;

(2) the Deal Documents and other agreements to which the Issuer is a party, including those relating to the rights of the Issuer in respect of the sale, transfer, conveyance, assignment, contribution, grant and servicing of the Purchased Assets;

(3) (A) all Accounts established under this Indenture at any time (other than the Escrow Account), (B) all amounts from time to time credited to such Accounts (other than the Escrow Account), (C) all cash, financial assets and other investment property, instruments, documents, chattel paper, general intangibles, accounts and other property from time to time credited to such Accounts (other than the Escrow Account) or representing investments and reinvestments of amounts credited to such Accounts (other than the Escrow Account) and (D) all interest, principal payments, dividends and other distributions payable on or with respect to, and all proceeds of, (i) all property so credited or representing such investments and reinvestments and (ii) such Accounts (other than the Escrow Account);

(4) all of the Issuer's rents, issues, profits, revenues and other income of the property subjected or required to be subjected to the lien of this Indenture;

(5) all other property and assets of the Issuer with respect to which a security interest can be created under Article 9 of the UCC, including all goods, deposit accounts, investment property, financial assets, letter-of-credit rights, supporting obligations, commercial tort claims, accounts, contract rights, general intangibles and all other cash (except (i) to the extent permitted to be distributed by the Issuer to the Equityholders pursuant to Section 3.7(a)(ii), Section 3.7(b) or Section 3.8 and (ii) proceeds from any Notes issued in accordance with and pursuant to this Indenture except for amounts to be used for Redemption of the Notes prior to such Redemption);

(6) all rights of the Issuer (contractual and otherwise) constituting, arising under, connected with or in any way related to any or all of the foregoing property;

(7) all books, records, ledger cards, files, correspondence, computer programs, tapes, disks and related data processing software (owned by the Issuer) that at any time evidence or contain information relating to any of the foregoing property or are otherwise necessary or helpful in the collection thereof or realization thereupon;

(8) all documents of title, policies and certificates of insurance, securities, chattel paper and other documents or instruments evidencing or pertaining to any of the foregoing property of the Issuer; and

(9) all proceeds and products of any and all of the foregoing property;

BUT SUBJECT TO all of the terms and conditions of this Indenture.

HABENDUM CLAUSE

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Trustee, its successors and assigns, in trust for the benefit and security of the Noteholders from time to time of each class of the Notes, without any priority of any one class of Notes over any other class of Notes by reason of difference in time of issuance or otherwise, except as expressly provided herein, and for the uses and purposes and subject to the terms and provisions set forth in this Indenture.

PROVIDED, HOWEVER, that, notwithstanding any of the foregoing provisions or anything to the contrary herein, so long as no Event of Default shall have occurred and be continuing, the Issuer shall have the right, to the exclusion of the Trustee and the Noteholders, to exercise in the Issuer's name all rights and powers of the Issuer under the Purchase and Sale Agreement and any other agreement (including any other Deal Documents) to which the Issuer is or may be a party or third party beneficiary (including the Counterparty Agreements), except as otherwise set forth in any such agreement, and SUBJECT TO all of the terms and conditions of this Indenture.

It is hereby further agreed that any and all property described or referred to in the Granting Clause that is hereafter acquired by the Issuer shall ipso facto, and without any other conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to

the Security Interest herein granted as fully and completely as though specifically described herein, but nothing contained in this paragraph shall be deemed to modify or change the obligations of the Issuer contained in the foregoing paragraphs.

The Issuer does hereby ratify and confirm this Indenture and the other Deal Documents to which it is a party and, subject to the other terms of this Indenture, does hereby agree that it will not take or omit to take any action, the taking or omission of which might result in an alteration or impairment of the assignment hereunder or of any of the rights created by any thereof.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Issuer shall remain liable under the Deal Documents and any other contracts and agreements included in the Collateral to the extent set forth therein and shall remain obligated to perform all of the duties and obligations of the Issuer thereunder to the same extent as if this Indenture had not been executed in accordance with and pursuant to the terms and provisions thereof, the exercise by the Trustee of any of its rights hereunder shall not release the Issuer from any of its duties or obligations under any such Deal Documents or other contracts or agreements included in the Collateral, and, prior to the foreclosure of the lien of this Indenture under Section 4.3, the Trustee and the Noteholders shall have no obligation or liability under any thereof by reason of or arising out of this Indenture or the assignment hereunder, nor shall the Trustee or the Noteholders be required or obligated in any manner to perform or fulfill any obligations or duties of the Issuer under or pursuant to any Deal Document or any other contract or agreement included in the Collateral or, except as herein expressly provided, to make any payment, make any inquiry as to the nature or sufficiency of any payment received by it, present or file any claim or take any action to collect or enforce any claim for payment assigned hereunder or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times; provided, however, that, in exercising any right of the Issuer under any Deal Document or any other contract or agreement included in the Collateral, the Trustee and the Noteholders shall be bound by, and shall comply with, the provisions thereof applicable to the Issuer in respect of the exercise of such right and the confidentiality provisions set forth therein to the extent permitted by Applicable Law.

IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

ARTICLE I
GENERAL

Section 1.1 Rules of Construction and Defined Terms. The rules of construction set forth in Annex A shall apply to this Indenture and are hereby incorporated by reference into this Indenture as if set forth fully in this Indenture. Capitalized terms used but not otherwise defined in this Indenture shall have the respective meanings given to such terms in Annex A, which is hereby incorporated by reference into this Indenture as if set forth fully in this Indenture. Not all terms defined in Annex A are used in this Indenture.

Section 1.2 Compliance Certificates and Opinions. Upon any application or request by the Issuer to the Trustee to take any action under any provision of this Indenture, the Issuer shall furnish to the Trustee an Officer's Certificate stating that, in the opinion of the signer

thereof in his or her capacity as such, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with, except that, in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no Officer's Certificate or Opinion of Counsel need be furnished.

Every Officer's Certificate or Opinion of Counsel with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 5.3) or any indenture supplemental hereto shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions in this Indenture relating thereto;

(b) 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;

(c) a statement that, in the opinion of each such individual in his or her capacity as such, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.3 Acts of Noteholders.

(a) Any direction, consent, waiver or other action provided by this Indenture in respect of the Notes of any class to be given or taken by Noteholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Noteholders in person or by an agent or proxy duly appointed in writing, and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee or to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Noteholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose under this Indenture and conclusive in favor of the Trustee or the Issuer, if made in the manner provided in this Section 1.3(a).

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction authorized to take acknowledgments of deeds or administer oaths that the Person executing such instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or such other officer and, where such execution is by an officer of a corporation or association, trustee of a trust or member of a partnership, on behalf of such corporation, association, trust or partnership, such certificate or affidavit shall also

constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other reasonable manner that the Trustee deems sufficient.

(c) In determining whether the Noteholders have given any direction, consent, request, demand, authorization, notice, waiver or other Act (a “Direction”) under this Indenture, Notes owned by the Issuer, any Equityholder or any Affiliate of any such Person shall be disregarded and deemed not to be Outstanding for purposes of any such determination. In determining whether the Trustee shall be protected in relying upon any such Direction, only Notes that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Notwithstanding the foregoing, if any such Person owns 100% of the Notes of any class Outstanding, such Notes shall not be so disregarded as aforesaid.

(d) Notwithstanding the definition of “Record Date”, the Issuer may, at its option, by delivery of Officer’s Certificate(s) to the Trustee, set a record date other than the Record Date to determine the Noteholders in respect of the Notes of any class entitled to give any Direction in respect of such Notes. Such record date shall be the record date specified in such Officer’s Certificate, which shall be a date not more than 30 days prior to the first solicitation of Noteholders in connection therewith. If such a record date is fixed, such Direction may be given before or after such record date, but only the Noteholders of the applicable class at the close of business on such record date shall be deemed to be Noteholders for the purposes of determining whether Noteholders of the requisite proportion of Outstanding Notes of such class have authorized, agreed or consented to such Direction, and for that purpose the Outstanding Notes of such class shall be computed as of such record date; provided, that no such Direction by the Noteholders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than one year after the record date.

(e) Any Direction or other action by the Noteholder of any Note shall bind the Noteholder of every Note issued upon the transfer thereof, in exchange therefor or in lieu thereof, whether or not notation of such action is made upon such Note, and any Direction or other action by the Beneficial Holder of any Beneficial Interest in any Note shall bind any transferee of such Beneficial Interest.

ARTICLE II THE NOTES

Section 2.1 Amount of Notes; Terms; Form; Execution and Delivery.

(a) The Outstanding Principal Balance of any class of Notes that may be authenticated and delivered from time to time under this Indenture shall not exceed, with respect to the Original Class A Notes, the initial Outstanding Principal Balance for the Original Class A Notes set forth in the definition thereof or, with respect to any class (or sub-class) of Subordinated Notes or any class of Refinancing Notes, the Outstanding Principal Balance authorized in the Resolution and set forth in an indenture supplemental hereto establishing such Subordinated Notes or Refinancing Notes; provided, that (i) any Refinancing Notes shall be issued in accordance with Section 2.15 and (ii) any Subordinated Notes shall be issued in accordance with Section 2.16.

(b) There shall be issued, authenticated and delivered on the Closing Date and on the date of issuance of any Subordinated Notes or any Refinancing Notes to each of the Noteholders Notes in the principal amounts and maturities and bearing the interest rates, in each case in registered form and, in the case of the Original Class A Notes, substantially in the form set forth in Exhibit A or, in the case of any Subordinated Notes or any Refinancing Notes, substantially in the form set forth in any indenture supplemental hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements typewritten, printed, lithographed or engraved thereon, as may, consistently herewith, be prescribed by the Trustee. The Trustee shall authenticate Notes and make Notes available for delivery only upon the written order of the Issuer signed by a Responsible Officer of the Issuer. Such order shall specify the aggregate principal amount of Notes to be authenticated, the date of issue, whether they are to be issued as Global Notes or Definitive Notes and delivery instructions.

Definitive Notes of each class shall be typewritten, printed, lithographed or engraved or produced by any combination of these methods, as determined by the Trustee. Any Notes offered and sold to Institutional Accredited Investors that are not QIBs that are not offered and sold in offshore transactions in reliance on Regulation S shall be issued initially in the form of Definitive Notes.

Any Notes offered and sold to QIBs or sold in reliance on Rule 144A shall be issued initially in the form of one or more permanent Global Notes in registered form, substantially in the form set forth in the applicable Exhibit to this Indenture or in any indenture supplemental hereto (each, a “144A Global Note”), registered in the name of the nominee of DTC, deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. The aggregate principal amount of each 144A Global Note may from time to time be increased or decreased by adjustments made on the books and records of the Registrar, as hereinafter provided.

Any Notes offered and sold to Institutional Accredited Investors in offshore transactions in reliance on Regulation S shall be issued initially in the form of one or more temporary global Notes in registered form substantially in the form set forth in the applicable Exhibit to this Indenture or in any indenture supplemental hereto (each, a “Temporary Regulation S Global Note”), registered in the name of the nominee of DTC, deposited with the Trustee, as custodian for DTC, duly executed by the Issuer and authenticated by the Trustee as hereinafter provided. At any time following the applicable Regulation S Global Note Exchange Date, upon receipt by the Trustee and the Issuer of a certificate substantially in the form of Exhibit E, executed by Euroclear or Clearstream, as the case may be, together with copies of certificates from Euroclear or Clearstream, as the case may be, certifying that it has received certification of non-U.S. beneficial ownership of a Temporary Regulation S Global Note (or portion thereof) with respect to any Notes to be exchanged, one or more permanent Global Notes for such Notes in registered form substantially in the form set forth in the applicable Exhibit to this Indenture or in any indenture supplemental hereto (each, a “Permanent Regulation S Global Note” and, together with each Temporary Regulation S Global Note, the “Regulation S Global Notes”) duly executed by the Issuer and authenticated by the Trustee as hereinafter provided shall be deposited with the Trustee, as custodian for DTC, and the Registrar shall reflect on its books and records the date

and a decrease in the principal amount of the Temporary Regulation S Global Note of such class in an amount equal to the principal amount of such Temporary Regulation S Global Note exchanged. Until the Regulation S Global Note Exchange Date with respect to any Temporary Regulation S Global Note, Beneficial Interests in such Temporary Regulation S Global Note may be held only through Agent Members acting for and on behalf of Euroclear and Clearstream.

Notes, if so provided herein or in any indenture supplemental hereto, shall be issued in the form of permanent certificated Notes in registered form in substantially the form set forth in this Section 2.1(b) (collectively with any definitive, fully registered Notes issued pursuant to Section 2.5(d) or Section 2.10(b), the “Definitive Notes”).

(c) Interest shall accrue on any class of Fixed Rate Notes from the date of issuance of such Fixed Rate Notes and shall be computed for each Interest Accrual Period on the basis of a 360-day year consisting of twelve 30-day months on the Outstanding Principal Balance of such Notes. Interest shall accrue on any class of Floating Rate Notes from the date of issuance of such Floating Rate Notes and shall be computed for each Interest Accrual Period on the basis of a 360-day year and the actual number of days elapsed in such Interest Accrual Period on the Outstanding Principal Balance of such Notes. If any interest payment is not made when due on a Payment Date, the unpaid portion of such interest payment will accrue interest at the rate then applicable to the Notes, compounded quarterly, until paid in full.

(d) On the date of any Refinancing, the Issuer shall issue and deliver, as provided in Section 2.15, an aggregate principal amount of Refinancing Notes having the maturities and bearing the interest rates and such other terms authorized by one or more Resolutions and set forth in any indenture supplemental hereto providing for the issuance of such Refinancing Notes or specified in the form of such Refinancing Notes, in each case in accordance with Section 2.15.

(e) On the date of any Subordinated Note Issuance, the Issuer shall issue and deliver, as provided in Section 2.16, an aggregate principal amount of Subordinated Notes having the maturities and bearing the interest rates and such other terms authorized by one or more Resolutions and set forth in any indenture supplemental hereto providing for the issuance of such Subordinated Notes or specified in the form of such Subordinated Notes, in each case in accordance with Section 2.16.

(f) The Notes shall be executed on behalf of the Issuer by the manual or facsimile signature of a Responsible Officer of the Issuer or any individual authorized to do so by a Responsible Officer of the Issuer.

(g) Each Note bearing the manual or facsimile signature of any individual who at the time such Note was executed was authorized to execute such Note by a Responsible Officer of the Issuer shall bind the Issuer, notwithstanding that any such individual has ceased to hold such authority thereafter but prior to the authentication and delivery of such Notes or any payment thereon.

(h) At any time and from time to time after the execution of any Notes, the Issuer may deliver such Notes to the Trustee for authentication and, subject to the provisions of Section 2.1(i), the Trustee shall authenticate such Notes by manual signature upon receipt by it of a written order of the Issuer. The Notes shall be authenticated on behalf of the Trustee by any Responsible Officer of the Trustee.

(i) No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless it shall have been executed on behalf of the Issuer as provided in Section 2.1(f) and authenticated by or on behalf of the Trustee as provided in Section 2.1(h). Such signatures shall be conclusive evidence that such Note has been duly executed and authenticated under this Indenture. Each Note shall be dated the date of its authentication.

Section 2.2 Restrictive Legends. Each Note (and all Notes issued in exchange therefor or upon registration of transfer or substitution thereof) shall bear the following legend on the face thereof (the "Legend"):

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, NOR IS SUCH REGISTRATION CONTEMPLATED. NEITHER THIS NOTE NOR ANY INTEREST HEREIN MAY BE ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION UNDER THE SECURITIES ACT OR AN EXEMPTION FROM SUCH REGISTRATION THEREUNDER AND ANY OTHER APPLICABLE SECURITIES LAW REGISTRATION REQUIREMENTS. EACH PERSON WHO ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE (1) REPRESENTS THAT (A) IT IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND, IF SUBSEQUENT TO THE INITIAL ACQUISITION HEREOF, IS PURCHASING THIS NOTE IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IT IS AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT (AN "INSTITUTIONAL ACCREDITED INVESTOR"), HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF THE PURCHASE OF THIS NOTE AND IS ABLE AND PREPARED TO BEAR THE ECONOMIC RISK OF INVESTING IN AND HOLDING THIS NOTE OR (C) IT IS AN INSTITUTIONAL ACCREDITED INVESTOR THAT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR AN INTEREST HEREIN, EXCEPT (A) TO THE ISSUER OR A SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A

QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT OR (C) TO AN INSTITUTIONAL ACCREDITED INVESTOR THAT IS PURCHASING THIS NOTE OR AN INTEREST HEREIN, AS THE CASE MAY BE, FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED, THAT THE ISSUER AND THE TRUSTEE SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (2) (C) OF THIS PARAGRAPH TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THE TERMS "OFFSHORE TRANSACTION", "UNITED STATES" AND "U.S. PERSON" HAVE THE RESPECTIVE MEANINGS GIVEN TO THEM BY REGULATIONS UNDER THE SECURITIES ACT. THE INDENTURE REFERRED TO HEREINAFTER CONTAINS A PROVISION REQUIRING THE REGISTRAR APPOINTED THEREUNDER TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.

BY ITS PURCHASE AND ACCEPTANCE OF THIS NOTE, EACH PURCHASER WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (I) NO PLAN ASSETS WILL BE USED TO PURCHASE THIS NOTE OR (II) PLAN ASSETS WILL BE USED TO PURCHASE THIS NOTE BUT (A) SUCH PURCHASE OF THIS NOTE WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR A VIOLATION OF SIMILAR LAWS BY REASON OF THE APPLICATION OF ONE OR MORE STATUTORY OR ADMINISTRATIVE EXEMPTIONS OR OTHERWISE OR (B) SUCH ASSETS ARE NOT CONSIDERED PLAN ASSETS BY REASON OF BEING HELD IN A SEPARATE ACCOUNT OF AN INSURANCE COMPANY, UNDER WHICH AMOUNTS PAYABLE OR CREDITED TO THE PLAN AND TO ANY PARTICIPANT OR BENEFICIARY OF THE PLAN ARE NOT AFFECTED BY THE INVESTMENT PERFORMANCE OF THE SEPARATE ACCOUNT. "PLAN ASSETS" HAS THE MEANING GIVEN TO IT BY SECTION 3(42) OF ERISA AND REGULATIONS OF THE DEPARTMENT OF LABOR OR UNDER SIMILAR LAWS.

THIS NOTE MAY NOT BE RESOLD OR TRANSFERRED EXCEPT AS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER, AND, IN ADDITION, EACH PERSON WHO ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE AGREES THAT IT SHALL CAUSE ANY PROPOSED TRANSFEREE TO EXECUTE A CONFIDENTIALITY AGREEMENT IN THE FORM ATTACHED AS EXHIBIT B TO SUCH INDENTURE AND DELIVER SUCH CONFIDENTIALITY AGREEMENT TO THE REGISTRAR (AS DEFINED IN SUCH INDENTURE) AND FURTHER AGREES TO OTHERWISE COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH IN SUCH INDENTURE, INCLUDING SECTION 2.11 THEREOF, AND FURTHER ACKNOWLEDGES AND AGREES TO THE PROVISIONS SET FORTH IN SECTION 2.5 OF SUCH INDENTURE.

Each Global Note shall also bear the following legend on the face thereof:

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.11 OF THE INDENTURE REFERRED TO HEREINAFTER.

Each Temporary Regulation S Global Note shall also bear the following legend on the face thereof:

THIS NOTE IS A TEMPORARY REGULATION S GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER AND IS SUBJECT TO RESTRICTIONS ON THE TRANSFER AND EXCHANGE THEREOF AND ON THE PAYMENT OF INTEREST THEREON AS SPECIFIED IN THE INDENTURE REFERRED TO HEREINAFTER.

Section 2.3 Registrar and Paying Agent.

(a) With respect to each class of Notes, there shall at all times be maintained an office or agency in the location set forth in Section 12.5 where the Notes of such class may be presented or surrendered for registration of transfer or for exchange (including any additional registrar, each, a “Registrar”) and for payment thereof (including any additional paying agent, each, a “Paying Agent”) and where notices and demands to or upon the Issuer in respect of such Notes may be served. The Trustee shall be the initial Paying Agent and Registrar, and the Issuer shall not be permitted to act as a Paying Agent or a Registrar. The Issuer shall cause each Registrar to keep a register of such class of Notes for which it is acting as Registrar and of their transfer and exchange (the “Register”). Written notice of the location of each such other office or agency and of any change of location thereof shall be given by the Trustee to the Issuer and the Noteholders of such class of Notes. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office.

(b) Each Authorized Agent shall be a bank, trust company or corporation organized and doing business under the laws of the U.S., any state or territory thereof or of the District of Columbia, with a combined capital and surplus of at least \$75,000,000 (or having a combined capital and surplus in excess of \$5,000,000 and the obligations of which, whether now in existence or hereafter incurred, are fully and unconditionally Guaranteed by a bank, trust company or corporation organized and doing business under the laws of the U.S., any state or territory thereof or of the District of Columbia and having a combined capital and surplus of at least \$75,000,000) and shall be authorized under the laws of the U.S., any state or territory thereof or the District of Columbia to exercise corporate trust powers, subject to supervision by federal or state authorities (such requirements, the “Eligibility Requirements”). Each Registrar other than the Trustee shall furnish to the Trustee, at least five Business Days prior to each Payment Date, and at such other times as the Trustee may request in writing, a copy of the Register maintained by such Registrar.

(c) Any Person into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of any Authorized Agent (including the administration of the fiduciary relationship contemplated by this Indenture), shall be the successor of such Authorized Agent hereunder, if such successor corporation is otherwise eligible under this Section 2.3, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor Person.

(d) Any Authorized Agent may at any time resign by giving written notice of resignation to the Trustee and the Issuer. The Issuer may, and at the request of the Trustee shall, at any time terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent and to the Trustee. Upon the resignation or termination of an Authorized Agent or if at any time any such Authorized Agent shall cease to be eligible under this Section 2.3 (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed by the Trustee), the Issuer shall promptly appoint one or more qualified successor Authorized Agents, reasonably satisfactory to the

Trustee, to perform the functions of the Authorized Agent that has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section 2.3. The Issuer shall give written notice of any such appointment made by it to the Trustee, and in each case the Trustee shall mail notice of such appointment to all Noteholders of the related class of Notes as their names and addresses appear on the Register for such class of Notes.

(e) The Issuer agrees to pay, or cause to be paid, from time to time to each Authorized Agent reasonable compensation for its services and to reimburse it for its reasonable expenses to be agreed to pursuant to separate agreements with each such Authorized Agent.

Section 2.4 Paying Agent to Hold Money in Trust. The Trustee shall require each Paying Agent other than the Trustee to agree in writing that all moneys deposited with any Paying Agent for the purpose of any payment on the Notes shall be deposited and held in trust for the benefit of the Noteholders entitled to such payment, subject to the provisions of this Section 2.4. Moneys so deposited and held in trust shall constitute a separate trust fund for the benefit of the Noteholders with respect to which such money was deposited.

The Trustee may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, direct any Paying Agent to pay to the Trustee all sums held in trust by such Paying Agent, and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Section 2.5 Method of Payment.

(a) On each Payment Date, the Trustee shall, or shall instruct a Paying Agent to, pay, subject to Section 3.7, to the extent of the Available Collections Amount for such Payment Date and any funds withdrawn from the Capital Account by the Trustee pursuant to Section 3.8, to the Noteholders all interest, principal and Premium, if any, on each class of Notes in the amounts determined by the Calculation Agent pursuant to Section 3.5; provided, that payment on a Temporary Regulation S Global Note shall be made to the Noteholder thereof only in conformity with Section 2.5(c) and payment on any Note may be deferred as provided in Section 2.5(d). Each payment on any Payment Date other than the final payment with respect to any class of Notes shall be made by the Trustee or Paying Agent to the Noteholders as of the Record Date for such Payment Date. The final payment with respect to any class of Notes, however, shall be made only upon presentation and surrender of such Note by the Noteholder or its agent at an office or agency of the Trustee or Paying Agent in New York City.

(b) Subject to Section 2.5(d), at such time, if any, as the Notes of any class are issued in the form of Definitive Notes, payments on a Payment Date shall be made by the Trustee or the Paying Agent by check mailed to each Noteholder of a Definitive Note on the applicable Record Date at its address appearing on the Register maintained with respect to such class of Notes. Alternatively, upon application in writing to the Trustee, not later than the applicable Record Date, by a Noteholder holding Definitive Notes, subject to Section 2.5(d), any such payments shall be made by wire transfer to an account designated by such Noteholder at a financial institution in New York City; provided, that, in each case, the final payment for any class of Notes shall be made only upon presentation and surrender of the Definitive Notes of such class by the Noteholder or its agent at an office or agency of the Trustee or Paying Agent in

New York City. Payments in respect of the Notes represented by a Global Note (including principal, Premium, if any, and interest) shall be made by wire transfer of immediately available funds to the account specified by DTC at a financial institution in New York City.

(c) The beneficial owner of a Temporary Regulation S Global Note may arrange to receive payments through Euroclear or Clearstream on such Temporary Regulation S Global Note only after delivery by such beneficial owner to Euroclear or Clearstream, as the case may be, of a written certification substantially in the form of Exhibit G and upon delivery by Euroclear or Clearstream, as the case may be, to the Paying Agent of a certification or certifications substantially in the form of Exhibit H. No interest shall be paid to any beneficial owner and no interest shall be paid to Euroclear or Clearstream on such beneficial owner's interest in a Temporary Regulation S Global Note unless Euroclear or Clearstream, as the case may be, has provided such a certification to the Paying Agent with respect to such interest.

(d) Not later than five Business Days prior to each Payment Date or any other date on which a Distribution Report is to be distributed to Noteholders and Beneficial Holders pursuant to Section 2.13(a), the Registrar shall use commercially reasonable efforts to (i) prepare a list (the "Approved Holder List") of each Noteholder and Beneficial Holder as of the Record Date related to such Payment Date that has executed and delivered to the Registrar a Confidentiality Agreement, (ii) obtain from DTC a list (the "DTC List") of the Agent Members holding Beneficial Interests in the Notes as of such Record Date, (iii) obtain from each such Agent Member as of such Record Date the corresponding Beneficial Holders of the Beneficial Interests held by each such Agent Member set forth on the DTC List as of such Record Date and prepare a list thereof and of the Beneficial Interests owned by each such Beneficial Holder (the "Actual Beneficial Holder List"), (iv) prepare a list (the "Escrow List"), if necessary, that identifies any differences between (x) the Noteholders and Beneficial Holders listed on the Approved Holder List and (y)(A) the Noteholders of Definitive Notes set forth in the Register and (B) the Beneficial Holders listed on the Actual Beneficial Holder List (or those Beneficial Holders that the Registrar actually knows have not executed and delivered to the Registrar Confidentiality Agreements), in each case as of such Record Date, and (v) provide the Approved Holder List, the DTC List, the Actual Beneficial Holder List and any Escrow List to the Issuer, the Servicer and the Trustee. Each Noteholder, Agent Member and Beneficial Holder hereby agrees, acknowledges and consents that (I) with respect to a Noteholder of any Notes (other than DTC or its nominee) that as of such Record Date has not executed and delivered to the Registrar a Confidentiality Agreement and, therefore, is listed on the Escrow List, the Trustee promptly (but in no event less than three Business Days prior to the applicable Payment Date) shall use commercially reasonable efforts to notify such Noteholder of such failure and, on the applicable Payment Date, if so instructed in writing by the Issuer, cause any principal payment with respect to the Outstanding Principal Balance or any payment of Premium, if any, or Interest Amount on such Notes to be paid directly to the Escrow Account and (II) with respect to a Beneficial Holder of any Beneficial Interest in a Note that as of such Record Date has not executed and delivered to the Registrar a Confidentiality Agreement and, therefore, is listed on the Escrow List, the Trustee promptly (but in no event less than three Business Days prior to the applicable Payment Date) shall use commercially reasonable efforts to cause the Beneficial Interest of such Beneficial Holder to be transferred into the name of the Trustee (including the Trustee acting as an Agent Member with respect to such Beneficial Interests) and shall use commercially reasonable efforts to cause any payment of principal, Premium, if any, or interest on such Notes or Beneficial

Interests received on such Payment Date, if so instructed in writing by the Issuer, to be deposited into the Escrow Account upon receipt thereof. If so deposited into the Escrow Account, upon receipt by the Trustee and the Issuer of written notice from the Registrar that the applicable Noteholder or Beneficial Holder has executed and delivered to the Registrar a Confidentiality Agreement, the Trustee will distribute such amounts, without interest, from the Escrow Account to the Trustee for distribution to each such Noteholder or Beneficial Holder, but prior to the receipt thereof the Trustee shall be authorized to treat such purported Noteholder or Beneficial Holder as not being a Noteholder or Beneficial Holder, as the case may be, for purposes of this Indenture. If any purported Noteholder or Beneficial Holder has not executed and delivered to the Registrar a Confidentiality Agreement, the Issuer may, at its option, by delivery of an Officer's Certificate to the Trustee, authorize the Trustee to remove any Notes held by such purported Noteholder or Beneficial Holder from the book-entry systems of DTC, Clearstream and Euroclear and instead have such Notes be issued in definitive form until such time as receipt by the Trustee and the Issuer of written notice from the Registrar that such purported Noteholder or Beneficial Holder has executed and delivered to the Registrar a Confidentiality Agreement. The Trustee shall so remove such Notes immediately upon receipt of such Officer's Certificate.

(e) The payment of any Interest Amount in respect of a class of Notes on a particular Payment Date shall be deemed allocated first to any unpaid Interest Amount due prior to such Payment Date (together with Additional Interest thereon) and second to any Interest Amount due on such Payment Date.

(f) If the Final Legal Maturity Date is not a Business Day, any payment scheduled to be made on the Final Legal Maturity Date shall be made on the next succeeding Business Day without the payment of additional interest.

Section 2.6 Minimum Denominations. Each class of Notes shall be issued in minimum denominations of \$100,000 or integral multiples of \$1,000 in excess thereof.

Section 2.7 Transfer and Exchange; Cancellation. The Notes are issuable only in fully registered form without coupons. A Noteholder or a Beneficial Holder may transfer a Note or a Beneficial Interest therein only by written application to the Registrar stating the name of the proposed transferee and otherwise complying with the terms of this Indenture, including the requirement for the execution and delivery of a Confidentiality Agreement by such proposed transferee to the Registrar relating to such transfer as set forth in Section 2.11(j). No such transfer shall be effected until, and such proposed transferee shall succeed to the rights of a Noteholder or a Beneficial Holder only upon, final acceptance and registration of the transfer by the Registrar and confirmation by the Registrar pursuant to Section 2.11(j) that such Noteholder or such Beneficial Holder has executed and delivered an appropriate Confidentiality Agreement to the Registrar.

Prior to the due presentment for registration of transfer of a Note and satisfaction of the requirements specified in the last sentence of the preceding paragraph, the Issuer and the Trustee may deem and treat the applicable registered Noteholder as the absolute owner and holder of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes and shall not be affected by any notice to the contrary. The Registrar (if different from the Trustee) shall promptly notify the Trustee in writing and the Trustee shall promptly notify the Issuer of each request for a registration of transfer of a Note by furnishing the Issuer a copy of such request.

Furthermore, any Noteholder of a Global Note shall, by acceptance of such Global Note, agree that, subject to Section 2.10(b) and Section 2.11, transfers of Beneficial Interests in such Global Note may be effected only through a book-entry system maintained by the Noteholder of such Global Note (or its agent) and that ownership of a Beneficial Interest in such Global Note shall be required to be reflected in a book-entry system. When Notes are presented to the Registrar with a request to register the transfer or to exchange them for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including, in the case of a transfer, that such Notes are duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and Registrar duly executed by the Noteholder thereof or by an attorney who is authorized in writing to act on behalf of the Noteholder). To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Notes at the Registrar's request. Except as set forth in Section 2.8 and Section 2.9, no service charge shall be made for any registration of transfer or exchange or redemption of the Notes.

The Registrar shall not be required to exchange or register the transfer of any Notes as above provided during the 15-day period preceding the Final Legal Maturity Date of any such Notes or during a 15-day period preceding the first mailing of any notice of Redemption or Refinancing of Notes to be redeemed or refinanced. The Registrar shall not be required to exchange or register the transfer of any Notes that have been selected, called or are being called for Redemption or Refinancing except, in the case of any Notes where written notice has been given that such Notes are to be redeemed in part, the portion thereof not so to be redeemed.

Any Person (including the Issuer) at any time may deliver Notes to the Trustee for cancellation. The Trustee and no one else shall cancel and destroy in accordance with its customary practices in effect from time to time (subject to the record retention requirements of the Exchange Act) any such Notes, together with any other Notes surrendered to it for registration of transfer, exchange or payment. The Issuer may not issue new Notes (other than Refinancing Notes issued in connection with any Refinancing) to replace Notes it (or any other Person) has redeemed, paid or delivered to the Trustee for cancellation.

Section 2.8 Mutilated, Destroyed, Lost or Stolen Notes. If any Note shall become mutilated, destroyed, lost or stolen, the Issuer shall, upon the written request of the Noteholder thereof and presentation of the Note or satisfactory evidence of destruction, loss or theft thereof to the Trustee or Registrar and a confirmation by the Registrar to the Trustee that such Noteholder (or Beneficial Holder of the Beneficial Interest therein) has executed and delivered to the Registrar a Confidentiality Agreement, issue, and the Trustee shall authenticate and the Trustee or Registrar shall deliver in exchange therefor or in replacement thereof, a new Note, payable to such Noteholder in the same principal amount, of the same maturity, with the same payment schedule, bearing the same interest rate and dated the date of its authentication. If the Note being replaced has become mutilated, such Note shall be surrendered to the Trustee or the Registrar and forwarded to the Issuer by the Trustee or such Registrar. If the Note being replaced has been destroyed, lost or stolen, the Noteholder thereof shall furnish to the Issuer, the

Trustee and the Registrar (a) such security or indemnity as may be required by the Issuer, the Trustee and the Registrar to save each of them harmless (an unsecured indemnity from any QIB being satisfactory security or indemnity) and (b) evidence satisfactory to the Issuer, the Trustee and the Registrar of the destruction, loss or theft of such Note and of the ownership thereof (an affidavit from any QIB being satisfactory evidence). The Noteholders will be required to pay any Tax or other governmental charge imposed in connection with such exchange or replacement and any other expenses (including the fees and expenses of the Trustee and the Registrar) connected therewith.

Section 2.9 Payments of Transfer Taxes. Upon the transfer of any Note or Notes pursuant to Section 2.7, the Issuer or the Trustee may require from the party requesting such new Note or Notes payment of a sum to reimburse the Issuer or the Trustee for, or to provide funds for the payment of, any transfer Tax or similar governmental charge payable in connection therewith.

Section 2.10 Book-Entry Provisions.

(a) Global Notes shall (i) be registered in the name of DTC or a nominee of DTC, (ii) be delivered to the Trustee as custodian for DTC and (iii) bear the Legend. In accordance with the requirements of DTC, the Issuer will cause the Trustee to authenticate an additional Global Note or additional Global Notes in the appropriate principal amount such that no Global Note may exceed an aggregate principal amount of \$500,000,000 at any time.

Members of, or participants in, DTC ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by DTC, or the Trustee as its custodian, or under such Global Note, and DTC may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever.

Whenever notice or other communication to the Noteholders of any class of Global Notes is required under this Indenture, unless and until Definitive Notes shall have been issued pursuant to Section 2.10(b), the Trustee shall give all such notices and communications specified herein to be given to Noteholders of such class of Global Notes to DTC and/or the Agent Members, and shall make available additional copies as requested by such Agent Members, subject to the limitations on distribution contained in Section 2.13.

Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices governing the exercise of the rights of a Noteholder under any Global Note. Neither the Issuer nor the Trustee shall be liable for any delay by DTC in identifying the Agent Members in respect of the Global Notes, and the Issuer and the Trustee may conclusively rely on, and shall be fully protected in relying on, instructions from DTC for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of any Global Notes to be issued).

(b) Transfers of a Global Note shall be limited to transfers of such Global Note in whole, but not in part, to DTC, its successors or their respective nominees. Interests of Agent Members in a Global Note may be transferred in accordance with the rules and procedures of DTC and the provisions of Section 2.11. Except as set forth in Section 2.5(d) and Section 2.11(a), Definitive Notes shall be issued to the individual Agent Members or Beneficial Holders or their nominees in exchange for their Beneficial Interests in a Global Note with respect to any class of Notes only if (i) the Issuer advises the Trustee in writing that DTC is no longer willing or able to properly discharge its responsibilities as depositary with respect to such class of Notes and the Trustee or the Issuer is unable to appoint a qualified successor within 90 days of such notice or (ii) during the occurrence of an Event of Default with respect to such class of Notes, any Noteholder requests that all or a portion of a Global Note be exchanged for a Definitive Note. Upon the occurrence of any event described in the immediately preceding sentence, the Trustee shall notify all affected Noteholders of such class, through DTC, of the occurrence of such event and of the availability of Definitive Notes of such class; provided, however, that in no event shall the Temporary Regulation S Global Note be exchanged for Definitive Notes prior to the later of (x) the Regulation S Global Note Exchange Date and (y) the date of receipt by the Issuer of any certificates determined by it to be required pursuant to Rule 903 or 904 under the Securities Act. Upon surrender to the Trustee of the Global Notes of such class held by DTC, accompanied by registration instructions from DTC for registration of Definitive Notes, the Issuer shall issue and the Trustee shall authenticate and deliver the Definitive Notes of such class to the Agent Members and Beneficial Holders of such class or their nominees in accordance with the instructions of DTC.

None of the Issuer, the Registrar, the Paying Agent or the Trustee shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such registration instructions. Upon the issuance of Definitive Notes of such class, subject to Section 2.5(d), the Trustee shall recognize the Persons in whose name the Definitive Notes are registered in the Register as Noteholders hereunder. Neither the Issuer nor the Trustee shall be liable if the Trustee or the Issuer is unable to locate a qualified successor to DTC.

Definitive Notes of any class will be freely transferable and exchangeable for Definitive Notes of the same class at the office of the Trustee or the office of the Registrar upon compliance with the requirements set forth herein. In the case of a transfer of only part of a holding of Definitive Notes, a new Definitive Note shall be issued to the transferee in respect of the part transferred and a new Definitive Note in respect of the balance of the holding not transferred shall be issued to the transferor and may be obtained at the office of the applicable Registrar.

(c) Any Beneficial Interest in one of the Global Notes as to any class that is transferred to a Person who takes delivery in the form of an interest in another Global Note will, upon transfer, cease to be an interest in such Global Note and become an interest in such other Global Note and, accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to Beneficial Interests in such other Global Note for as long as it remains such an interest.

(d) Any Definitive Note delivered in exchange for an interest in a Global Note pursuant to Section 2.5(d) or Section 2.10(b) shall bear the Legend applicable to a Global Note.

Section 2.11 Special Transfer Provisions.

(a) The following provisions shall apply with respect to any proposed transfer of a Beneficial Interest in a 144A Global Note or a Permanent Regulation S Global Note or a proposed transfer of a Definitive Note to any Institutional Accredited Investor that is not a QIB (excluding Non-U.S. Persons):

(i) The Registrar shall register the transfer of any Definitive Note if the proposed transferee has delivered to the Registrar (A) a certificate substantially in the form of Exhibit J (such certificate also to be delivered to the Issuer), (B) if requested by the Issuer or the Trustee, an Opinion of Counsel acceptable to the Issuer that such transfer is in compliance with the Securities Act and (C) a Confidentiality Agreement duly executed by such transferee.

(ii) If the proposed transferor is an Agent Member holding a Beneficial Interest in a 144A Global Note or a Permanent Regulation S Global Note, upon receipt by the Registrar of (A) the documents required by Section 2.11(a)(i), including the Confidentiality Agreement, and (B) instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the 144A Global Note or the Permanent Regulation S Global Note, as the case may be, in an amount equal to the principal amount of the Beneficial Interest in the Global Note to be transferred, and the Issuer shall execute, and the Trustee shall authenticate and deliver, one or more Definitive Notes of like tenor and amount.

(b) The following provisions shall apply with respect to any proposed transfer of a Beneficial Interest in a 144A Global Note or a Permanent Regulation S Global Note or a proposed transfer of a Definitive Note to a QIB (excluding Non-U.S. Persons):

(i) If the Note to be transferred consists of (A) Definitive Notes, the Registrar shall reflect the transfer on its books and records if such transfer is being made by a proposed transferor who has delivered such Note and checked the box provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that (w) it is purchasing the Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account are QIBs within the meaning of Rule 144A, (x) it is or such QIBs are aware that the sale to it or them is being made in reliance on Rule 144A and acknowledge that it has or they have received such information regarding the Issuer as it has or they have requested pursuant to Rule 144A or has or have determined not to request such information, (y) it is or such QIBs are aware that the transferor is relying upon the foregoing representations in order to claim the exemption from registration provided by Rule 144A and (z) it has and all such QIBs have duly executed and delivered to the Registrar a Confidentiality Agreement or (B) a Beneficial Interest in a 144A Global Note, the transfer of such Beneficial Interest may be effected only through the book-entry system maintained by DTC and to the extent provided in the agreement with DTC, and, in each case, each transferee has delivered to the Registrar a Confidentiality Agreement duly executed by such transferee.

(ii) If the proposed transferee is an Agent Member, and the Note to be transferred is a Definitive Note, upon receipt by the Registrar of the documents referred to in Section 2.11(b)(i), including the Confidentiality Agreement, and instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount at maturity of the 144A Global Note in an amount equal to the principal amount at maturity of the Definitive Note to be transferred, and the Trustee shall cancel the Definitive Note so transferred (upon written direction from the Registrar if different from the Trustee).

(iii) If the proposed transferee is an Agent Member, and the Note to be transferred is represented by a Beneficial Interest in a Permanent Regulation S Global Note, upon receipt by the Registrar of the documents referred to in Section 2.11(b)(i), including the Confidentiality Agreement, and instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the Permanent Regulation S Global Note in an amount equal to the principal amount of the Beneficial Interest in the Permanent Regulation S Global Note to be transferred, and the Registrar shall reflect on its books and records an increase in the principal amount of the 144A Global Note in an amount equal to such transferred amount.

(c) With respect to any proposed transfer of a Beneficial Interest in a Temporary Regulation S Global Note to an Institutional Accredited Investor, the Registrar shall reflect on its books and records the transfer of such Beneficial Interest (A) if the proposed transferee is a Non-U.S. Person, the proposed transferor has delivered to the Registrar a certificate substantially in the form of Exhibit I (such certificate also to be delivered to the Issuer) and the proposed transferee has duly executed and delivered to the Registrar a Confidentiality Agreement (in which case the transferee will receive a corresponding Beneficial Interest in the Temporary Regulation S Global Note) or (B) if the proposed transferee is a QIB and the proposed transferor has checked the box provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the form of Note stating, or has otherwise advised the Issuer and the Registrar in writing, that (w) it is purchasing the Note (or the Beneficial Interest therein) for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account are QIBs within the meaning of Rule 144A, (x) it is or such QIBs are aware that the sale to it or them is being made in reliance on Rule 144A and acknowledge that it has or they have received such information regarding the Issuer as it has or they have requested pursuant to Rule 144A or has or have determined not to request such information, (y) it is or such QIBs are aware that the transferor is relying upon the foregoing representations in order to claim the exemption from registration provided by Rule 144A and (z) it has and all such QIBs have duly executed and delivered to the Registrar a Confidentiality Agreement (in which case the Registrar shall reflect on its books and records the date and an increase in the principal amount of the 144A Global Note of the relevant class, in an amount equal to the principal amount of the Temporary Regulation S Global Note (or the Beneficial Interest therein) of such class to be transferred, and the Trustee shall decrease the amount of the Temporary Regulation S Global Note of such class (upon written direction from the Registrar if different from the Trustee)).

(d) Except as set forth in Section 2.11(c), the following provisions shall apply with respect to any transfer of a Note (or a Beneficial Interest therein) to a Non-U.S. Person:

(i) Except as set forth in Section 2.11(c), prior to the applicable Regulation S Global Note Exchange Date, the Registrar shall not register or reflect on its books and records any proposed transfer of a Note (or a Beneficial Interest therein) to a Non-U.S. Person.

(ii) The Registrar shall register or reflect on its books and records, as the case may be, any proposed transfer of a Note (or a Beneficial Interest therein) to any Non-U.S. Person that is an Institutional Accredited Investor if the Note to be transferred is a Definitive Note or a Beneficial Interest in a 144A Global Note, upon receipt of a certificate substantially in the form of Exhibit I from the proposed transferor and a Confidentiality Agreement duly executed and delivered to the Registrar by such Non-U.S. Person that is an Institutional Accredited Investor.

(iii)(A) If the proposed transferor is an Agent Member holding a Beneficial Interest in a 144A Global Note, upon receipt by the Registrar of (x) the documents, if any, required by Section 2.11(d)(ii) and (y) instructions in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the 144A Global Note in an amount equal to the principal amount of the Beneficial Interest in such 144A Global Note to be transferred, and (B) if the proposed transferee is an Agent Member, upon receipt by the Registrar of instructions given in accordance with DTC's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Permanent Regulation S Global Note of the relevant class in an amount equal to the principal amount of the Beneficial Interest in such 144A Global Note or any Definitive Notes issued in exchange for such Beneficial Interest in such 144A Global Note to be transferred, and the Trustee shall cancel the Definitive Note, if any, so transferred or decrease the amount of the 144A Global Note (upon written direction from the Registrar if different from the Trustee).

(e) With respect to any proposed transfer of any Note (or a Beneficial Interest therein), the Registrar shall reflect the transfer of such Note or Beneficial Interest on its books and records (along with any appropriate increase or decrease in the principal amount at maturity of any Global Note upon receipt by the Registrar of instructions given in accordance with DTC's and the Registrar's procedures) if the proposed transferee has duly executed and delivered to the Registrar a Confidentiality Agreement.

(f) Upon the transfer, exchange or replacement of Notes bearing the Legend, the Registrar shall deliver only Notes that bear the Legend.

(g) By its acceptance of any Note bearing the Legend, each Noteholder of such Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Legend and agrees that it will transfer such Note (or the Beneficial Interest therein) only as provided in this Indenture and in accordance with the Legend. The Registrar shall not register or reflect on its books and records a transfer of any Note (or any Beneficial Interest therein) unless such transfer complies with the restrictions on transfer of such Note set forth in this Indenture and in accordance with the Legend. In connection with any transfer of Notes (or Beneficial Interests therein), each Noteholder (or Beneficial Holder) agrees by its acceptance of the Notes (or Beneficial Interests therein) to furnish the Trustee the certifications and legal opinions (if requested and required pursuant hereto) described herein to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act; provided, that the Trustee shall not be required to determine (but may rely on a determination made by the Issuer with respect to) the sufficiency of any such legal opinions.

(h) The Notes shall be issued pursuant to an exemption from registration under the Securities Act. The Issuer agrees that it will not at any time (i) apply to list, list or list upon notice of issuance, (ii) consent to or authorize an application for the listing or the listing of, or (iii) enable or authorize the trading of, the Notes on an established securities market, including (w) a national securities exchange registered under the Exchange Act or exempted from registration because of the limited volume of transactions, (x) a foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the Exchange Act applicable to exchanges described in Section 2.11(h)(iii)(w), (y) a regional or local exchange or (z) an over-the-counter market, as the term “established securities market” and the terms in this Section 2.11(h) are defined for purposes of Section 7704 of the Code.

(i) The Trustee shall retain copies of all letters, notices and other written communications received pursuant to Section 2.10 or this Section 2.11. The Issuer shall have the right to inspect and make copies of all such letters, notices, Confidentiality Agreements or other written communications at any reasonable time upon the giving of reasonable written notice to the Trustee.

(j) Each Noteholder, Agent Member and Beneficial Holder agrees, by acceptance of any Note or any Beneficial Interest therein, that it will not take any action to transfer any Note (or any Beneficial Interest therein) to a proposed transferee without causing such proposed transferee to execute and deliver to the Registrar an appropriate Confidentiality Agreement relating to such transfer as set forth in this Section 2.11. After the Closing Date with respect to the Original Class A Notes (or the date of issuance with respect to any Subordinated Notes or any Refinancing Notes), forms of Confidentiality Agreements will be available to Noteholders, Agent Members and Beneficial Holders and proposed transferees of the Notes (or the Beneficial Interests therein) from the Registrar, initially at the Corporate Trust Office. Each such Confidentiality Agreement shall be delivered to the Registrar promptly upon execution by the parties thereto and the Registrar shall record the receipt of such Confidentiality Agreement. The Registrar shall promptly, but in any event no later than two Business Days after receipt of any such executed Confidentiality Agreement, furnish a copy of such executed Confidentiality Agreement to the Trustee, the Issuer and the Servicer and shall maintain a list of proposed transferees (including Noteholders and Beneficial Holders) who have furnished such executed Confidentiality Agreements, whether or not such proposed transferees purchase any Notes (or any Beneficial Interests therein), and make such list available for inspection at the request of the Trustee, the Issuer or the Servicer.

(k) Notwithstanding any other provision contained in this Indenture to the contrary, any Noteholder or Beneficial Holder may assign a security interest in, or pledge, all or any portion of the Notes (or any interest therein) held by it to a lender or a trustee or collateral agent (or other similar representative) under any indenture, loan agreement or similar agreement to which such Noteholder or Beneficial Holder is party in support of any obligations of such Noteholder or Beneficial Holder to a holder or holders of securities or other obligations issued by such Noteholder or Beneficial Holder; provided, that no such assignment or pledge shall release the assigning or pledging Noteholder or Beneficial Holder from its obligations hereunder; provided, further, that any assignee or pledgee shall be required to execute and deliver to the Registrar an appropriate Confidentiality Agreement as a condition of such assignment or pledge.

Section 2.12 Temporary Definitive Notes. Pending the preparation of Definitive Notes of any class, the Issuer may execute and the Trustee may authenticate and deliver temporary Definitive Notes of such class that are printed, lithographed, typewritten or otherwise produced, in any denomination, containing substantially the same terms and provisions as are set forth in the applicable Exhibit or in any indenture supplemental hereto, except for such appropriate insertions, omissions, substitutions and other variations relating to their temporary nature as a Responsible Officer of the Issuer executing such temporary Definitive Notes may determine, as evidenced by his or her execution of such temporary Definitive Notes.

If temporary Definitive Notes of any class are issued, the Issuer shall cause such Definitive Notes of such class to be prepared without unreasonable delay. After the preparation of Definitive Notes of such class, the temporary Definitive Notes shall be exchangeable for Definitive Notes upon surrender of such temporary Definitive Notes at the Corporate Trust Office, without charge to the Noteholder thereof. Upon surrender for cancellation of any one or more temporary Definitive Notes of any class, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor Definitive Notes of like class, in authorized denominations and in the same aggregate principal amounts. Until so exchanged, such temporary Definitive Notes shall in all respects be entitled to the same benefits under this Indenture as Definitive Notes.

Section 2.13 Statements to Noteholders.

(a) On each Payment Date and any other date for distribution of any payments with respect to any class of Notes then Outstanding, the Trustee shall deliver a report, covering the information set forth in Exhibit D and prepared by the Servicer, giving effect to such payments (each, a "Distribution Report"), to (i) each Noteholder and Beneficial Holder included on the Approved Holder List, (ii) the Issuer, (iii) the Calculation Agent and (iv) the Equityholders, and to no other Person.

(b) Each Distribution Report provided to each Noteholder and Beneficial Holder by the Trustee for each Payment Date pursuant to Section 2.13(a), commencing March 15, 2010, shall be accompanied by (i) a statement prepared by the Servicer setting forth an analysis of the Collection Account activity for the period commencing on the day next following the preceding

Calculation Date and ending on the Calculation Date relating to such Payment Date and (ii) the information, if any, that the Issuer shall have provided to the Trustee pursuant to Section 5.3 (or the Servicer shall have provided to the Trustee pursuant to Section 3.1 of the Servicing Agreement) during the Interest Accrual Period then ended (including any reports produced by Counterparty pursuant to the Counterparty Agreements in respect of worldwide sales of the Licensed Products), which information shall be treated confidentially pursuant to the terms of the Confidentiality Agreement.

(c) After the end of each calendar year but not later than the latest date permitted by law, the Trustee shall (or shall instruct any Paying Agent to) furnish to each Person who at any time during such calendar year was a Noteholder of any class of Notes a statement (for example, a Form 1099 or any other means required by law) prepared by the Trustee containing the sum of the amounts determined pursuant to the information covered by Exhibit D with respect to the class of Notes for such calendar year or, in the event such Person was a Noteholder of any class of Notes during only a portion of such calendar year, for the applicable portion of such calendar year, and such other items as are readily available to the Trustee and that a Noteholder shall reasonably request as necessary for the purpose of such Noteholder's preparation of its U.S. federal income or other tax returns. So long as any of the Notes are registered in the name of DTC or its nominee, such report and such other items will be prepared on the basis of such information supplied to the Trustee by DTC and the Agent Members and will be delivered by the Trustee to DTC and by DTC to the applicable Beneficial Holders in the manner described above. In the event that any such information has been provided by any Paying Agent directly to such Person through other tax-related reports or otherwise, the Trustee in its capacity as Paying Agent shall not be obligated to comply with such request for information.

(d) At such time, if any, as the Notes of any class are issued in the form of Definitive Notes, the Trustee shall prepare and deliver the information described in Section 2.13(c) to each Noteholder of a Definitive Note of such class for the relevant period of registered ownership of such Definitive Note as appears on the books and records of the Trustee, subject to confirmation that each such Noteholder has executed and delivered to the Registrar a Confidentiality Agreement.

(e) The Trustee shall be at liberty to sanction any method of giving notice to the Noteholders of any class if, in its opinion, such method is reasonable, having regard to the number and identity of the Noteholders of such class and/or to market practice then prevailing, is in the best interests of the Noteholders of such class, and any such notice shall be deemed to have been given on such date as the Trustee may approve; provided, that notice of such method is given to the Noteholders of such class in such manner as the Trustee shall require.

Section 2.14 Identification Numbers. The Issuer in issuing the Notes may use CUSIP, CINS, ISIN, private placement or other identification numbers (if then generally in use), and, if so, the Trustee shall use such CUSIP, CINS, ISIN, private placement or other identification numbers, as the case may be, in notices of redemption or exchange as a convenience to Noteholders; provided, that any such notice shall state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption or exchange and that reliance may be placed only on the other identification numbers

printed on the Notes; provided, further, that failure to use CUSIP, CINS, ISIN, private placement or other identification numbers in any notice of redemption or exchange shall not affect the validity or sufficiency of such notice.

Section 2.15 Refinancing Notes.

(a) Subject to Section 2.15(b), Section 2.15(c) and Section 2.15(d), the Issuer may issue Refinancing Notes pursuant to this Indenture solely for the purpose of refinancing all, but not part, of the Outstanding Principal Balance of any class of Notes (including a refinancing of Refinancing Notes). Each refinancing of any class of Notes with the proceeds of an offering of Refinancing Notes (a "Refinancing") shall be authorized pursuant to one or more Resolutions. Each Refinancing Note shall be designated generally as a Note for all purposes under this Indenture, with such further designations added or incorporated in such title as specified in the related Resolution and set forth in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes, as the case may be. The Refinancing Notes shall be issued on the Redemption Date on which the Redemption in whole of the class of Notes being refinanced is to occur as provided in Section 3.10 and shall rank equal in priority relative to the class of Notes being refinanced.

(b) A Refinancing of any class of Notes shall be effected as a Redemption pursuant to Section 3.9, provided that a Refinancing of the Original Class A Notes shall be effected as an Optional Redemption pursuant to Section 3.9(b). On the date of any Refinancing, the Issuer shall issue and sell an aggregate principal amount of Refinancing Notes (when added to the Available Collections Amount and any funds in the Redemption Account or the Capital Account used or to be used in connection with such Refinancing) resulting in proceeds in an amount sufficient to pay in full the applicable Redemption Price of the Notes being refinanced in whole thereby plus the Refinancing Expenses relating thereto. The proceeds of each sale of Refinancing Notes shall be used to the extent necessary to make the deposit required by Section 3.10 and to pay such Refinancing Expenses. Subject to Section 3.10(b), once a notice of a Redemption in respect of any Refinancing is published in accordance with Section 3.10(a), each class of Notes to which such notice applies shall become due and payable on the Redemption Date stated in such notice at their Redemption Price.

(c) Each Refinancing Note shall contain such terms as may be established in or pursuant to the related Resolution (subject to Section 2.1) and set forth in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes to the extent permitted below. Prior to the issuance of any Refinancing Notes, any or all of the following, as applicable, with respect to the related issue of Refinancing Notes shall have been determined by the Issuer and set forth in such Resolution and in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes, as the case may be:

- (i) the class of Notes to be refinanced by such Refinancing Notes;
- (ii) the aggregate principal amount of each class of Refinancing Notes that may be issued in respect of such Refinancing;

- (iii) the proposed date of such Refinancing;
- (iv) the Final Legal Maturity Date of each class of such Refinancing Notes;
- (v) the rate at which such Refinancing Notes shall bear interest or the method by which such rate shall be determined;
- (vi) the denomination or denominations in which any class of such Refinancing Notes shall be issuable;
- (vii) whether such Refinancing Notes will be subject to redemption pursuant to Section 3.9(c);

(viii) whether any such Refinancing Notes are to be issuable initially in temporary or permanent global form and, if so, whether beneficial owners of interests in any such permanent global Refinancing Note may exchange such interests for Refinancing Notes of such class and of like tenor and of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.7, and the circumstances under which and the place or places where any such exchanges may be made and the identity of any initial depository therefor; and

(ix) any other terms, conditions, rights and preferences (or limitations on such rights and preferences) relating to the class of Refinancing Notes (which terms shall comply with Applicable Law and not violate any restrictions of this Indenture).

(d) If any of the terms of any issue of Refinancing Notes are established by action taken pursuant to one or more Resolutions, such Resolutions shall be delivered to the Trustee setting forth the terms of such Refinancing Notes.

Section 2.16 Subordinated Notes.

(a) Subject to Section 2.16(b), Section 2.16(c) and Section 2.16(d), the Issuer may issue Subordinated Notes pursuant to this Indenture (each, a “Subordinated Note Issuance”) for any purpose, including, at the option of the Issuer, for the purpose of funding a redemption of the Class A Notes, in whole or in part. Each Subordinated Note Issuance shall be authorized pursuant to one or more Resolutions. Each Subordinated Note shall be designated generally as a Note for all purposes under this Indenture. Each Subordinated Note shall have such further designations added or incorporated in such title as specified in the related Resolution and set forth in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes, as the case may be. There are no limitations on the use of proceeds from the issuance of any such Subordinated Notes, including making dividends or distributions to the Equityholders and redeeming the Class A Notes in whole or in part. If the proceeds of any Subordinated Notes are being used to redeem the Class A Notes, in whole or in part, such Subordinated Notes shall be issued on the Redemption Date on which the Optional Redemption of the Class A Notes being refinanced is to occur as provided in Section 3.10.

(b) If the proceeds of any Subordinated Notes are being used to redeem any Class A Notes, such redemption shall be effected as an Optional Redemption pursuant to Section 3.9(b). On the date of any such Optional Redemption, the Issuer shall issue and sell an aggregate principal amount of Subordinated Notes in an amount not less than the amount sufficient to pay in full the applicable Redemption Price of the Notes being redeemed thereby plus the Transaction Expenses relating thereto. The proceeds of each sale of such Subordinated Notes shall be used to make the deposit required by Section 3.10, to the extent applicable, to pay such Transaction Expenses and/or for such other purposes, if any, as shall be specified in the Resolution authorizing the issuance of such Subordinated Notes. Subject to Section 3.10(b), once a notice of Redemption in respect of any Subordinated Note Issuance is published in accordance with Section 3.10(a), each class of Notes to which such notice applies shall become due and payable on the Redemption Date stated in such notice at their Redemption Price.

(c) Each Subordinated Note shall contain such terms as may be established in or pursuant to the related Resolution (subject to Section 2.1) and set forth in any indenture supplemental hereto providing for the issuance of such Notes or specified in the form of such Notes to the extent permitted herein, shall rank in priority relative to any other classes (or sub-classes) of Subordinated Notes as specified in such Resolution and set forth in an indenture supplemental hereto and, in any event, shall be subordinate to the Class A Notes to the extent provided in this Indenture. Prior to the issuance of any such Subordinated Notes, any or all of the following, as applicable, with respect to the related Subordinated Note Issuance shall have been determined by the Issuer and set forth in such Resolution and in any indenture supplemental hereto or specified in the form of such Subordinated Notes, as the case may be, with respect to such Subordinated Notes to be issued:

- (i) the aggregate principal amount of any such Subordinated Notes that may be issued;
- (ii) the proposed date of such Subordinated Note Issuance;
- (iii) the Final Legal Maturity Date of any such Subordinated Notes;
- (iv) whether any such Subordinated Notes are to have the benefit of any reserve account and, if so, the amount and terms thereof;
- (v) the rate at which such Subordinated Notes shall bear interest or the method by which such rate shall be determined;
- (vi) the denomination or denominations in which such Subordinated Notes shall be issuable;
- (vii) whether such Subordinated Notes will be subject to redemption pursuant to Section 3.9(c);

(viii) whether any such Subordinated Notes are to be issuable initially in temporary or permanent global form and, if so, whether beneficial owners of interests in any such permanent global Subordinated Note may exchange such interests for Subordinated Notes of like tenor and of any authorized form and denomination and the

circumstances under which any such exchanges may occur, if other than in the manner provided in Section 2.7, and the circumstances under which and the place or places where any such exchanges may be made and the identity of any initial depository therefor;

(ix) the ranking in priority of such Subordinated Notes relative to any other classes (or sub-classes) of Subordinated Notes;

(x) the use of proceeds of such Subordinated Note Issuance; and

(xi) any other terms, conditions, rights and preferences (or limitations on such rights and preferences) relating to such Subordinated Notes (which terms shall comply with Applicable Law and not violate any restrictions of this Indenture).

(d) If any of the terms of any issue of Subordinated Notes are established by action taken pursuant to one or more Resolutions, such Resolutions shall be delivered to the Trustee setting forth the terms of such Subordinated Notes.

(e) Any Subordinated Notes shall be subordinated to the Class A Notes pursuant to the priority of payment provisions under this Indenture, and no payments of principal, interest or Premium, if any, may be made on such Subordinated Notes from the Available Collections Amount until the Class A Notes have been paid in full. In addition, while any Class A Notes are Outstanding, Subordinated Notes may only be redeemed by the Issuer with proceeds from Refinancing Notes in respect of such Subordinated Notes or capital contributions from the Equityholders.

ARTICLE III ACCOUNTS; PRIORITY OF PAYMENTS

Section 3.1 Establishment of Accounts.

(a) Pursuant to the terms of the Servicing Agreement, the Issuer will cause the Servicer, acting on behalf of the Issuer, to establish and maintain with the Operating Bank on its books and records in the name of the Issuer, subject to the Liens established under this Indenture, (i) a collection account (the "Collection Account"), (ii) a redemption account (the "Redemption Account"), (iii) a capital contribution account (the "Capital Account"), (iv) an escrow account (the "Escrow Account") and (v) any additional accounts the establishment of which is set forth in a Resolution delivered by the Issuer to the Servicer and the Trustee, in each case at such time as is set forth in this Section 3.1 or in such Resolution. Each Account shall be established and maintained as an Eligible Account so as to create, perfect and establish the priority of the Liens established under this Indenture in such Account and all cash, Eligible Investments and other property from time to time deposited therein and otherwise to effectuate the Liens under this Indenture.

(b) The Trustee as the Operating Bank shall have sole dominion and control over the Accounts (including, among other things, the sole power to direct withdrawals or transfers from the Accounts and to direct the investment and reinvestment of funds in the Accounts, subject to Section 3.2). The Trustee as the Operating Bank shall make withdrawals and transfers

from the Accounts in accordance with the terms of this Indenture based on the Relevant Information and as calculated by it pursuant to this Indenture. Each of the Issuer and the Trustee as the Operating Bank acknowledges and agrees that the Accounts are “deposit accounts” or “investment property” within the meaning of Section 9-102 of the UCC and that the Trustee has “control”, for purposes of Section 9-314 of the UCC, of Accounts that are maintained with the Trustee as the Operating Bank. The Issuer agrees that, if any Account is established or maintained with any Operating Bank other than the Trustee, the Issuer shall direct the Servicer to cause such Operating Bank to enter into an agreement with the Trustee, the Issuer and the Servicer pursuant to which such Operating Bank agrees to comply with any and all instructions of the Trustee directing the disposition, investment and reinvestment of funds in all Accounts maintained with such Operating Bank without the further consent of the Issuer (or the Servicer), and the Issuer shall take such other actions as are reasonably required by the Trustee to establish its “control”, for purposes of Section 9-314 of the UCC, over any such Accounts. The Trustee as the Operating Bank hereby confirms that it has established the following accounts in the name of the Issuer: (a) the Collection Account (account number 133970000); (b) the Redemption Account (account number 133970002); (c) the Capital Account (account number 133970004); and (d) the Escrow Account (account number 133970003) (collectively, the “Closing Day Accounts”). The Trustee, the Issuer and the Trustee as the Operating Bank hereby agree that (i) the Trustee as the Operating Bank shall comply with all instructions originated by the Trustee directing the disposition of funds in any Closing Day Account or any other Account maintained with the Trustee as the Operating Bank and all entitlement orders originated by the Trustee with respect to any Closing Day Account or any other Account, in each case without further consent by the Issuer, and (ii) the jurisdiction of the Trustee as the Operating Bank for purposes of the UCC shall be the State of New York.

(c) If, at any time, any Account ceases to be an Eligible Account, the Issuer will cause the Servicer or an agent thereof to, within ten Business Days, establish a new Account meeting the conditions set forth in this Section 3.1 in respect of such Account and transfer any cash or investments in the existing Account to such new Account, and, from the date such new Account is established, it shall have the same designation as the existing Account. If the Operating Bank should change at any time, then the Issuer will cause the Servicer, acting on behalf of the Issuer, to thereupon promptly establish replacement Accounts as necessary at the successor Operating Bank and transfer the balance of funds in each Account then maintained at the former Operating Bank pursuant to the terms of the Servicing Agreement to such successor Operating Bank.

(d) The Issuer will cause the Servicer to maintain the Collection Account at the Operating Bank not later than the Closing Date, and the Collection Account shall bear a designation clearly indicating that the funds or other assets deposited therein are held for the benefit of the Trustee. Except as expressly provided herein, all Collections shall be deposited in the Collection Account and transferred therefrom in accordance with the terms of this Indenture. No funds shall be deposited in the Collection Account that do not constitute Collections, except as expressly provided in this Indenture, without the prior written consent of the Trustee.

(e) The Issuer will cause the Servicer to maintain the Redemption Account at the Operating Bank that shall bear a designation clearly indicating that the funds or other assets deposited therein are held for the benefit of the Trustee, who shall hold such amounts for the

benefit of the Noteholders of Notes that are the subject of such Redemption. All amounts received for the purpose of any such Redemption shall be deposited in such Redemption Account and shall be held in such Account until such amounts are applied to pay the Redemption Price of such Notes (together with related Expenses) and such Notes are cancelled by the Trustee.

(f) The Issuer will cause the Servicer to maintain the Capital Account at the Operating Bank not later than the Closing Date, and the Capital Account shall bear a designation clearly indicating that the funds or other assets deposited therein are held for the benefit of the Trustee. Except as expressly provided herein, all capital contributions made to the Issuer shall be deposited and held in the Capital Account and transferred therefrom (i) to the Noteholders in payment of any Interest Amount in accordance with Section 3.8, (ii) on the Final Legal Maturity Date, to the Noteholders in payment of the Outstanding Principal Balance in accordance with Section 3.8, (iii) to the Redemption Account only to the extent specifically provided for in any written notice of an Optional Redemption delivered to the Trustee pursuant to Section 3.9(b), (iv) to the Equityholders only to the extent permitted by Section 5.2(b) (solely in respect of such Section 5.2(b) as relates to the issuance of Capital Securities of the Issuer in accordance with such Section 5.2(b)) and (v) to the Equityholders only to the extent permitted by Section 3.8.

(g) The Issuer will cause the Servicer to maintain the Escrow Account at the Operating Bank in the name of the Trustee that shall bear a designation clearly indicating that the funds or other assets deposited therein are held for the benefit of any such Noteholder, Agent Member or Beneficial Holder. All amounts withheld from such Noteholder, Agent Member or Beneficial Holder pursuant to Section 2.5(d) shall be deposited in such Escrow Account and shall be held in such Escrow Account until such amounts are distributed as provided in Section 2.5(d).

Section 3.2 Investments of Cash. So long as no Event of Default has occurred and is continuing, the Servicer may direct the Trustee in writing to invest and reinvest the funds on deposit in the Collection Account in Eligible Investments, to the extent such Eligible Investments are available to the relevant Operating Bank, and advise the Trustee in writing of any depository institution or trust company described in the proviso to the definition of Eligible Investments; provided, however, that, so long as an Event of Default has occurred and is continuing, the Trustee shall direct each Operating Bank to invest such amount in Eligible Investments described in clause (a) of the definition thereof from the time of receipt thereof until such time as such amounts are required to be distributed pursuant to the terms of this Indenture. In the absence of written direction delivered to the Trustee from the Servicer, the Trustee shall direct each Operating Bank to invest any funds in Eligible Investments described in clause (a) of the definition thereof. The Trustee shall direct each Operating Bank to make such investments and reinvestments in accordance with the terms of the following provisions:

(a) the Eligible Investments shall have maturities and other terms such that sufficient funds shall be available to make required payments pursuant to this Indenture on the Business Day immediately preceding the next occurring Payment Date after such investment is made;

(b) if any funds to be invested are received in the Accounts after 1:00 p.m., New York City time, on any Business Day, such funds shall, if possible, be invested in overnight Eligible Investments;

(c) all interest and earnings on Eligible Investments held in the Accounts shall be invested in Eligible Investments on an overnight basis and credited to the appropriate Account until the next Payment Date; and

(d) the Issuer acknowledges that regulations of the U.S. Comptroller of the Currency grant the Issuer the right to receive confirmations of security transactions as they occur, and the Issuer specifically waives receipt of such confirmations to the extent permitted by Applicable Law and acknowledges that the Operating Bank will instead furnish monthly cash transaction statements that will detail all investment transactions as set forth in this Indenture.

Section 3.3 Payments and Transfers in connection with Issuance of Subordinated Notes or Refinancing Notes. On the date of issuance of any Subordinated Notes or any Refinancing Notes, the Trustee shall, subject to the receipt of written direction from the Issuer upon receipt of the proceeds of the sale by the Issuer of such Notes, make such payments and transfers as shall be specified in this Indenture, the related Resolution and any indenture supplemental hereto in respect of such Notes, copies of which Resolution and indenture supplemental hereto shall be attached to such written direction.

Section 3.4 Capital Contributions. The Issuer will immediately forward any capital contributions received by it from any Equityholder for deposit in the Capital Account.

Section 3.5 Calculation Date Calculations.

(a) As soon as reasonably practicable after each Calculation Date (a "Relevant Calculation Date"), but in no event later than 12:00 noon (New York City time) on the second Business Day prior to the immediately succeeding Payment Date, the Calculation Agent shall, based on the Calculation Date Information received by the Calculation Agent, and based on information known to it or Relevant Information provided to it, make the following determinations and calculations (and each of the Trustee and the Issuer (for itself and on behalf of the Servicer) agrees to provide any Relevant Information reasonably requested by the Calculation Agent for the purpose of making such determinations and calculations):

(i) the Available Collections Amount for such Payment Date;

(ii) (x) the amount of Collections received during the period commencing on the day immediately following the Calculation Date that immediately preceded such Relevant Calculation Date and ending on such Relevant Calculation Date and (y) the amount, if any, to be transferred from the Capital Account as of the Relevant Calculation Date to the Collection Account on such Payment Date in accordance with Section 3.8 and as calculated pursuant to Section 3.5(a)(x);

(iii) the balance of funds on deposit in each Account other than the Collection Account on such Relevant Calculation Date and the amount of interest and earnings (net of losses and investment expenses), if any, on investments of funds on

deposit therein from the day immediately following the Calculation Date that immediately preceded such Relevant Calculation Date and ending on such Relevant Calculation Date;

(iv) the balance of funds on deposit in the Collection Account on such Relevant Calculation Date and the amount of interest and earnings (net of losses and investment expenses), if any, on investments of funds on deposit therein from the day immediately following the Calculation Date that immediately preceded such Relevant Calculation Date and ending on such Relevant Calculation Date;

(v) Taxes owed by the Issuer;

(vi) the amount of the Tax Distribution, if any, to be made on such Payment Date, provided such Tax Distribution is being made in accordance with Section 3.7(a)(ii);

(vii) (x) all other Expenses due and payable on such Payment Date and not previously paid or reimbursed, and to be paid or reimbursed, pursuant to Section 3.7(a)(iii), in the amounts shown on all supporting documentation therefor and attached to the Calculation Date Information received by the Calculation Agent, and (y) all Expenses previously reimbursed and paid to the Issuer in respect of Expenses pursuant to Section 3.7(c) from the day immediately following the Calculation Date that immediately preceded such Relevant Calculation Date and ending on such Relevant Calculation Date;

(viii) the applicable interest rate on each class of Floating Rate Notes (if any) determined on the Reference Date for the Interest Accrual Period beginning on such Payment Date and the Interest Amount (including any Additional Interest) on each class of Floating Rate Notes and Fixed Rate Notes for such Payment Date;

(ix) if such Payment Date is a Redemption Date on which a Redemption of Notes is scheduled to occur, the amount necessary to pay the Redemption Price (and related Expenses) of the Notes to be repaid on such Redemption Date and the Redemption Premium, if any, to be paid as part of such Redemption Price;

(x) the Interest Amount due to the Noteholders of Class A Notes on such Payment Date and the difference, if any, between the Interest Amount due to the Noteholders of Class A Notes on such Payment Date and the Available Collections Amount for such Payment Date, after giving effect to the payment of all amounts to be paid or reimbursed on such Payment Date pursuant to Section 3.7(a)(i), Section 3.7(a)(ii) and Section 3.7(a)(iii) (such difference, a "Shortfall"), and, with respect to each Shortfall, the amount to be withdrawn from the Capital Account, if any, determined as provided in Section 3.8;

(xi) the Outstanding Principal Balance of each class of Notes on such Payment Date immediately prior to any principal payment with respect to the Outstanding Principal Balance on such Payment Date and the amount of any principal payment with respect to the Outstanding Principal Balance to be made in respect of each class of Notes on such Payment Date, taking into account the other payments to be made on such Payment Date entitled to priority pursuant to Section 3.7;

(xii) the amounts, if any, distributable to the Issuer on such Payment Date pursuant to Section 3.7(a)(viii); and

(xiii) any other information, determinations and calculations reasonably required in order to give effect to the terms of this Indenture and the other Deal Documents.

(b) Following the calculations and determinations by the Calculation Agent described in Section 3.5(a), and not later than 1:00 p.m., New York City time, on the second Business Day prior to the immediately succeeding Payment Date, the Calculation Agent shall provide to each of the Issuer, the Servicer and the Trustee a calculation report (a "Calculation Report") listing the determinations and calculations set forth in Section 3.5(a).

Section 3.6 Payment Date First Step Transfers. On each Payment Date, the Trustee shall transfer from any Account (other than the Collection Account and the Capital Account) to the Collection Account the amount of interest and earnings (net of losses and investment expenses), if any, earned as a result of investments of funds on deposit therein from the day immediately following the Calculation Date that immediately preceded the Relevant Calculation Date and ending on the Relevant Calculation Date.

Section 3.7 Payment Date Second Step Withdrawals.

(a) Subject to Section 3.7(d), on each Payment Date, after the applicable transfers provided for in Section 3.6 have been made, the Trustee shall distribute (or instruct the Paying Agent to distribute) from the Collection Account the amounts set forth below in the order of priority set forth below but, in each case, only to the extent that all amounts then required to be paid ranking prior thereto have been paid in full:

(i) first, to the Issuer for the payment of all Taxes owed by the Issuer, if any;

(ii) second, to each Equityholder, the Tax Distribution; provided, however, that no such Tax Distribution shall be made if (x) an Event of Default has occurred and is continuing or (y) actual Net Sales of the Licensed Products in respect of such Payment Date are less than 66.7% of the amount set forth on Schedule A in respect of such Payment Date;

(iii) third, to the payment of all Expenses not previously paid or reimbursed, in the amounts shown in all supporting documentation attached to the Calculation Date Information received by the Calculation Agent;

(iv) fourth, to the Trustee for distribution to the Noteholders of the Class A Notes, the ratable payment of the Interest Amount then due and payable on the Class A Notes, taking into account any adjustment to be made pursuant to Section 3.7(d) and any amounts to be paid pursuant to Section 3.8, in each case on such Payment Date;

(v) fifth, to the Trustee for distribution to the Noteholders of the Class A Notes, principal payments with respect to the Outstanding Principal Balance on the Class A Notes (without Premium or penalty), allocated pro rata in proportion to the Outstanding Principal Balance of such Class A Notes held by such Noteholders, until the Outstanding Principal Balance of the Class A Notes has been paid in full;

(vi) sixth, after the Class A Notes have been paid in full, to the Trustee for distribution to the Noteholders of the Subordinated Notes, if any, the principal amount of and the Interest Amount on the Subordinated Notes in accordance with their terms until the Subordinated Notes have been paid in full;

(vii) seventh, after the Notes have been paid in full, to the ratable payment of all other obligations under this Indenture until all such amounts are paid in full; and

(viii) eighth, after the Notes have been paid in full, to the Issuer, all remaining amounts.

(b) To the extent the Issuer receives amounts from the Trustee from the Collection Account pursuant to Section 3.7(a)(viii), such amounts may be distributed by the Issuer to the Equityholders (or as otherwise directed by the Equityholders or any Person designated by the Equityholders to give such directions) in their sole discretion. The provisions contained in this Section 3.7(b) may not be amended, modified, waived or terminated (including pursuant to any termination of this Indenture) without the prior written consent of the Equityholders materially and adversely affected thereby, and the provisions contained in this Section 3.7(b) shall survive the termination of this Indenture. The parties hereto specifically agree that each Equityholder materially and adversely affected thereby (i) is and shall be an express third-party beneficiary of the provisions of this Section 3.7(b) and (ii) shall have the right to enforce any provision of this Section 3.7(b).

(c) Notwithstanding anything herein to the contrary, so long as no Event of Default shall have occurred and be continuing, the Calculation Agent shall, on the 15th day of each calendar month (other than any month in which a Payment Date falls), reimburse and pay to the Issuer (or such other appropriate Person identified at the written instruction of the Issuer), from the Collection Account, an amount equal to the lesser of (i) all Expenses not previously paid or reimbursed and (ii) the balance of the Collection Account, in either case upon delivery to the Calculation Agent by the Issuer, not less than three Business Days prior to such 15th day, of supporting documentation therefor in writing.

(d) Notwithstanding anything herein to the contrary, the priority of payments set forth in Section 3.7(a) shall be adjusted to give effect to (i) any inaccuracy set forth in any report of an accounting firm pursuant to Section 6.15(b), such that each Person shall be restored on the immediately succeeding Payment Date (or, if necessary, the immediately succeeding Payment Dates) to the cash flow position that such Person would have been in had the accurate amounts set forth in such report been paid in accordance with Section 3.7(a) on the relevant prior Payment Dates, and (ii) the amount by which any Audit Expenses exceed \$50,000 per annum (to the extent that such excess amount is to be borne by the Noteholders in accordance with Section 6.15(b)), such that any payments to the Noteholders pursuant to Section 3.7(a) shall first be

offset against the payment of such Audit Expenses; provided, that the Issuer (or the Servicer) shall notify the Trustee in writing of the occurrence of the events described in the proviso to Section 6.15 and an itemization of the impact on the cash flows pursuant to Section 3.7(a).

Section 3.8 Capital Account; Shortfalls. If the Calculation Agent has determined that a Shortfall exists pursuant to the Calculation Report with respect to any Payment Date and there is a positive balance in the Capital Account on the Relevant Calculation Date immediately preceding such Payment Date, then on such Payment Date the Trustee shall withdraw from the Capital Account an amount equal to the lesser of the Shortfall and the balance in the Capital Account and distribute it to the Noteholders of the Class A Notes in payment of the Interest Amount; provided, that the Trustee shall (a) make such a withdrawal from the Capital Account in respect of not more than six Payment Dates in total prior to the Final Legal Maturity Date and in respect of not more than any three consecutive Payment Dates and (b) distribute any funds remaining in the Capital Account to the Equityholders upon their written request in the event that withdrawals from the Capital Account have been made in respect of six Payment Dates. If funds from the Capital Account are insufficient to pay the remaining Shortfall, then the unpaid Shortfall shall accrue interest at the interest rate applicable to the Class A Notes compounded quarterly. If such unpaid Shortfall (and interest thereon) is not paid in full by the next succeeding Payment Date, an Event of Default shall occur. Notwithstanding the foregoing, if, on the Final Legal Maturity Date, (x) the portion of the Available Collections Amount available to pay in full the Outstanding Principal Balance on the Class A Notes, after giving effect to the other payments to be made on the Final Legal Maturity Date and entitled to priority pursuant to Section 3.7, are insufficient to pay in full the Outstanding Principal Balance on the Class A Notes, and (y) there is a positive balance in the Capital Account after giving effect to any withdrawal therefrom in respect of any Shortfall, then on the Final Legal Maturity Date the Trustee shall withdraw from the Capital Account an amount equal to the lesser of the Outstanding Principal Balance on the Class A Notes and the balance of the Capital Account and distribute it to the Noteholders of the Class A Notes for payment of all or any portion of the Outstanding Principal Balance on the Class A Notes.

Section 3.9 Redemptions.

(a) On any Redemption Date, the Trustee shall distribute the amounts in the applicable Redemption Account as provided herein and in the applicable Resolution, including:

(i) to the extent Subordinated Notes or Refinancing Notes were issued for the purpose of funding such Redemption, paying to such Persons as shall be specified by the Issuer such Transaction Expenses as shall be due and payable in connection with the issuance and sale of the applicable Subordinated Notes or Refinancing Notes;

(ii) remitting to the Noteholders of such class of Notes, in accordance with the Resolution authorizing such Redemption (and, if such Redemption Date is a Payment Date, after application of Section 3.7 and Section 3.8), an amount equal to the Redemption Price plus Premium, if any, allocated, in the event of a Redemption of such Notes in part, pro rata in proportion to the Outstanding Principal Balance of such Notes held by such Noteholders; and

(iii) making such other distributions and payments as shall be authorized and directed by the Resolution and indentures supplemental hereto executed in connection with such Redemption.

(b) Subject to the provisions of Section 3.9(c) and Section 3.10, on any Redemption Date (and, if such Redemption Date is a Payment Date, to the extent that any class of Notes will remain Outstanding after application of Section 3.7 and Section 3.8), the Issuer may elect to redeem such class of Notes, in whole, but not in part, out of the proceeds of the Refinancing Notes and any funds in the Capital Account in the case of a Refinancing of such class of Notes, or, in whole or in part, out of amounts available in the Redemption Account for such purpose, if any, including the proceeds of any Subordinated Notes (but excluding in the case of a Redemption in part any funds in the Capital Account), in each case, at the Redemption Price (any such redemption, an “Optional Redemption”). The Issuer shall give written notice of any such Optional Redemption to the Trustee and the Servicer not later than five Business Days prior to the date on which notice is to be given to Noteholders in accordance with Section 3.10(a) (unless the Trustee and any such Servicer agree to waive or limit the requirement for such notice). Such written notice to the Trustee shall include a copy of the Resolution authorizing such Optional Redemption and shall set forth the relevant information regarding such Optional Redemption, including the information to be included in the notice given pursuant to Section 3.10(a).

(c) An indenture supplemental hereto providing for the issuance of any Subordinated Notes or Refinancing Notes may authorize one or more redemptions, in whole or in part, of such Notes, on such terms and subject to such conditions as shall be specified in such indenture supplemental hereto; provided, that, while any Class A Notes are Outstanding, such Subordinated Notes may only be redeemed by the Issuer with proceeds from Refinancing Notes in respect of such Subordinated Notes or capital contributions from the Equityholders.

(d) The application of Purchased Royalties to principal payments on any Notes shall not be deemed to be a redemption or partial redemption of such Notes.

Section 3.10 Procedure for Redemptions.

(a) The Trustee (or the Servicer acting as its agent (or any authorized agent of any such Servicer)) shall give written notice in respect of any Redemption of any class of Notes under Section 3.9 to each Noteholder of such Notes at least 30 days but not more than 60 days before such Redemption Date. Each notice in respect of a Redemption given pursuant to this Section 3.10(a) shall state (A) the expected applicable Redemption Date, (B) the arrangements for making payments in respect of such Redemption, (C) the projected Redemption Price of the Notes to be redeemed, (D) in the case of a Redemption of the Notes of any class in part, the portion of the Outstanding Principal Balance of the Notes that is expected to be redeemed, (E) that Notes to be redeemed in a Redemption in whole must be surrendered (which action may be taken by any Noteholder or its authorized agent) to the Trustee to collect the Redemption Price on such Notes and (F) that, unless the Issuer fails to pay the Redemption Price, interest on Notes called for Redemption in whole shall cease to accrue on and after the Redemption Date. If mailed in the manner herein provided, the notice shall be conclusively presumed to have been given whether or not the Noteholder receives such notice.

(b) If, at the time of the mailing of any notice in respect of a Redemption, the Issuer shall not have irrevocably directed the Trustee to apply funds then on deposit with the Trustee or held by the Issuer and available to be used for such Redemption to redeem all of the Notes called for Redemption, such notice, at the election of the Issuer, may state that such Redemption is conditional and subject to the receipt of the redemption moneys in an amount sufficient to pay the principal of and Premium, if any, and interest on the Notes being redeemed by the Trustee on or before the Redemption Date and that such notice shall be of no force and effect, and the Issuer shall not be required to redeem such Notes, unless such Redemption moneys are so received on or before such Redemption Date.

(c) If notice in respect of a Redemption for any Notes shall have been given as provided in Section 3.10(a) and such notice shall not contain the language permitted at the Issuer's option under Section 3.10(b), such Notes shall become due and payable on the Redemption Date at the Corporate Trust Office at the applicable Redemption Price, and, unless there is a default in the payment of the applicable Redemption Price, interest on such Notes shall cease to accrue on and after the Redemption Date. Upon presentation and surrender of such Notes at the Corporate Trust Office, such Notes shall be paid and redeemed at the applicable Redemption Price. On or before any Redemption Date in respect of such a Redemption, the Issuer shall, to the extent an amount equal to the Redemption Price of such Notes (and any Transaction Expenses relating thereto as of the Redemption Date) is not then held by the Issuer or on deposit in the Redemption Account, deposit or cause to be deposited in the Redemption Account an amount in immediately available funds so that the total amount in the Redemption Account shall be sufficient to pay such Redemption Price (and any Transaction Expenses relating thereto as of the Redemption Date).

(d) If notice in respect of a Redemption for any Notes shall have been given as provided in Section 3.10(a) and such notice shall contain the language permitted at the Issuer's option under Section 3.10(b), such Notes shall become due and payable on the Redemption Date at the Corporate Trust Office at the applicable Redemption Price and interest on such Notes shall cease to accrue on and after the Redemption Date; provided, that, in each case, the Issuer shall have deposited in the Redemption Account on or prior to 11:00 a.m. (New York City time) on the Redemption Date an amount sufficient to pay the Redemption Price (and any Transaction Expenses relating thereto as of the Redemption Date). Upon the Issuer making such deposit and presentation and surrender of such Notes at the Corporate Trust Office, such Notes shall be paid and redeemed at the applicable Redemption Price. If the Issuer shall not make such deposit on or prior to 11:00 a.m. (New York City time) on the Redemption Date, the notice in respect of Redemption shall be of no force and effect, and the principal on such Notes or specified portions thereof shall continue to bear interest as if such notice in respect of Redemption had not been given.

(e) All Notes that are redeemed will be surrendered to the Trustee for cancellation and may not be reissued or resold.

ARTICLE IV
DEFAULT AND REMEDIES

Section 4.1 Events of Default. Each of the following events or occurrences shall constitute an “Event of Default” hereunder with respect to any class of Notes (except for clauses (a), (b), (c) and (d) below in which the potential events or occurrences that would constitute an Event of Default are specific to certain classes of Notes, in which case such Event of Default shall be constituted only with respect to such classes of Notes (and not all classes of Notes)), and each such Event of Default shall be deemed to exist and continue so long as, but only so long as, it shall not have been waived or remedied, as applicable:

(a)(i) failure to pay interest on the Class A Notes due on any Payment Date (other than the Final Legal Maturity Date or any Redemption Date) within five days of such Payment Date, but only to the extent of the Available Collections Amount available for interest payments pursuant to the priority of payments in Section 3.7 and any capital contributed to the Issuer by the Equityholders as described in Section 3.1(f) and available for interest payments pursuant to Section 3.8, or (ii) failure to pay principal of the Class A Notes due on any Payment Date (other than the Final Legal Maturity Date or any Redemption Date) within five days of such Payment Date, but only to the extent of the Available Collections Amount available for principal payments pursuant to the priority of payments in Section 3.7;

(b)(i) failure to pay interest on the Class A Notes due on any Payment Date (other than the Final Legal Maturity Date, any Redemption Date or as set forth in Section 4.1(a)) in full by the next succeeding Payment Date, together with Additional Interest on any interest not paid on the Payment Date on which it was originally due, and (ii) in the case of any class of Notes other than the Class A Notes, except as provided in the related Resolution and set forth in any indenture supplemental hereto providing for the issuance of such Notes pursuant to Section 2.15 or Section 2.16, failure to pay interest on any Notes of such class on the Payment Date that such interest is due, in each case regardless of whether or not funds are available in the Collection Account;

(c) (i) failure to pay principal of and Premium, if any, and accrued and unpaid interest on any Notes of such class on the applicable Final Legal Maturity Date or (ii) subject to Section 3.10(b), failure to pay the Redemption Price when due on any Redemption Date for such class;

(d) failure to pay any other amount when due and payable in connection with such class of Notes and the continuance of such default for a period of 30 or more days after written notice thereof is given to the Issuer by the Trustee;

(e) failure by the Issuer to comply with any covenant, obligation, condition or provision binding on it under this Indenture or the Notes (other than a payment default for which provision is made in Section 4.1(a), Section 4.1(b), Section 4.1(c) or Section 4.1(d)); provided, that, (i) if the consequences of the failure can be cured, such failure continues for a period of 30 days or more after written notice thereof has been given to the Issuer by the Trustee at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, and (ii) such failure is a Material Adverse Change;

(f) the Issuer becomes subject to a Voluntary Bankruptcy or an Involuntary Bankruptcy;

(g) any judgment or order for the payment of money in excess of \$1,000,000 shall be rendered against the Issuer and either (i) enforcement proceedings have been commenced by any creditor upon such judgment or order or (ii) there is any period of ten consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(h) the Issuer becomes an investment company required to be registered under the Investment Company Act of 1940, as amended;

(i) the Issuer is classified as a corporation or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes;

(j) the Seller shall have failed to perform any of its covenants under the Purchase and Sale Agreement where such failure is a Material Adverse Change (except as set forth in Section 4.1(k));

(k) the Seller shall have failed to perform the covenant set forth in Section 4.8 of the Purchase and Sale Agreement;

(l) the Equityholders shall have failed to perform any of their covenants under the Pledge and Security Agreement where such failure is a Material Adverse Change; or

(m) the Trustee shall fail to have a first-priority perfected security interest in any of the Collateral, in any of the Issuer Pledged Equity or in any material portion of the other Issuer Pledged Collateral.

Section 4.2 Acceleration, Rescission and Annulment.

(a) If an Event of Default with respect to the Notes (other than an Acceleration Default) occurs and is continuing, the Senior Trustee may, and, upon the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, shall, give an Acceleration Notice to the Issuer. Upon delivery of such an Acceleration Notice (and so long as such Acceleration Notice has not been rescinded and annulled pursuant to this Indenture), the Outstanding Principal Balance of the Notes and all accrued and unpaid interest thereon shall be immediately due and payable. At any time after the Senior Trustee or such Noteholders have so declared the Outstanding Principal Balance of the Notes to be immediately due and payable, and prior to the exercise of any other remedies pursuant to this Article IV, the Senior Trustee, upon the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, shall, subject to Section 4.5(a), by written notice to the Issuer, rescind and annul such declaration and thereby annul its consequences if (i) there has been paid to or deposited with the Trustee an amount sufficient to pay all overdue installments of interest on the Notes, and the principal of, and Premium, if any, on, the Notes that would have become due otherwise than by such declaration of acceleration, (ii) the rescission would not conflict with any judgment or decree and (iii) all other Defaults and Events of Default, other than non-payment of interest and Premium, if any, on and principal of the Notes that have become

due solely because of such declaration of acceleration, have been cured or waived. If an Acceleration Default occurs, the Outstanding Principal Balance of the Notes and all accrued and unpaid interest thereon shall automatically become immediately due and payable without any further action by any party.

(b) Notwithstanding this Section 4.2, Section 4.3 and Section 4.12, after the occurrence and during the continuation of an Event of Default, no Noteholders of any class of Notes other than the Senior Class of Notes shall be permitted to give or direct the giving of an Acceleration Notice, or to exercise any remedy in respect of such Event of Default, and no Person other than the Senior Trustee, at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, may give an Acceleration Notice or exercise any such remedy.

(c) Within 30 days after the occurrence of an Event of Default in respect of any class of Notes, the Trustee shall give to the Noteholders notice, transmitted by mail, of all uncured or unwaived Defaults known to it on such date; provided, that the Trustee may withhold such notice with respect to a Default (other than a payment default with respect to interest, principal or Premium, if any) if it determines in good faith that withholding such notice is in the interest of the affected Noteholders.

Section 4.3 Other Remedies. Subject to the provisions of this Indenture and the Pledge and Security Agreement, if an Event of Default shall have occurred and be continuing, then the Senior Trustee may, but only at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, pursue any available remedy by proceeding at law or in equity to collect the payment of principal, Premium, if any, or interest due on the Notes or to enforce the performance of any provision of the Notes, this Indenture, the Servicing Agreement or the Pledge and Security Agreement, including any of the following, to the fullest extent permitted by law, subject to the receipt of such Direction:

(a) The Senior Trustee may obtain the appointment of a Receiver of the Indenture Estate as provided in Section 12.7 and the Issuer consents to and waives any right to notice of any such appointment.

(b) The Senior Trustee may, without notice to the Issuer and at such time as the Senior Trustee in its sole discretion may determine, exercise any or all of the Issuer's rights in, to and under or in any way connected with or related to any or all of the Indenture Estate, including (i) demanding and enforcing payment and performance of, and exercising any or all of the Issuer's rights and remedies with respect to the collection, enforcement or prosecution of, any or all of the Indenture Estate (including the Purchased Assets and the Issuer's rights under the Purchase and Sale Agreement), in each case by legal proceedings or otherwise, (ii) settling, adjusting, compromising, extending, renewing, discharging and releasing any or all of, and any legal proceedings brought to collect or enforce any or all of, the Purchased Assets and otherwise under the Deal Documents and (iii) preparing, filing and signing the name of the Issuer on (A) any proof of claim or similar document to be filed in any bankruptcy or similar proceeding involving the Indenture Estate (including the Purchased Assets) and (B) any notice of lien, assignment or satisfaction of lien, or similar document in connection with the Indenture Estate (including the Purchased Assets).

(c) Subject to the Pledge and Security Agreement, the Senior Trustee may, without notice except as specified herein, sell or cause the sale of all or any part of the Indenture Estate in one or more parcels at public or private sale, at any of the Senior Trustee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Senior Trustee may deem commercially reasonable, provided, that, so long as the Counterparty Agreements remain in force, the Senior Trustee shall make any such sale only to a Person that is a Permitted Holder. The Issuer agrees that, to the extent notice of sale shall be required by law, at least 20 days' notice to the Issuer of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Senior Trustee shall not be obligated to make any sale of all or any part of the Indenture Estate regardless of notice of sale having been given. The Senior Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(d) The Senior Trustee may, instead of exercising the power of sale conferred upon it by Section 4.3(c) and Applicable Law, proceed by a suit or suits at law or in equity to foreclose the Security Interest and sell all or any portion of the Indenture Estate under a judgment or a decree of a court or courts of competent jurisdiction, provided, that, so long as the Counterparty Agreements remain in force, the Senior Trustee shall make any such foreclosure sale only to a Person that is a Permitted Holder.

(e) The Senior Trustee may require the Issuer to, and the Issuer hereby agrees that it shall at its expense and upon request of the Senior Trustee, forthwith assemble all or part of the Indenture Estate as directed by the Senior Trustee and make it available to the Senior Trustee at a place to be designated by the Senior Trustee that is reasonably convenient to both parties.

(f) In addition to the rights and remedies provided for in this Indenture, the Senior Trustee may exercise in respect of the Indenture Estate all the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected property included in the Indenture Estate) and under all other Applicable Law; provided, that, so long as the Counterparty Agreements remain in force, the Senior Trustee shall cause any sale of the Collateral to be made only to a Person that is a Permitted Holder.

(g) The Senior Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding.

Section 4.4 Limitation on Suits. Without limiting the provisions of Section 4.9 and the final sentence of Section 12.4, no Noteholder shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, the Pledge and Security Agreement or the Notes, for the appointment of a receiver or trustee or for any other remedy hereunder, unless:

(a) such Noteholder is a holder of the Senior Class of Notes and has previously given written notice to the Senior Trustee of a continuing Event of Default;

(b) the Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes make a written request to the Senior Trustee to pursue a remedy hereunder;

(c) such Noteholder or Noteholders offer to the Senior Trustee an indemnity reasonably satisfactory to the Senior Trustee against any costs, expenses and liabilities to be incurred in complying with such request;

(d) the Senior Trustee does not comply with such request within 60 days after receipt of the request and the offer of indemnity; and

(e) during such 60-day period, Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes do not give the Senior Trustee a Direction inconsistent with such request.

No one or more Noteholders may use this Indenture to affect, disturb or prejudice the rights of another Noteholder or to obtain or seek to obtain any preference or priority not otherwise created by this Indenture and the terms of the Notes over any other Noteholder or to enforce any right under this Indenture, except in the manner herein provided.

Section 4.5 Waiver of Existing Defaults.

(a) The Senior Trustee, upon the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, by written notice to the Issuer may waive any existing Default (or Event of Default) hereunder and its consequences, except a Default (or Event of Default) (i) in the payment of the interest on, principal of and Premium, if any, on any Note or (ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of the Noteholder of each Note affected thereby. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default (or Event of Default) or impair any right consequent thereon.

(b) Any written waiver of a Default or an Event of Default given by the Senior Trustee to the Issuer in accordance with the terms of this Indenture shall be binding upon the Senior Trustee and the other parties hereto. Unless such writing expressly provides to the contrary, any waiver so granted shall extend only to the specific event or occurrence that gave rise to the Default or Event of Default so waived and not to any other similar event or occurrence that occurs subsequent to the date of such waiver.

Section 4.6 Restoration of Rights and Remedies. If the Senior Trustee or any Noteholder of the Senior Class of Notes has instituted any proceeding to enforce any right or remedy under this Indenture, and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Senior Trustee or such Noteholder, then in every such case the Issuer, the Senior Trustee and the Noteholders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Senior Trustee and the Noteholders shall continue as though no such proceeding has been instituted.

Section 4.7 Remedies Cumulative. Each and every right, power and remedy herein given to the Trustee specifically or otherwise in this Indenture shall be cumulative and shall, to the extent permitted by law, be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any Default on the part of the Issuer or to be an acquiescence.

Section 4.8 Authority of Courts Not Required. The parties hereto agree that, to the greatest extent permitted by law, the Trustee shall not be obliged or required to seek or obtain the authority of, or any judgment or order of, the courts of any jurisdiction in order to exercise any of its rights, powers and remedies under this Indenture, and the parties hereby waive any such requirement to the greatest extent permitted by law.

Section 4.9 Rights of Noteholders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Noteholder to receive payment of interest on, principal of, or Premium, if any, on any Note on or after the respective due dates therefor expressed in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Noteholder.

Section 4.10 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 and of any Noteholder allowed in any judicial proceedings relating to any obligor on the Notes, its creditors or its property.

Section 4.11 Undertaking for Costs. All parties to this Indenture agree, and each Noteholder by its acceptance hereof shall be deemed to have agreed, that, 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 such suit of an undertaking to pay the costs of such suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defense made by the party litigant. This Section 4.11 does not apply to a suit instituted by the Trustee, a suit instituted by any Noteholder for the enforcement of the payment of interest, principal, or Premium, if any, on any Note on or after the respective due dates expressed in such Note or a suit by a Noteholder or Noteholders of at least 10% of the Outstanding Principal Balance of the Notes.

Section 4.12 Control by Noteholders. Subject to this Article IV and to the rights of the Trustee hereunder, Noteholders of a majority of the Outstanding Principal Balance of the Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust, right or power conferred on the Trustee under any Transaction Document; provided, that:

(a) such Direction shall not be in conflict with any rule of law or with this Indenture and would not involve the Trustee in personal liability or expense;

(b) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Noteholders of such class not taking part in such Direction; and

(c) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such Direction.

Section 4.13 Senior Trustee. The Trustee irrevocably agrees (and the Noteholders (other than the Noteholders represented by the Senior Trustee) shall be deemed to agree by virtue of their purchase of the Notes) that the Senior Trustee shall have all of the rights granted to it under this Indenture, including the right to direct the Trustee to take certain action as provided for in this Indenture, and the Trustee hereby agrees to act in accordance with each such authorized direction of the Senior Trustee.

Section 4.14 Application of Proceeds. All cash proceeds received by the Senior Trustee in respect of any sale of, collection from or other realization upon all or any part of the Indenture Estate shall be deposited in the Collection Account and distributed as provided in Article III. Any surplus of such cash proceeds held and remaining after payment in full of all Secured Obligations shall be paid over to the Issuer or whomsoever may be lawfully entitled to receive such surplus as provided in Section 3.7. Any amount received for any sale or sales conducted in accordance with the terms of Section 4.3 shall to the extent permitted by Applicable Law be deemed conclusive and binding on the Issuer and the Noteholders.

Section 4.15 Waivers of Rights Inhibiting Enforcement. The Issuer waives (a) any claim that, as to any part of the Indenture Estate, a private or public sale, should the Senior Trustee elect so to proceed, is, in and of itself, not a commercially reasonable method of sale for such part of the Indenture Estate, (b) the right to assert in any action or proceeding between it and the Senior Trustee offsets or counterclaims that it may have, (c) except as otherwise provided in any of the Deal Documents, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE OR JUDICIAL HEARING IN CONNECTION WITH THE TRUSTEE'S TAKING POSSESSION OR DISPOSITION OF ANY OF THE INDENTURE ESTATE, INCLUDING ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT THAT THE ISSUER WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE U.S. OR OF ANY STATE, AND ALL OTHER REQUIREMENTS AS TO THE TIME, PLACE AND TERMS OF SALE OR OTHER REQUIREMENTS WITH RESPECT TO THE ENFORCEMENT OF THE TRUSTEE'S RIGHTS HEREUNDER, (d) all rights of redemption, appraisal, valuation, stay and extension or moratorium and (e) except as otherwise provided in any of the Deal Documents, all other rights the exercise of which would, directly or indirectly, prevent, delay or inhibit the enforcement of any of the rights or remedies under this Indenture or the absolute sale of the Indenture Estate, now or hereafter in force under any Applicable Law, and the Issuer, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws and rights.

Section 4.16 Security Interest Absolute. All rights of the Trustee and security interests hereunder, and all obligations of the Issuer hereunder, shall be absolute and unconditional irrespective of, and the Issuer hereby irrevocably waives any defenses it may now have or may hereafter acquire in any way relating to, any or all of the following:

- (a) any lack of validity or enforceability of any of the Deal Documents or any other agreement or instrument relating thereto (other than against the Trustee);
- (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Deal Documents or any other agreement or instrument relating thereto;
- (c) any taking, exchange, surrender, release or non-perfection of any Collateral or any other collateral, or any release or amendment or waiver of or consent to any departure from any guaranty, for all or any of the Secured Obligations;
- (d) any manner of application of any Collateral or any other collateral, or proceeds thereof, to all or any of the Secured Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Secured Obligations or any other obligations of the Issuer under or in respect of the Deal Documents or any other assets of the Issuer;
- (e) any change, restructuring or termination of the limited liability company structure or existence of the Issuer;
- (f) the failure of any other Person to execute this Indenture or any other agreement or the release or reduction of liability of the Issuer or other grantor or surety with respect to the Secured Obligations; or
- (g) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation by the Trustee that might otherwise constitute a defense available to, or a discharge of, the Issuer.

Section 4.17 Observer.

(a) If an Event of Default with respect to the Notes has occurred and is continuing and the Trustee has received written notice of (or otherwise has actual knowledge of) such Event of Default, the Trustee shall, within three Business Days following receipt of such notice, give to the Noteholders and Beneficial Holders on the Approved Holder List written notice (the "Initial Notice") of such Event of Default advising that each Noteholder and Beneficial Holder has the right to nominate a Person (the "Nominee") to be appointed as an observer of all meetings of the governing body (and committees thereof) of the Issuer (the "Observer"). Each Noteholder and Beneficial Holder may, but is not required to, nominate one Nominee by written notice received by the Trustee within ten Business Days of the date of the Initial Notice (the "Nomination Period"). Each such notice shall contain at least the following information: (i) the identity of such Nominee and reasonable detail about the Person nominated; (ii) the identity of the nominating Noteholder or Beneficial Holder with respect to such Nominee, together with the Outstanding Principal Balance of Notes held by such Noteholder or the amount of Beneficial Interests held by such Beneficial Holder; and (iii) a statement confirming that such Nominee is willing to serve as Observer if appointed.

(b) If no Nominee is nominated within the Nomination Period, the Trustee shall promptly notify the Issuer, with a copy to the Noteholders and Beneficial Holders on the Approved Holder List, that no Nominee has been nominated.

(c) If any Nominee is nominated within the Nomination Period, the Trustee shall, within three Business Days following the end of the Nomination Period, give to the Noteholders and Beneficial Holders on the Approved Holder List written notice (the "Solicitation Notice") setting forth (i) the identity of each Nominee and the details relating to each such Nominee provided to the Trustee, (ii) the identity of the nominating Noteholder or Beneficial Holder with respect to each Nominee, together with the Outstanding Principal Balance of Notes held by such Noteholder or the amount of Beneficial Interests held by such Beneficial Holder, (iii) a statement confirming that each Nominee is willing to serve as Observer if appointed and (iv) that each Noteholder shall have ten Business Days after the date of the Solicitation Notice (the "Solicitation Period") to indicate by written notice to the Trustee the Nominee (and no more than one Nominee) from the list of Nominees specified in the Solicitation Notice that it wishes to have appointed as Observer. Immediately following the end of the Solicitation Period, the Trustee shall calculate, based upon the written notices it received during the Solicitation Period, for each Nominee, the Outstanding Principal Balance of the Notes selecting such Nominee. The Nominee that is selected by the largest Outstanding Principal Balance of the Notes shall be designated as Observer (and, in the event that two or more Nominees are selected by the largest Outstanding Principal Balance of the Notes, then the Trustee shall furnish a new Solicitation Notice within three Business Days thereof setting forth only such Nominees selected by such largest Outstanding Principal Balance of the Notes, and the process set forth above shall be repeated therefrom to select an Observer). The Trustee shall give written notice to the Issuer, the Servicer and the Noteholders and Beneficial Holders on the Approved Holder List of the results of the solicitation, and the Issuer shall (A) provide the Observer with notice of any meeting of the governing body (or any committee thereof) of the Issuer in accordance with the Issuer Organizational Documents (as if the Observer were a member of the governing body or committee thereof, as the case may be), (B) furnish to the Observer any materials distributed to any other participant in any such meeting at the same time as such materials are distributed to such other participant(s), (C) permit the Observer to attend and observe any such meeting and (D) cause the Issuer's officers or other representatives to promptly, accurately and in good faith respond to any inquiries of the Observer.

(d) At any time, the Noteholders of a majority of the Outstanding Principal Balance of the Notes may remove the Observer by written notice to the Trustee, the Issuer and the Noteholders. Upon removal of the Observer, the Trustee shall request the nomination and selection of a replacement Observer using the procedures described in this Section 4.17.

(e) The Observer shall provide to the Trustee, for inclusion with the next Distribution Reports, a report summarizing its observations from each meeting of the governing body (or any committee thereof) of the Issuer that it shall have attended.

ARTICLE V
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 Representations and Warranties. The Issuer represents and warrants, as of the date of this Indenture, to the Trustee as follows:

(a) The Issuer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware, is duly qualified to do business and in good standing in each jurisdiction where such qualification is required (except where the failure to be so qualified would not be a Material Adverse Change) and has full power and authority to conduct its business and to execute, deliver and perform this Indenture, each other instrument to be delivered by it pursuant to this Indenture and each other Deal Document to which it is a party, and the Issuer is not in liquidation or bankruptcy and has not become subject to a Voluntary Bankruptcy or an Involuntary Bankruptcy.

(b) The Issuer has not engaged in any activities or become subject to any Losses or other obligations since its organization (other than those incidental to its organization and permitted by the Issuer Organizational Documents, the execution and performance of the Deal Documents to which it is a party and the activities referred to in or contemplated by such agreements and, in respect of Losses or other obligations since its organization, assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement), and the Issuer has not paid any dividends or made any similar distributions since its organization.

(c) The creation of the Notes and the issuance, execution and delivery, and the compliance by the Issuer with the terms, of the Notes and each of the other Deal Documents to which it is a party:

(i) do not at the Closing Date conflict with, result in a breach of any of the terms or provisions of or constitute a default under (A) the Issuer Organizational Documents or (B) assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, any judgment, order or decree of any Governmental Authority having jurisdiction over the Issuer, its assets or its properties or any Applicable Law, except for purposes of this clause (B) where it would not be a Material Adverse Change; and

(ii) assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, do not at the Closing Date violate, or constitute a default under, any deed, indenture, agreement or other instrument or obligation to which the Issuer is a party or by which it or any part of its assets, property or revenues are bound, except where it would not be a Material Adverse Change.

(d) The creation, execution and issuance of the Notes, the execution and delivery by the Issuer of the Deal Documents executed by it and the performance by the Issuer of its obligations hereunder and thereunder and the arrangements contemplated hereby and thereby to be performed by it have been duly authorized, executed and delivered by the Issuer.

(e) This Indenture constitutes, and the other Deal Documents to which it is a party, when duly authorized, executed and delivered by the other party or parties thereto, and, in the case of the Notes, when issued and authenticated, will constitute, valid, legally binding and (subject to general equitable principles, and laws relating to insolvency, liquidation, reorganization and other laws of general application relating to creditors' rights or claims or to laws of prescription or the concepts of materiality, reasonableness, good faith and fair dealing) enforceable obligations of the Issuer.

(f) Assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, on the Closing Date, there exists no Event of Default nor any event that, had the Notes already been issued, would constitute a Default or an Event of Default.

(g) On the Closing Date, subject to the Liens created in favor of the Trustee and except for any other Permitted Liens, there exists no Lien over the assets of the Issuer.

(h) Assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, on the Closing Date, all consents, approvals, authorizations or other orders of all Governmental Authorities required (excluding any required by the other parties to the Deal Documents) for or in connection with the execution, delivery and performance of the Deal Documents by the Issuer and the issuance and performance of the Notes and the offering of the Notes by the Issuer have been obtained and are in full force and effect and are not contingent upon fulfillment of any condition except for those required by the securities or blue sky laws of various states. No consent of any Governmental Authority or any other party (including directors, officers, partners, members, managers or creditors of the Issuer) is required that has not been obtained for the pledge by the Issuer of the Collateral pursuant to this Indenture.

(i) Assuming compliance with Section 6.9 and after giving pro forma effect to the use of proceeds as contemplated by the Offering Memorandum, the Issuer would not be required to register as an investment company under the Investment Company Act of 1940, as amended.

(j) Assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, there is no action, suit, investigation or proceeding pending or, to the knowledge of the Issuer, threatened against the Issuer before any Governmental Authority that in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Indenture and the other Deal Documents to which the Issuer is a party, which, if adversely determined, would be a Material Adverse Change.

(k) The Issuer has no Subsidiaries.

(l) Assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, the Issuer is the sole legal and beneficial owner of the Purchased Assets and the other assets and properties constituting the Collateral, free and clear of any Liens other than Permitted Liens.

(m) Under the laws of the State of Delaware, the laws of the State of New York and U.S. federal law in force at the Closing Date, it is not necessary that this Indenture or any other Deal Document (other than evidences and perfection of the Liens) be filed, recorded or enrolled by the Issuer with any court or other Governmental Authority in any such jurisdictions or that any stamp, registration or similar Tax be paid by the Issuer on or in relation to this Indenture or any of the other Deal Documents (other than filings of Uniform Commercial Code financing statements set forth in Exhibit E and the various consents and agreements, if any, pursuant hereto).

(n) The filings of financing statements under the UCC and other recordings, if any, in the appropriate offices therefor and any other actions required to perfect a security interest in favor of the Trustee in the Collateral, including the Purchased Assets sold, transferred, conveyed, assigned, contributed and granted on the Closing Date pursuant to the Purchase and Sale Agreement, have been or shall have been duly made by the Closing Date. No other security agreement, financing statement or other public notice with respect to all or any part of the Collateral (other than any of the foregoing that is referenced in Exhibit E to this Indenture or otherwise names the Trustee as secured party) is on file or of record in any public office that perfects a valid security interest therein. This Indenture creates a valid security interest in the Collateral securing the payment of the Secured Obligations.

(o) Assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, the Issuer has determined, and by virtue of its entering into the transactions contemplated hereby and its authorization, execution and delivery of this Indenture and the other Deal Documents to which it is party, that its incurrence of Indebtedness and any other liability hereunder or thereunder or contemplated hereby or thereby, (i) is in its own best interests, (ii) does not leave it unable to pay its debts as they become due in the ordinary course of business, (iii) will not leave it with debts that cannot be paid from the present saleable value of its property and (iv) will not render it insolvent within the meaning of Section 101(32) of the Bankruptcy Code or Section 271 of the New York Debtor and Creditor Law or leave it with unreasonably small capital.

(p) Assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, no material adverse change in the business, condition (financial or otherwise), operations or earnings of the Issuer has occurred since its date of formation.

(q) The Issuer is an entity that is disregarded as separate from the initial Equityholder for U.S. federal income tax purposes. The Issuer has never filed any tax return or report under any name other than its exact legal name. The Issuer has filed (or caused to be filed) all tax returns and reports required by law to have been filed by it and has paid all Taxes required to be paid by it. The Issuer does not have any express or implied obligation to indemnify any other Person with respect to Taxes.

(r) No step has been taken or is intended by the Issuer or, so far as it is aware, any other Person for the winding-up, liquidation, dissolution, administration, merger or consolidation or for the appointment of a receiver or administrator of the Issuer or all or any of its assets.

(s) Subject to Permitted Liens, the Issuer has not assigned or pledged any of its right, title or interest in the Collateral to anyone other than the Trustee.

(t) Assuming the accuracy of the representations and warranties of the Seller in the Purchase and Sale Agreement and the due and timely performance by the Seller of its obligations under the Purchase and Sale Agreement, the Issuer is in compliance with the requirements of all Applicable Laws, a breach of any of which would be a Material Adverse Change.

(u) The Issuer is not engaged in the business of extending credit for the purpose of buying or carrying margin stock, and no portion of the Note Purchase Price shall be used by the Issuer (i) for a purpose that violates Regulation T, U or X promulgated by the Board of Governors of the Federal Reserve System from time to time or (ii) to acquire any security in any transaction that is subject to Section 13 or 14 of the Exchange Act.

(v) The representations and warranties made by the Issuer to the Noteholders in any of the other Transaction Documents to which it is a party are true and accurate as of the date made.

Section 5.2 Covenants. The Issuer covenants with the Trustee that, so long as any Notes are Outstanding, it will perform and comply with each of the following covenants and not engage in any activity prohibited by this Indenture without the prior written consent of the Trustee pursuant to Section 9.1 or Section 9.2, as applicable, authorizing the Issuer not to perform any such covenants or to engage in any such activity prohibited by this Indenture, in each case on such terms and conditions, if any, as shall be specified in such prior written consent:

(a) Except as described under Article IX, the Issuer shall not take any action, whether orally or in writing, that would amend, waive, modify, supplement, restate, cancel or terminate, or discharge or prejudice the validity or effectiveness of, this Indenture, the Notes or the Pledge and Security Agreement, or permit any party to any such document to be released from its obligations thereunder.

(b) The Issuer shall not, directly or indirectly, (i) declare or pay any dividend or make any distribution on its Capital Securities, whether in cash, property, securities or a combination thereof, to the Equityholders or otherwise with respect to any ownership of the Issuer's Capital Securities, except that the Issuer may distribute to the Equityholders (w) any amounts pursuant to Section 3.8, (x) any Tax Distribution pursuant to Section 3.7(a)(ii), (y) pursuant to Section 3.7(b), all or any portion of any amounts transferred to the Issuer pursuant to Section 3.7(a)(viii) or (z) any proceeds from an issuance of Notes or Capital Securities in accordance with this Indenture, (ii) purchase, redeem, retire or otherwise acquire for value any issued Capital Securities of the Issuer, (iii) make any payment of principal, interest or Premium, if any, on the Notes or make any voluntary or optional redemption, repurchase, defeasance or other acquisition or retirement for value of, or make any deposit (including the payment of amounts into a sinking fund or other similar fund) with respect to, Indebtedness of the Issuer other than any issuance or sale of any Subordinated Notes, Refinancing Notes or Capital Securities expressly permitted by the Notes and this Indenture or (iv) make any loan or advance to any Person, any purchase or other acquisition of any beneficial interest, Capital Securities, warrants, rights, options, obligations or other securities of such Person, any capital contribution to such Person or any other investment in such Person (other than Eligible Investments and investments permitted under Section 5.2(f)).

(c) The Issuer shall not (and shall not consent to the Equityholders taking any action that would cause the Issuer to) incur or suffer to exist any Lien over or with respect to any of the Issuer's assets, including the Collateral, other than any Permitted Lien (including any security interest created or required to be created hereunder, including in connection with the issuance of any Subordinated Notes and any Refinancing Notes).

(d) The Issuer shall not incur, create, issue, assume, Guarantee or otherwise become liable for or with respect to, or become responsible for, the payment or performance of, contingently or otherwise, whether present or future (in any such case, to "Incur"), Indebtedness; provided, however, that the Issuer may Incur Indebtedness in respect of the Original Class A Notes, any Subordinated Notes and any Refinancing Notes issued in accordance with this Indenture.

(e) Except as contemplated by the Deal Documents, the Issuer shall not liquidate or dissolve and shall not consolidate with, merge with or into, sell, convey, transfer, lease or otherwise dispose of the Purchased Assets or all or any material portion of its other property and assets to, or purchase or otherwise acquire all or substantially all of the assets of, any other Person, or permit any other Person to merge with or into, or consolidate or otherwise combine with, the Issuer; provided, that, notwithstanding anything in this Indenture to the contrary, the Issuer shall not acquire or dispose of assets for the primary purpose of recognizing gains or decreasing losses resulting from market value changes.

(f) The Issuer shall not, directly or indirectly, issue, deliver or sell, or consent to issue, deliver or sell, any Capital Securities of the Issuer unless the Seller retains a majority of the Voting Securities of the Issuer if required by the Counterparty Agreements and such Capital Securities are pledged to the Trustee pursuant to the Pledge and Security Agreement; provided, that (i) the Issuer shall not accept any capital contributions from the Equityholders after the Closing Date except for capital contributions deposited into the Capital Account, which may be

used only as provided in Section 3.1(f), (ii) any such Equityholder is not subject to U.S. federal withholding tax in respect of the Purchased Royalties and (iii) prior to such issuance, delivery or sale, the Trustee shall have been provided with an Opinion of Counsel from a law firm with a nationally recognized tax practice that such issuance, delivery or sale should not cause a “significant modification” of the Notes for U.S. federal income tax purposes; provided, however, that, notwithstanding anything in this Section 5.2(f)(iii), the Trustee shall not be required to be provided with such an Opinion of Counsel if there has been a Change in Law and counsel to such Equityholder determines in good faith that it is unable to render such an Opinion of Counsel (whereas it would have been able to render such an Opinion of Counsel had the Change in Law not occurred).

(g) The Issuer shall not engage in any business or activity other than purchasing, holding, servicing and pledging the Purchased Assets, collecting the Purchased Royalties, issuing Notes, issuing Capital Securities (subject to the provisions of Section 5.2(f)), undertaking any action contemplated by the Purchase and Sale Agreement or necessary or reasonably appropriate to maintain, enforce or enjoy the full benefit of any current or residual rights granted by or arising out of the Purchase and Sale Agreement, and entering into, remaining a party to, and otherwise performing any of the obligations contemplated by, and exercising any right or remedy granted to the Issuer pursuant to or arising out of, the Deal Documents and the Counterparty Agreements and other matters reasonably related thereto.

(h) The Issuer shall not, directly or indirectly, enter into, renew or extend any transaction (including the purchase, sale, lease or exchange of property or assets, or the rendering of any service) with any Affiliate of the Issuer, except for the Deal Documents and the Issuer Organizational Documents.

(i) The Issuer shall not, without the written consent of the Independent Manager, take any action to become subject to a Voluntary Bankruptcy or an Involuntary Bankruptcy. The Issuer shall provide promptly the Trustee with written notice of the institution of any proceeding by or against the Issuer seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property. The Issuer shall not, without the written consent of the Independent Manager, take any action to waive, repeal, amend, vary, supplement or otherwise modify any provisions of any of the Issuer Organizational Documents that require written consent of the Independent Manager. The Issuer shall comply with, and cause compliance with, the Issuer Organizational Documents.

(j) The Issuer shall not take any action to waive, repeal, amend, vary, supplement or otherwise modify the Issuer Organizational Documents in a manner that would adversely affect (x) the rights, remedies, privileges or preferences of the Noteholders or (y) the validity, perfection or priority of the Lien on any Collateral (including the Purchased Assets) or any Issuer Pledged Collateral.

(k) The Issuer shall duly and punctually pay principal with respect to the Outstanding Principal Balance, Premium, if any, and Interest Amount on the Notes in accordance with the terms of this Indenture and such Notes; provided, that the Issuer shall be in compliance with this covenant with respect to any Payment Date (other than the Final Legal Maturity Date or any Redemption Date subject to Section 3.10(b)) if any such interest in excess of the portion of the Available Collections Amount available to pay such interest on the relevant Payment Date and funds in the Capital Account (subject to Section 3.8) are paid in full not later than the immediately succeeding Payment Date (together with Additional Interest thereon).

(l) The Issuer shall not employ any employees other than as required by any provisions of local law; provided, that the Members and the Service Providers shall not be deemed to be employees for purposes of this Section 5.2(l).

(m) The Issuer shall not (v) assign, amend, waive, modify, supplement, restate, cancel or terminate (or consent to any cancellation or termination of) the Purchase and Sale Agreement, (w) breach any of the provisions of the Purchase and Sale Agreement, (x) enter into any new agreement in respect of the Purchased Assets or any of the Licensed Products, (y) waive any obligation of, or grant any consent to, the Seller under or in respect of the Purchased Assets, the Purchase and Sale Agreement, any of the Licensed Products or any Counterparty Agreement or (z) consent to an assignment of the Purchase and Sale Agreement by the Seller or any of the Counterparty Agreements by Counterparty.

(n) The Issuer shall at all times use its commercially reasonable efforts to exercise and enforce its rights and remedies under the Purchase and Sale Agreement, the Servicing Agreement and the Counterparty Agreements in a timely and commercially reasonable manner; provided, that, following the occurrence and continuation of an Event of Default, the Issuer shall give notice to the Trustee on behalf of the Noteholders of any contemplated enforcement of such rights and remedies and will follow any Direction regarding enforcement of contractual rights provided by Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes (or the Senior Trustee on their behalf) that it has received.

(o) The Issuer shall maintain its existence separate and distinct from any other Person in all material respects, including using its commercially reasonable efforts in taking the following actions, as appropriate:

(i) maintaining in full effect its existence, properties, rights and franchises as a Delaware limited liability company and obtaining and preserving its qualification to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of this Indenture and each other instrument or agreement necessary or appropriate to properly administer this Indenture and permit and effectuate the transactions contemplated hereby and thereby;

(ii) maintaining its own deposit accounts, separate from those of the Equityholders, the Independent Manager, any of the Members and their respective Affiliates;

(iii) conducting its affairs separately from those of the Equityholders, the Independent Manager, any of the Members or any of their respective Affiliates and maintaining accurate and separate books, records and accounts and financial statements in accordance with GAAP, including in connection with the purchase of the Purchased Assets from the Seller;

(iv) acting solely in its own name and not that of any other Person, including the Equityholders, the Independent Manager, any of the Members or any of their respective Affiliates, and at all times using its own stationery, invoices and checks separate from those of the Equityholders, the Independent Manager, any of the Members or any of their respective Affiliates;

(v) not holding itself out as having agreed to pay or guarantee, or as otherwise being liable for, the obligations of the Equityholders, the Independent Manager, any of the Members or any of their respective Affiliates;

(vi) insuring that any financial reports prepared by the Issuer disclose the effects of the purchase of the Purchased Assets from the Seller in compliance with GAAP;

(vii) maintaining all of its assets in its own name and not commingling its assets with those of any other Person except as required under the Deal Documents;

(viii) paying its own operating expenses and other liabilities out of its own funds;

(ix) observing all formalities required by the Issuer Organizational Documents;

(x) not acquiring obligations of the Equityholders, the Independent Manager, any Member or any of their respective Affiliates except as required under the Deal Documents;

(xi) holding itself out to the public as a legal entity separate and distinct from any other Person, including the Equityholders or any Affiliate of any Equityholder;

(xii) correcting any known misunderstanding regarding its separate identity;

(xiii) not forming, acquiring or holding any Subsidiary;

(xiv) not sharing any common logo with or identifying itself as a department or division of the Equityholders, the Independent Manager, any Member or any of their respective Affiliates; provided, however, that the Issuer may identify itself as an investment of and owned and/or managed by any such Equityholders or any of their respective Affiliates;

(xv) except as permitted by Section 5.2(g), conducting no material transactions between the Issuer and the Equityholders, other than entering into and performing its obligations under the Deal Documents to which it is party; and

(xvi) allocating fairly and reasonably the cost of any shared overhead expenses, including office space, if applicable, with the Equityholders, the Independent Manager, any of the Members or any of their respective Affiliates.

(p) The Issuer will not enter into any agreement prohibiting the right of the Trustee or any Noteholder to amend or otherwise modify any Deal Document; provided, that the foregoing prohibition shall not apply to restrictions contained in any Deal Document.

(q) The Issuer will not change, amend or alter its exact legal name at any time except following 30 days' notice given by the Issuer to the Trustee. The Issuer shall not change its accounting policies or reporting practices except as permitted by the Issuer Organizational Documents.

(r) The Issuer will not assign or pledge, so long as the assignment hereunder shall remain in effect and has not been terminated pursuant to Section 11.1, any of its right, title or interest in the Collateral hereby assigned to anyone other than the Trustee; provided, that the sale or other disposition of the Capital Securities of the Issuer by any Equityholder (or any interest therein) in compliance with the Pledge and Security Agreement or any issuance of Capital Securities by the Issuer (subject to the provisions of Section 5.2(f)) shall not be considered a violation of this Section 5.2(r).

(s) The Issuer agrees that, at any time and from time to time, at the Issuer's expense and upon the Trustee's written request, the Issuer will promptly and duly execute and deliver or cause to be duly executed and delivered any and all such further instruments and documents, and take all further action, that may be necessary in the reasonable discretion of the Trustee, in order to perfect the security interest in the Collateral and to carry out the provisions of this Indenture or to enable the Trustee to exercise and enforce its rights and remedies hereunder with respect to any Collateral. The Issuer also agrees that, at any time and from time to time, at the Issuer's expense, the Issuer will file (or cause to be filed) such UCC continuation statements and such other instruments or notices as may be necessary, including UCC financing statements or amendments thereto, that the Trustee may reasonably request in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Trustee hereby. With respect to the foregoing and the grant of the security interest hereunder, the Issuer hereby authorizes the Trustee to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral. The Issuer hereby authorizes the Trustee to file financing statements describing as the collateral covered thereby "all of the debtor's personal property or assets" or words to that effect, notwithstanding that such wording may be broader in scope than the Collateral described in this Indenture.

(t) The Issuer will maintain in the Borough of Manhattan, The City of New York, an office or agency of the Trustee, Registrar and Paying Agent where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer, exchange or purchase and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. Each of the Corporate Trust Office and each office or agency of the Trustee in the Borough of Manhattan, The City of New York shall initially be one such office or agency for all of the aforesaid purposes. The Issuer shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or

agency (other than a change in the location of the office of the Trustee). If at any time the Issuer 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 set forth in Section 12.5. The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes.

(u) The Issuer shall use commercially reasonable efforts to file any form (or comply with any other administrative formalities) required for an exemption from or a reduction of any withholding tax for which it is eligible. The Issuer shall maintain its status as an entity that is not classified as a corporation or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes. The Issuer shall maintain its status as a “pass-through” entity (i.e., either (i) an entity that is disregarded as separate from the Equityholder if there is one Equityholder for U.S. federal income tax purposes or (ii) a partnership if there is more than one Equityholder for U.S. federal income tax purposes, in each case for U.S. federal income tax purposes and, to the extent permitted by Applicable Law, state and local tax purposes). The Issuer shall not file any tax return or report under any name other than its exact legal name. The Issuer shall treat the Notes as debt for U.S. federal income tax purposes. Neither the Issuer nor the Trustee shall treat any Noteholder or Beneficial Holder as a “partner” of the Issuer for U.S. federal income tax purposes with respect to the ownership of the Notes. The Issuer and the Trustee will treat all interest paid or otherwise accruing on the Notes as interest for U.S. federal income tax purposes. The Issuer will prepare and file all tax returns of the Issuer consistent with the covenants set forth in this Section 5.2(u) and will not take any inconsistent position in any communication or agreement with any taxing authority unless required by a final “determination” of a court of law within the meaning of Section 1313(a)(1) of the Code. The Issuer shall not enter into or incur any express or implied obligation to indemnify any other Person with respect to Taxes. The Issuer shall file (or cause to be filed) all tax returns and reports required by law to be filed by it and pay all Taxes required to be paid by it.

(v) The Issuer shall comply with all Applicable Laws with respect to the Deal Documents, the Counterparty Agreements, the Purchased Assets and all ancillary agreements related thereto, the violation of which would be a Material Adverse Change.

(w) The Issuer shall (i) preserve and maintain its existence, (ii) preserve and maintain its rights, franchises, permits, licenses, approvals and privileges and (iii) qualify and remain qualified in good standing in each jurisdiction, in each case where the failure to preserve and maintain such existence, rights, franchises, permits, licenses, approvals, privileges and qualifications would be a Material Adverse Change. The Issuer shall appoint and employ such agents or attorneys in each jurisdiction where it shall be necessary to take any action under this Indenture.

(x) The Issuer shall timely and fully perform and comply with each of its duties and obligations to the Noteholders under the Servicing Agreement, including all covenants, conditions and other provisions with respect to the Purchased Assets.

(y) During any period in which the Issuer is not subject to Section 13 or 15(d) of the Exchange Act, the Issuer shall make available to any Noteholder or Beneficial Holder in connection with any sale of any or all of its Notes and any prospective purchaser of such Notes from such Noteholder or Beneficial Holder the information required by Rule 144A(d)(4) under the Securities Act.

(z) The Issuer shall not, and shall not permit any of its Affiliates to, directly or indirectly, pay or cause to be paid any consideration of any type or form (whether in cash, property, by way of interest or fee or otherwise) to or for the benefit of any Noteholder or Beneficial Holder for or as an inducement to any forbearance, consent, waiver or amendment of any of the terms or provisions hereof or of the Notes, or any agreement in respect thereof, unless such consideration is, on the same terms and conditions, offered to all Noteholders and Beneficial Holders and paid to all Noteholders and Beneficial Holders that agree to such forbearance, consent, waiver or amendment, or agreement in respect thereof.

Section 5.3 Reports and Other Deliverables by the Issuer.

(a) The Issuer shall furnish to the Trustee, within 120 days after the end of each fiscal year commencing with the fiscal year ending December 31, 2009, a certificate from a Responsible Officer of the Issuer as to his or her knowledge of the Issuer's compliance with all of its obligations under this Indenture (it being understood that, for purposes of this Section 5.3, such compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture but shall reflect any Interest Amount paid on the Original Class A Notes by the next succeeding Payment Date as contemplated by the proviso to Section 5.2(k) as have been timely paid).

(b) The Issuer shall deliver written notice to the Trustee of the occurrence of any Default or Event of Default under this Indenture promptly and in any event within ten Business Days of a Responsible Officer of the Issuer becoming aware of such Default or Event of Default.

(c) The Issuer shall promptly (and in any event within five Business Days of receipt thereof) provide to the Trustee and the Servicer copies of all materials that the Issuer receives from the Seller pursuant to the Purchase and Sale Agreement or otherwise in respect of the Counterparty Agreements.

(d) Within 120 days after the beginning of each fiscal year commencing with the fiscal year beginning January 1, 2010, the Issuer shall furnish to the Trustee an opinion of its legal counsel, which opinion shall state either that (i) in the opinion of such counsel, all action has been taken with respect to any filing, re-filing, recording or re-recording with respect to the Collateral as is necessary to maintain the security interest on the Collateral in favor of the Trustee and the Noteholders or (ii) in the opinion of such counsel, no such action is necessary to maintain such security interest.

ARTICLE VI
THE TRUSTEE

Section 6.1 Acceptance of Trusts and Duties. Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; provided, that, to the extent those duties are qualified, limited or otherwise affected by the provisions of any other Deal Document, the Trustee shall be required to perform those duties only as so qualified, limited or otherwise affected. The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture) and as set forth herein. The Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture and the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture) and agrees to receive and disburse all moneys received by it in accordance with the terms hereof. The Trustee in its individual capacity shall not be answerable or accountable under any circumstances except for its own willful misconduct or negligence or breach of any of its representations or warranties set forth herein, and the Trustee shall not be liable for any action or inaction of the Issuer or any other parties to any of the Deal Documents. Any amounts received by or due to the Trustee under this Indenture, including the fees, out-of-pocket expenses and indemnities of the Trustee, shall be Expenses of the Issuer.

The Issuer does hereby constitute and appoint the Trustee the true and lawful attorney of the Issuer, irrevocably, granted for good and valuable consideration and coupled with an interest and with full power of substitution, and with full power (in the name of the Issuer or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all monies and claims for monies (in each case including insurance and requisition proceeds) due and to become due under or arising out of any Deal Document and all other property that now or hereafter constitutes part of the Indenture Estate, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings that the Trustee may deem to be necessary or advisable in the premises; provided, that the Trustee shall not exercise any such rights except upon the occurrence and during the continuance of an Event of Default hereunder in accordance with Section 4.3.

Section 6.2 Copies of Documents and Other Notices.

(a) The Trustee, upon written request, shall furnish to each requesting Noteholder or Beneficial Holder included on the Approved Holder List and the Servicer, promptly upon receipt thereof, duplicates or copies of all reports, Notices, requests, demands, certificates, financial statements and other instruments furnished to the Trustee under or in connection with this Indenture.

(b) The Trustee shall furnish to Noteholders and Beneficial Holders included on the Approved Holder List and the Servicer promptly after receipt thereof any reports or notices received from any of the Issuer, the Equityholders, the Seller or Counterparty.

Section 6.3 Representations and Warranties. The Trustee does not make and shall not be deemed to have made any representation or warranty as to the validity, legality or enforceability of this Indenture, the Notes or any other document or instrument or as to the correctness of any statement contained in any thereof, except that the Trustee in its individual capacity hereby represents and warrants as follows:

(a) The Trustee is a national banking association and is validly existing and in good standing under the laws of the United States, and is duly authorized and licensed under applicable law to conduct its business as presently conducted.

(b) The Trustee has all requisite right, power and authority to execute and deliver this Indenture and its related documents and to perform all of its duties as Trustee hereunder and thereunder.

(c) The execution and delivery by the Trustee of this Indenture and the other Deal Documents to which it is a party, and the performance by the Trustee of its duties hereunder and thereunder, have been duly authorized by all necessary corporate proceedings, and no further approvals or filings, including any governmental approvals, are required for the valid execution and delivery by the Trustee, or the performance by the Trustee, of this Indenture and such other Deal Documents to which it is a party.

(d) The execution, delivery and performance by the Trustee of this Indenture and the other Deal Documents to which it is a party (i) to the best of the Trustee's knowledge and without independent inquiry or investigation into the facts thereto, do not violate any provision of any Applicable Law and (ii) do not violate any provision of its corporate charter or by-laws.

(e) The execution, delivery and performance by the Trustee of this Indenture and the other Deal Documents to which it is a party, to the best of the Trustee's knowledge and without independent inquiry or investigation into the facts thereto, do not require the authorization, consent or approval of, the giving of notice to, the filing or registration with, or the taking of any action in respect of, any Governmental Authority.

(f) The Trustee has duly executed and delivered this Indenture and each other Deal Document to which it is a party, and each of this Indenture and each such other Deal Document constitutes the legal, valid and binding obligation of the Trustee in accordance with its terms, except as (i) such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting the enforcement of creditors' rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

(g) The Trustee meets the requirements of Section 6.9.

Section 6.4 Reliance; Agents; Advice of Counsel. The Trustee shall incur no liability to anyone acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Trustee may accept a copy of a resolution of the governing body of any party to any Deal Document (including the Issuer), certified in an accompanying Officer's Certificate as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically

described herein, the Trustee shall be entitled to receive and may for all purposes hereof conclusively rely on a certificate, signed by an officer of any duly authorized Person, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. To the extent not otherwise specifically provided herein, the Trustee shall assume, and shall be fully protected in assuming, that the Issuer is authorized by its constitutional documents to enter into this Indenture and to take all action permitted to be taken by it pursuant to the provisions hereof and shall not be required to inquire into the authorization of the Issuer with respect thereto. To the extent not otherwise specifically provided herein, the Trustee shall furnish to the Issuer or the Servicer upon written request such information and copies of such documents as the Trustee may have and as are necessary for the Issuer or any such Servicer to perform its duties under Article II and Article III or otherwise.

The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the Direction of the Noteholders in accordance with Section 4.12 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust, right or power conferred upon the Trustee, under any Transaction Document.

The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder or under any other Transaction Document either directly or by or through agents or attorneys or a custodian or nominee, and the Trustee shall not be responsible for any misconduct or negligence on the part of, or for the supervision of, any such agent, attorney, custodian or nominee appointed with due care by it hereunder.

The Trustee may consult with counsel as to any matter relating to this Indenture or any other Transaction Document and any Opinion of Counsel or any advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or any other Transaction Document, or to institute, conduct or defend any litigation hereunder or in relation hereto, at the request, order or Direction of any of the Noteholders, pursuant to the provisions of this Indenture or any other Transaction Document, unless such Noteholders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby.

The Trustee shall not be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any other Transaction Document, or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or indemnity satisfactory to it against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Indenture or any other Transaction Document shall in any event require the Trustee to perform, or be responsible or liable for the manner of performance of, any obligations of the Issuer or the Servicer under this Indenture or any of the other Transaction Documents.

The Trustee shall not be liable for any Losses or Taxes (except for Taxes relating to any compensation, fees or commissions of any entity acting in its capacity as Trustee hereunder) or in connection with the selection of Eligible Investments or for any investment losses resulting from Eligible Investments.

When the Trustee incurs expenses or renders services in connection with an Acceleration Default, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors' rights generally.

The Trustee shall not be charged with knowledge of an Event of Default unless a Responsible Officer of the Trustee obtains actual knowledge of such event or has received written notice of such event at its Corporate Trust Office from the Issuer, the Servicer or Noteholders of not less than 10% of the Outstanding Principal Balance of the Notes.

The Trustee shall have no duty to monitor the performance of the Issuer, the Servicer or any other party to the Deal Documents, nor shall it have any liability in connection with the malfeasance or nonfeasance by such parties.

Whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action to be taken hereunder or under any other Transaction Document, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by a certificate signed by a Responsible Officer of the Issuer and delivered to the Trustee, and such certificate, in the absence of gross negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture or any other Transaction Document upon the faith thereof.

Except as provided expressly hereunder, the Trustee shall have no obligation to invest and reinvest any cash held in the Accounts in the absence of timely and specific written investment direction by or on behalf of the Issuer. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Issuer to provide timely written investment direction.

When the Trustee incurs expenses after the occurrence of a Default specified in Section 4.1 with respect to the Issuer, if the surviving entity has failed to honor such obligation, the expenses are intended to constitute expenses of administration under any insolvency law or under the Bankruptcy Code.

Section 6.5 Not Acting in Individual Capacity. The Trustee acts hereunder solely as trustee unless otherwise expressly provided, and all Persons, other than the Noteholders to the extent expressly provided in this Indenture, having any claim against the Trustee by reason of the transactions contemplated hereby shall look, subject to the lien and priorities of payment as provided herein or in any other Transaction Document, only to the property of the Issuer for payment or satisfaction thereof.

Section 6.6 Compensation of Trustee. The Trustee agrees that it shall have no right against the Noteholders or, except as provided in Section 3.7(a), the property of the Issuer, for any fee as compensation for its services hereunder. The Issuer shall pay to the Trustee from time to time such compensation as is agreed between the two parties. The priority of such compensation shall be subject to Section 3.7(a).

Section 6.7 Notice of Defaults. As promptly as practicable after, and in any event within 30 days after, the occurrence of any Default hereunder, the Trustee shall transmit by mail to the Issuer, the Servicer and the Noteholders of the related class, in accordance with Section 313(c) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), notice of such Default hereunder actually known to a Responsible Officer of the Trustee, unless such Default shall have been cured or waived; provided, however, that, except in the case of a Default on the payment of the interest, principal or Premium, if any, on any Note, the Trustee shall be fully protected in withholding such notice if and so long as a trust committee of Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Noteholders of the related class.

Section 6.8 May Hold Notes. The Trustee, any Paying Agent, the Registrar or any of their Affiliates or any other agent in their respective individual or any other capacity may become the owner or pledgee of the Notes and, subject to Sections 310(b) and 311 of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), may otherwise deal with the Issuer with the same rights it would have if it were not the Trustee, Paying Agent, Registrar or such other agent.

Section 6.9 Corporate Trustee Required; Eligibility. There shall at all times be a Trustee that shall (a) be eligible to act as a trustee under Section 310(a) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), (b) meet the requirements of Rule 3a-7(a)(4)(i) under the Investment Company Act of 1940, as amended, and (c) meet the Eligibility Requirements. If such corporation publishes reports of conditions at least annually, pursuant to law or to the requirements of any federal, state, foreign, territorial or District of Columbia supervising or examining authority, then, for the purposes of this Section 6.9, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of conditions so published.

In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 6.9 to act as Trustee, the Trustee shall resign immediately as Trustee in the manner and with the effect specified in Section 7.1.

Section 6.10 Reports by the Trustee. Within 60 days after May 15 of each year commencing with the first full calendar year following the issuance of any class of Notes, the Trustee shall, if required by Section 313(a) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), transmit to the Noteholders of each class, as provided in Section 313(c) of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture), a brief report describing, among other things, any changes in eligibility and qualifications of the Trustee and any Subordinated Note Issuance.

Section 6.11 Calculation Agent. The Trustee shall act as the Calculation Agent hereunder. Subject to the approval of the Issuer and Noteholders of a majority of the Outstanding Principal Balance of the Notes, another Person may become the Calculation Agent on such terms as shall be approved by them. To the extent not otherwise specifically provided herein, the Trustee shall furnish to the Calculation Agent, and the Calculation Agent shall furnish to the Trustee, upon written request such information and copies of such documents as the Trustee or the Calculation Agent may have and as are necessary for the Calculation Agent and the Trustee to perform their respective duties under Article III or otherwise.

Section 6.12 Pledge and Security Agreement and Other Deal Documents. The Trustee shall enter into the Pledge and Security Agreement with the Equityholders on the Closing Date and shall hold the collateral pledged thereunder as part of the Collateral and the Indenture Estate for purposes of this Indenture. The provisions of this Article VI shall apply to the Trustee's exercise of rights and remedies under the Pledge and Security Agreement, mutatis mutandis. In addition, the Trustee shall enter into such other Deal Documents on the Closing Date to which it is party.

Section 6.13 Custody of the Collateral. The Trustee shall hold such of the Indenture Estate as consists of instruments, deposit accounts, negotiable documents, money, goods, letters of credit and advices of credit in the State of New York. The Trustee shall hold such of the Indenture Estate as constitutes investment property through a securities intermediary, which securities intermediary shall agree with the Trustee that (a) such investment property shall at all times be credited to a securities account of the Trustee, (b) such securities intermediary shall treat the Trustee as entitled to exercise the rights that comprise each financial asset credited to such securities account, (c) all property credited to such securities account shall be treated as a financial asset, (d) such securities intermediary shall comply with entitlement orders originated by the Trustee without the further consent of any other Person, (e) such securities intermediary will not agree with any Person other than the Trustee to comply with entitlement orders originated by such other Person, (f) such securities account and the property credited thereto shall not be subject to any lien, security interest or right of set-off in favor of such securities intermediary or anyone claiming through it (other than the Trustee) and (g) such agreement shall be governed by the laws of the State of New York. Except as permitted by this Section 6.13 or as otherwise permitted by any Transaction Document, the Trustee shall not hold any part of the Indenture Estate through an agent or a nominee.

Section 6.14 Preservation and Disclosure of Noteholder Lists. The Registrar shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Noteholders received by it, including the Approved Holder List. At any time when a default or an Event of Default has occurred and is continuing, in case either (a) three or more Noteholders that have executed and delivered to the Registrar a Confidentiality Agreement or (b) one or more Noteholders of at least 25% of the Outstanding Principal Balance of the Senior Class of Notes that have executed and delivered to the Registrar a Confidentiality Agreement (in each case, "Applicants") apply in writing to the Registrar and furnish to the Registrar reasonable proof that each such Applicant has owned a Note for a period of at least three months preceding the date of such application, and such application states that the Applicants desire to communicate with other Noteholders with respect to their rights under this Indenture or under the Notes and such application is accompanied by a copy of the form of proxy

or other communication that such Applicants propose to transmit, then the Registrar shall, within five Business Days after the receipt of such application, inform such Applicants as to the approximate number of Noteholders whose names and addresses appear in such information and as to the approximate cost of mailing to such Noteholders the form of proxy or other communication, if any, specified in such application. The Registrar shall, upon the written request of such Applicants, mail to each Noteholder whose name and address appears in such information a copy of the form of proxy or other communication that is specified in such request, with reasonable promptness after a tender to the Registrar of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing. Each and every Noteholder, by receiving and holding the same, agrees with the Issuer and the Registrar that neither the Registrar nor any agent of the Issuer or the Registrar shall be held accountable by reason of mailing any material pursuant to a request made under this Section 6.14.

Section 6.15 Audit Rights.

(a) At the Direction of Noteholders of at least 25% of the Outstanding Principal Balance of the Senior Class of Notes, the Senior Trustee shall instruct the Servicer to audit the records of Counterparty consistent with the rights of the Seller under the respective Counterparty Agreements and include a copy of any audit report delivered in connection with such audit with the first Distribution Report to be distributed by the Trustee to Noteholders and Beneficial Holders on the Approved Holder List following such time that all material information contained in such audit report has been made available to the public, and such audit report shall be treated confidentially pursuant to the terms of the Confidentiality Agreement.

(b) At the Direction of Noteholders of at least 25% of the Outstanding Principal Balance of the Senior Class of Notes, the Issuer shall, upon not less than ten Business Days' prior written notice to the Issuer, permit an independent public accounting firm of nationally recognized standing selected by such Noteholders to make such inspection and audit of the books and records of the Issuer as may reasonably be necessary to determine the correctness of any Distribution Report, including the calculations made by the Calculation Agent in respect of any Calculation Date, as set forth in Section 3.5, and the payments made pursuant to Section 3.7 with respect thereto. Such inspection and audit (x) may not be conducted more than once during any calendar year, (y) shall be conducted by such accounting firm during normal business hours at such place or places where such books and records are held and (z) may not be conducted more than once in respect of any given Calculation Date. Subject to this Section 6.15(b), the Issuer shall make available to such accounting firm such books and records of the Issuer reasonably pertinent to such inspection and audit and shall reasonably cooperate with such accounting firm in connection therewith. Any and all fees and expenses of such accounting firm incurred in connection with any such inspection and audit (the "Audit Expenses") shall constitute Expenses; provided, that any and all such Audit Expenses exceeding \$50,000 per annum shall be borne solely by the Noteholders in accordance with Section 3.7(d) if the report prepared by such accounting firm does not disclose that there was a shortfall of 5% or more in the amounts paid during such period(s) when compared to the amounts that should have been paid during such period(s) in accordance with this Indenture. Such accounting firm shall prepare a report disclosing its conclusions with respect to the accuracy or inaccuracy of the amounts inspected and audited and shall furnish such report to the Trustee for distribution to Noteholders and Beneficial Holders on the Approved Holder List. In the event of any inaccuracy reported by such accounting firm, the Issuer shall cause the amounts to be paid to the Collection Account for distribution on the immediately succeeding Payment Date pursuant to Section 3.7(a) to be adjusted in accordance with Section 3.7(d).

Section 6.16 Compliance with Applicable Anti-Terrorism and Anti-Money Laundering Regulations. In order to comply with Applicable Laws in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering, the Trustee is required to obtain, verify and record certain information relating to Persons that maintain a business relationship with the Trustee. Accordingly, the Issuer agrees to provide to the Trustee upon its request from time to time such identifying information and documentation as may be available for the Issuer in order to enable the Trustee to comply with such Applicable Laws.

Section 6.17 Jurisdiction of Trustee. Each of the Issuer and the Trustee agrees that the State of New York shall be the Trustee's jurisdiction for purposes of Sections 8-110, 9-304 and 9-305 of the UCC.

Section 6.18 Notice of Event of Default to the Equityholders. If an Event of Default of which the Trustee has been provided written notice or has actual knowledge shall have occurred and be continuing, the Trustee shall deliver written notice to each Equityholder, in accordance with the notice information provided in the Pledge and Security Agreement to which such Equityholder is party, of the occurrence and continuance of such Event of Default promptly and in any event within five Business Days of a Responsible Officer of the Trustee so becoming aware of such Event of Default; provided, that the Trustee shall not be deemed to have any fiduciary duty to any Equityholder by reason of this Section 6.18, and the Trustee shall not be liable to any Equityholder for any failure to comply with this Section 6.18.

ARTICLE VII
SUCCESSOR TRUSTEES, REGISTRARS, PAYING AGENTS AND CALCULATION
AGENTS

Section 7.1 Resignation and Removal of Trustee, Registrar, Paying Agent or Calculation Agent. Any of the Trustee, the Registrar, the Paying Agent and the Calculation Agent may resign as to all or any of the classes of Notes at any time without cause by giving at least 30 days' prior written notice to the Issuer, the Servicer and the Noteholders. Noteholders of a majority of the Outstanding Principal Balance of any class of Notes may at any time remove one or more of the Trustee, the Registrar, the Paying Agent and the Calculation Agent as to such class without cause, with the consent of the Issuer (such consent not to be unreasonably withheld) if no Event of Default shall have occurred and be continuing, by an instrument in writing delivered to the Issuer, the Servicer and the Trustee, Registrar, Paying Agent or Calculation Agent being removed. In addition, the Issuer may remove the Trustee, the Registrar, the Paying Agent or the Calculation Agent as to any class of Notes if (a) such Trustee, Registrar, Paying Agent or Calculation Agent fails to comply with Section 310 of the Trust Indenture Act (as if the Trust Indenture Act applied to this Indenture) after written request therefor by the Issuer or the Noteholders of the related class who have been bona fide Noteholders for at least six months, (b) such Trustee, Registrar, Paying Agent or Calculation Agent fails to comply with Section 7.2(d) or any other provision hereof, (c) such Trustee, Registrar, Paying Agent or

Calculation Agent is adjudged a bankrupt or an insolvent, (d) a receiver or public officer takes charge of such Trustee, Registrar, Paying Agent or Calculation Agent or its property or (e) such Trustee, Registrar, Paying Agent or Calculation Agent becomes incapable of acting. References to the Trustee, Registrar, Paying Agent and Calculation Agent in this Indenture include any successor Trustee, Registrar, Paying Agent or Calculation Agent, as the case may be, as to all or any of the classes of Notes appointed in accordance with this Article VII. Any resignation or removal of the Trustee, Registrar, Paying Agent or Calculation Agent pursuant to this Section 7.1 shall not be effective until a successor Trustee, Registrar, Paying Agent or Calculation Agent, as the case may be, shall have been duly appointed and vested as Trustee, Registrar, Paying Agent or Calculation Agent, as the case may be, pursuant to Section 7.2.

Section 7.2 Appointment of Successor.

(a) In the case of the resignation or removal of the Trustee, Registrar, Paying Agent or Calculation Agent as to any class of Notes under Section 7.1, the Issuer shall promptly appoint a successor Trustee, Registrar, Paying Agent or Calculation Agent as to such class. Every successor Trustee, Registrar, Paying Agent or Calculation Agent (i) shall be a national or state bank or trust company that is authorized by law to perform all the duties imposed upon it by this Indenture and to exercise corporate trust powers and (ii) shall have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least \$50,000,000 as set forth in its (or its related bank holding company's) most recent published annual report of condition. If a successor Trustee, Registrar, Paying Agent or Calculation Agent as to any class of Notes shall not have been appointed and accepted its appointment hereunder within 60 days after the Trustee, Registrar, Paying Agent or Calculation Agent, as the case may be, gives notice of resignation as to such class, the retiring Trustee, Registrar, Paying Agent or Calculation Agent, as the case may be, the Issuer, the Servicer or a majority of the Outstanding Principal Balance of such class of Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee, Registrar, Paying Agent or Calculation Agent as to such class.

(b) Any successor Trustee, Registrar, Paying Agent or Calculation Agent as to any class of Notes, however appointed, shall execute and deliver to the Issuer, the Servicer and the predecessor Trustee, Registrar, Paying Agent or Calculation Agent as to such class an instrument accepting such appointment, and thereupon such successor Trustee, Registrar, Paying Agent or Calculation Agent, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of such predecessor Trustee, Registrar, Paying Agent or Calculation Agent hereunder in the trusts hereunder applicable to it with like effect as if originally named the Trustee, Registrar, Paying Agent or Calculation Agent as to such class herein; provided, that, upon the written request of such successor Trustee, Registrar, Paying Agent or Calculation Agent, such predecessor Trustee, Registrar, Paying Agent or Calculation Agent shall, upon payment of all amounts due and owing to it, execute and deliver an instrument transferring to such successor Trustee, Registrar, Paying Agent or Calculation Agent, upon the trusts herein expressed applicable to it, all the estates, properties, rights, powers and trusts of such predecessor Trustee, Registrar, Paying Agent or Calculation Agent, and such predecessor Trustee, Registrar, Paying Agent or Calculation Agent shall duly assign, transfer, deliver and pay over to such successor Trustee, Registrar, Paying Agent or Calculation Agent all moneys or other property then held by such predecessor Trustee, Registrar, Paying Agent or Calculation Agent hereunder solely for the benefit of such class of Notes.

(c) If a successor Trustee, Registrar, Paying Agent or Calculation Agent is appointed with respect to one or more (but not all) classes of the Notes, the Issuer, the predecessor Trustee, Registrar, Paying Agent or Calculation Agent and each successor Trustee, Registrar, Paying Agent or Calculation Agent with respect to each class of Notes shall execute and deliver an indenture supplemental hereto that shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee, Registrar, Paying Agent or Calculation Agent with respect to the classes of Notes as to which the predecessor Trustee, Registrar, Paying Agent or Calculation Agent is not retiring shall continue to be vested in the predecessor Trustee, Registrar, Paying Agent or Calculation Agent, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the Notes hereunder by more than one Trustee, Registrar, Paying Agent or Calculation Agent.

(d) Each Trustee, Registrar, Paying Agent or Calculation Agent shall be an Eligible Institution and shall meet the Eligibility Requirements and the requirements of Section 6.9, if there be such an institution willing, able and legally qualified to perform the duties of a Trustee, Registrar, Paying Agent or Calculation Agent hereunder.

(e) Any Person into which the Trustee, Registrar, Paying Agent or Calculation Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee, Registrar, Paying Agent or Calculation Agent shall be a party, or any Person to which all or substantially all of the corporate trust business of the Trustee, Registrar, Paying Agent or Calculation Agent (including the administration of the trust created by this Indenture) may be transferred, shall, subject to the terms of Section 7.2(c), be the Trustee, Registrar, Paying Agent or Calculation Agent, as the case may be, under this Indenture without the execution or filing of any paper with any party hereto or any further act on the part of any party hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

ARTICLE VIII INDEMNITY

Section 8.1 Indemnity. The Issuer shall indemnify and defend the Trustee (and its officers, directors, managers, employees and agents) for, and hold it harmless from and against, and reimburse the Trustee for, any loss, liability or expense incurred by it without bad faith, gross negligence or willful misconduct on its part in connection with the acceptance or administration of this Indenture and its performance of its duties under this Indenture and the Notes or any other Transaction Document, including the costs and expenses of defending itself against any claim or liability and of complying with any process served upon it or any of its officers in connection with the exercise or performance of any of its powers or duties, and hold it harmless against any loss, liability or reasonable expense incurred without bad faith, gross negligence or willful misconduct on its part, arising out of or in connection with actions taken or omitted to be taken in reliance on any Officer's Certificate furnished hereunder, or the failure to

furnish any such Officer's Certificate required to be furnished hereunder. The Trustee shall notify the Issuer promptly of any claim asserted against the Trustee for which it may seek indemnity; provided, however, that failure to provide such notice shall not invalidate any right to indemnity hereunder. The Issuer shall defend any such claim and the Trustee shall cooperate in the defense thereof. The Trustee may have separate counsel and the Issuer shall pay the reasonable fees and expenses of one separate outside counsel for the Trustee. The Issuer need not pay for any settlements made without its consent; provided, that such consent shall not be unreasonably withheld or delayed. The Issuer need not reimburse any expense or provide any indemnity against any loss, liability or expense incurred by the Trustee through bad faith, gross negligence or willful misconduct.

Section 8.2 Noteholders' Indemnity. The Trustee shall be entitled, subject to such Trustee's duty during a Default to act with the standard of care required under this Indenture, to be indemnified by the Noteholders of any class of Notes before proceeding to exercise any right or power under this Indenture or any other Transaction Document at the request or Direction of such Noteholders.

Section 8.3 Survival. The provisions of Section 8.1 and Section 8.2 shall survive the termination of this Indenture or the earlier resignation or removal of the Trustee.

ARTICLE IX MODIFICATION

Section 9.1 Modification with Consent of Noteholders. Subject to Section 3.7(b), with the consent of Noteholders of a majority of the Outstanding Principal Balance of the Notes (voting or acting as a single class), the Trustee may agree to amend, modify or waive any provision of (or consent to the amendment, modification or waiver of) this Indenture, the Notes, the Pledge and Security Agreement or the Servicing Agreement; provided, however, that if there shall be Notes of more than one class Outstanding and if a proposed amendment, modification, consent or waiver shall directly affect the rights of Noteholders of one or more, but less than all, of such classes, then the consent only of the Noteholders of a majority of the Outstanding Principal Balance of each affected class of Notes, each voting or acting as a single class, shall be required; provided, further, however, that no such amendment, modification, consent or waiver may, without the consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby:

- (a) reduce the percentage of Noteholders of any such class of Notes required to take or approve any action hereunder or thereunder;
- (b) reduce the amount or change the time of payment of any amount owing or payable with respect to any such class of Notes (including pursuant to any Redemption) or change the rate of interest or change the manner of calculation of interest payable with respect to any such class of Notes;
- (c) alter or modify in any material adverse respect the provisions of this Indenture with respect to the Collateral for the Notes, the provisions of the Pledge and Security Agreement with respect to the related Issuer Pledged Collateral for the Notes or the manner of

payment or the order of priority in which payments or distributions hereunder will be made as between the Noteholders of such Notes and the Issuer or as among the Noteholders (including pursuant to Section 3.7) (except, with respect to Subordinated Notes or as among classes of Subordinated Notes, alterations or modifications to Section 3.7(a)(vi), at the time such Subordinated Notes are established, provided such alterations or modifications do not change the order of priority as between the Class A Notes and the Subordinated Notes); or

(d) consent to any assignment of the Issuer's rights to a party other than the Trustee for the benefit of the Noteholders;

provided, that the Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, by written notice to the Trustee, may waive any Default or Event of Default to the extent provided in Section 4.5.

It shall not be necessary for the consent of the Noteholders under this Section 9.1 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof. Any such modification approved by the required Noteholders of any class of Notes will be binding on the Noteholders of the relevant class of Notes and each party to this Indenture.

After an amendment under this Section 9.1 becomes effective, the Issuer or, at the direction of the Issuer, the Trustee shall mail to the Noteholders a notice briefly describing such amendment. Any failure of the Issuer or the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment.

After an amendment under this Section 9.1 becomes effective, it shall bind every Noteholder, whether or not notation thereof is made on any Note held by such Noteholder.

Section 9.2 Modification Without Consent of Noteholders. Subject to Section 3.7(b), the Trustee may, without the consent of any Noteholder, agree to amend, modify or waive any provision of (or consent to the amendment, modification or waiver of) this Indenture, the Notes, the Pledge and Security Agreement or the Servicing Agreement to:

(a) establish the terms of any Refinancing Notes or Subordinated Notes pursuant to Section 2.15 and Section 2.16, respectively (including, with respect to Subordinated Notes or as among classes of Subordinated Notes, modifications to Section 3.7(a)(vi));

(b) evidence the succession of a successor to the Trustee, Registrar or Calculation Agent, the removal of the Trustee, Registrar or Calculation Agent or the appointment of any separate or additional trustee or trustees or co-trustees and to define the rights, powers, duties and obligations conferred upon any such separate trustee or trustees or co-trustees;

(c) correct, confirm or amplify the description of any property at any time subject to the lien of this Indenture or to convey, transfer, assign, mortgage or pledge any property to or with the Trustee;

(d) cure any ambiguity in or correct or supplement any defective or inconsistent provision of this Indenture, the Notes, the Pledge and Security Agreement or the Servicing Agreement in any manner that will not adversely affect the interests of the Noteholders in any material respect as confirmed in an Officer's Certificate of the Issuer;

(e) grant or confer upon the Trustee for the benefit of the Noteholders any additional rights, remedies, powers, authority or security that may be lawfully granted or conferred and that are not contrary to this Indenture;

(f) add to the covenants or agreements to be observed by the Issuer, which are not contrary to this Indenture, or to add Events of Default for the benefit of the Noteholders;

(g) comply with the requirements of the SEC or any other regulatory body or any Applicable Law; or

(h) effect any indenture supplemental hereto or any other amendment, modification, supplement, waiver or consent with respect to this Indenture, the Notes, the Pledge and Security Agreement or the Servicing Agreement; provided, that such indenture supplemental hereto, amendment, modification, supplement, waiver or consent will not adversely affect the interests of the Noteholders in any material respect as confirmed in an Officer's Certificate of the Issuer.

After an amendment under this Section 9.2 becomes effective, the Issuer or, at the direction of the Issuer, the Trustee shall mail to the Noteholders a notice briefly describing such amendment. Any failure of the Issuer or the Trustee to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment.

After an amendment under this Section 9.2 becomes effective, it shall bind every Noteholder, whether or not notation thereof is made on any Note held by such Noteholder.

Section 9.3 Subordination; Priority of Payments. The subordination provisions contained in Article X may not be amended or modified without the consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby. In no event shall the provisions set forth in Section 3.7 relating to the priority of payment of Expenses be amended or modified.

Section 9.4 Execution of Amendments by Trustee. In executing, or accepting the additional trusts created by, any amendment or modification to this Indenture permitted by this Article IX or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amendment is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such amendment that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

ARTICLE X
SUBORDINATION

Section 10.1 Subordination of the Notes.

(a) Each of the Issuer and the Trustee (on behalf of the Noteholders) covenants and agrees, and each Noteholder, by its acceptance of a Note, covenants and agrees, that the Notes of each class will be issued subject to the provisions of this Article X. Each Noteholder, by its acceptance of a Note, further agrees that all amounts payable on any Note will, to the extent provided in Section 3.7 and in the manner set forth in this Article X, be subordinated in right of payment to the prior payment in full of all Taxes owed by the Issuer (if any), all Expenses payable to the Service Providers and all Tax Distributions payable to the Equityholders pursuant to this Indenture and the other Transaction Documents. Each Noteholder of a Subordinated Note, by its acceptance of a Subordinated Note, further agrees that all amounts payable on any Subordinated Note will, to the extent provided in Section 3.7 and in the manner set forth in this Article X, be subordinated in right of payment to the payment in full of the Class A Notes. Any claim to payment so stated to be subordinated is referred to as a “Subordinated Claim”; each claim to payment to which another claim to payment is a Subordinated Claim is referred to as a “Senior Claim” with respect to such Subordinated Claim.

(b) If, prior to the payment in full of all Senior Claims then due and payable, the Trustee or any Noteholder of a Subordinated Claim shall have received any payment or distribution in respect of such Subordinated Claim in excess of the amount to which such Noteholder was then entitled under Section 3.7, then such payment or distribution shall be received and held in trust by such Person and paid over or delivered to the Trustee for application as provided in Section 3.7.

(c) If any Service Provider, any Equityholder, the Trustee or any Noteholder of any Senior Claim receives any payment in respect of any Senior Claim that is subsequently invalidated, declared preferential, set aside and/or required to be repaid to a trustee, receiver or other party, then, to the extent such payment is so invalidated, declared preferential, set aside and/or required to be repaid, such Senior Claim shall be revived and continue in full force and effect and shall be entitled to the benefits of this Article X, all as if such payment had not been received.

(d) The Trustee (on its own behalf and on behalf of the Noteholders) and the Issuer each confirm that the payment priorities specified in Section 3.7 shall apply in all circumstances.

(e) Each Noteholder, by its acceptance of a Note, authorizes and expressly directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article X, and appoints the Trustee its attorney-in-fact for such purposes, including, in the event of any dissolution, winding-up, liquidation or reorganization of the Issuer (whether in bankruptcy, insolvency, receivership, reorganization or similar proceedings or upon an assignment for the benefit of creditors or otherwise), any actions tending towards liquidation of the property and assets of the Issuer or the filing of a claim for the unpaid balance of its Notes in the form required in those proceedings.

(f) If payment on the Notes is accelerated as a result of an Event of Default, the Issuer shall promptly notify the holders of the Senior Claims of such acceleration.

(g) After all Senior Claims are paid in full and until the Subordinated Claims are paid in full, and to the extent that such Senior Claims shall have been paid with funds that would, but for the subordination pursuant to this Article X, have been paid to and retained by such holders of Subordinated Claims, the holders of Subordinated Claims shall be subrogated to the rights of holders of Senior Claims to receive payments applicable to Senior Claims. A payment made under this Article X to holders of Senior Claims that otherwise would have been made to the holders of Subordinated Claims is not, as between the Issuer and the holders of Subordinated Claims, a payment by the Issuer.

(h) No right of any holder of any Senior Claim to enforce the subordination of any Subordinated Claim shall be impaired by an act or failure to act by the Issuer or the Trustee or by any failure by either the Issuer or the Trustee to comply with this Indenture.

(i) Each Noteholder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Claim, whether such Senior Claim was created or acquired before or after the issuance of such Noteholder's claim, to acquire and continue to hold such Senior Claim, and such holder of any Senior Claim shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold such Senior Claim. Each holder of a Subordinated Claim agrees to comply with the provisions of Article IV.

ARTICLE XI DISCHARGE OF INDENTURE

Section 11.1 Discharge of Indenture.

(a) When (i) all outstanding Secured Obligations have been satisfied and the Issuer delivers to the Trustee all Outstanding Notes (other than Notes replaced pursuant to Section 2.8) for cancellation or (ii) all Outstanding Notes have become due and payable, whether at maturity or as a result of the mailing of a notice of an Optional Redemption pursuant to Section 3.9(b) or any other Redemption pursuant to Section 3.9(c), in each case that is subject to Section 3.10(c), and the Issuer irrevocably deposits in the Redemption Account funds sufficient to pay all remaining Expenses accrued and payable through such date and to pay all principal of and interest and Premium (if any) on Outstanding Notes at maturity or upon redemption all Outstanding Notes, including interest and any Premium thereon to maturity or the Redemption Date (other than Notes replaced pursuant to Section 2.8), and if in either case the Issuer pays all other sums payable hereunder by the Issuer, then this Indenture shall, subject to Section 11.1(b), cease to be of further effect and the Security Interest granted to the Trustee hereunder in the Collateral and the Indenture Estate shall terminate. The Trustee shall acknowledge satisfaction and discharge of this Indenture, file all UCC termination statements and similar documents prepared by the Issuer and take other actions in order to terminate the Security Interest, on demand of the Issuer accompanied by an Officer's Certificate and an Opinion of Counsel, at the cost and expense of the Issuer, to the effect that any conditions precedent to a discharge of this Indenture have been met.

(b) Notwithstanding Section 11.1(a), the Issuer's obligations in Section 3.7(b) and Section 8.1 and the Trustee's obligations in Section 12.13 and Section 12.14 shall survive the satisfaction and discharge of this Indenture.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Right of Trustee to Perform. If the Issuer for any reason fails to observe or punctually to perform any of its obligations to the Trustee, whether under this Indenture, under any of the other Transaction Documents or otherwise, the Trustee shall have the power (but shall have no obligation), on behalf of or in the name of the Issuer or otherwise, to perform such obligations or cause performance of such obligations and to take any steps that the Trustee may, in its absolute discretion, consider appropriate with a view to remedying, or mitigating the consequences of, such failure by the Issuer, in which case the reasonable expenses of the Trustee, including the fees and expenses of its counsel, incurred in connection therewith shall be payable by the Issuer under Section 8.1; provided, that no exercise or failure to exercise this power by the Trustee shall in any way prejudice the Trustee's other rights under this Indenture or any of the other Transaction Documents.

Section 12.2 Waiver. Any waiver by any party of any provision of this Indenture or any right, remedy or option hereunder shall only prevent and estop such party from thereafter enforcing such provision, right, remedy or option if such waiver is given in writing and only as to the specific instance and for the specific purpose for which such waiver was given. The failure or refusal of any party hereto to insist in any one or more instances, or in a course of dealing, upon the strict performance of any of the terms or provisions of this Indenture by any party hereto or the partial exercise of any right, remedy or option hereunder shall not be construed as a waiver or relinquishment of any such term or provision, but the same shall continue in full force and effect. No failure on the part of the Trustee to exercise, and no delay on its part in exercising, any right or remedy under this Indenture will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Indenture are cumulative and not exclusive of any rights or remedies provided by law.

Section 12.3 Severability. In the event that any provision of this Indenture or the application thereof to any party hereto or to any circumstance or in any jurisdiction governing this Indenture shall, to any extent, be invalid or unenforceable under any applicable statute, regulation or rule of law, then such provision shall be deemed inoperative to the extent that it is invalid or unenforceable, and the remainder of this Indenture, and the application of any such invalid or unenforceable provision to the parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall the same affect the validity or enforceability of this Indenture. The parties hereto further agree that the holding by any court of competent jurisdiction that any remedy pursued by the Trustee hereunder is unavailable or unenforceable shall not affect in any way the ability of the Trustee to pursue any other remedy available to it.

Section 12.4 Restrictions on Exercise of Certain Rights. The Trustee and, during the continuance of a payment Default with respect to the Senior Class of Notes, the Senior Trustee, except as otherwise provided in Section 4.4, Section 4.9 and Section 4.11, may sue for recovery or take any other steps for the purpose of recovering any of the obligations hereunder or any other debts or liabilities whatsoever owing to it by the Issuer. Each of the Noteholders shall at all times be deemed to have agreed by virtue of the acceptance of the Notes that only the Trustee and, during the continuance of a payment Default with respect to the Senior Class of Notes, the Senior Trustee, except as provided in Section 4.4, Section 4.9 and Section 4.11, may take any steps for the purpose of procuring the appointment of an administrative receiver, examiner, receiver or similar officer or the making of an administration order or for instituting any bankruptcy, reorganization, arrangement, insolvency, winding-up, liquidation, composition, examination or any like proceedings under Applicable Law.

Section 12.5 Notices. All Notices shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, (d) on the date transmitted by legible telecopier transmission with a confirmation of receipt or (e) in the case of reports under Article III and any other report that is of a routine nature, on the date sent by first class mail or overnight courier or transmitted by legible telecopier transmission, in all cases, with a copy emailed to the recipient at the applicable address, addressed to the recipient as follows:

if to the Issuer, to:

QHP Royalty Sub LLC
c/o PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer
Telephone: 775-832-8500
Facsimile: 775-832-8501
Email: cris.larson@pdl.com

With a copy to:

Attention: General Counsel
Email: chris.stone@pdl.com

if to the Trustee, the Registrar, the Paying Agent or the Calculation Agent, to:

U.S. Bank National Association
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (QHP Royalty Sub LLC)
Telephone: 617-603-6553
Facsimile: 617-603-6683

A copy of each notice given hereunder to any party hereto shall also be given to each of the other parties hereto. Each party hereto may, by notice given in accordance herewith to each of the other parties hereto, designate any further or different address to which subsequent Notices shall be sent.

Section 12.6 Assignments. This Indenture shall be a continuing obligation of the Issuer and shall (a) be binding upon the Issuer and its successors and assigns and (b) inure to the benefit of and be enforceable by the Trustee and by its successors, transferees and assigns and, as and to the extent provided in Section 3.7(b), the Equityholders. The Issuer may not assign any of its obligations under this Indenture or delegate any of its duties hereunder.

Section 12.7 Application to Court. The Trustee may at any time after the service of an Acceleration Notice apply to any court of competent jurisdiction for an order that the terms of this Indenture be carried into execution under the direction of such court and for the appointment of a Receiver of the Collateral or any part thereof and for any other order in relation to the administration of this Indenture as the Trustee shall deem fit, and it may assent to or approve any application to any court of competent jurisdiction made at the instigation of any of the Noteholders and shall be indemnified by the Issuer against all costs, charges and expenses incurred by it in relation to any such application or proceedings.

Section 12.8 GOVERNING LAW. THIS INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Section 12.9 Jurisdiction.

(a) Each of the parties hereto agrees that the U.S. federal and State of New York courts located in the Borough of Manhattan, The City of New York shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Indenture and, for such purposes, submits to the jurisdiction of such courts. Each of the parties hereto waives any objection that it might now or hereafter have to the U.S. federal or State of New York courts located in the Borough of Manhattan, The City of New York being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Indenture and agrees not to claim that any such court is not a convenient or appropriate forum. Each of the parties hereto has irrevocably designated, appointed and empowered the respective Persons named in Exhibit C as its designee, appointee and agent to receive, accept and acknowledge for and on its behalf, and its properties, assets and revenues, service of any and all legal process, summons, notices and documents that may be served in any suit, action or proceeding brought against such party in any United States or state court arising out of or relating to this Indenture or the Notes. If for any reason any such designee, appointee and agent hereunder shall cease to be available to act as such, such party agrees to designate a new designee, appointee and agent in the Borough of Manhattan, The City of New York on the terms and for the purposes of this Section 12.9

satisfactory to such other party. Each party further hereby irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents in any suit, action or proceeding against such party by serving a copy thereof upon the relevant agent for service of process referred to in this Section 12.9 (whether or not the appointment of such agent shall for any reason prove to be ineffective or such agent shall accept or acknowledge such service) or by mailing copies thereof by registered or certified mail, postage prepaid, to such party at its address specified in or designated pursuant to this Indenture. Each party agrees that the failure of any such designee, appointee and agent to give any notice of such service to it shall not impair or affect in any way the validity of such service or any judgment rendered in any action or proceeding based thereon. Nothing herein shall in any way be deemed to limit the ability of the Issuer or the Trustee and the Noteholders, as the case may be, to serve any such legal process, summons, notices and documents in any other manner permitted by Applicable Law or to obtain jurisdiction over such party or bring suits, actions or proceedings against such party in such other jurisdictions, and in such manner, as may be permitted by Applicable Law.

(b) The submission to the jurisdiction of the courts referred to in Section 12.9(a) shall not (and shall not be construed so as to) limit the right of the Trustee to take proceedings against the Issuer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

(c) Each of the parties hereto hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Indenture to the giving of any relief or the issue of any process in connection with such action or proceeding, including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment that may be made or given in such action or proceeding.

(d) If, for the purpose of obtaining a judgment or order in any court, it is necessary to convert a sum due hereunder to any Noteholder from U.S. dollars into another currency, the Issuer has agreed, and each Noteholder by holding a Note will be deemed to have agreed, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, such Noteholder could purchase U.S. dollars with such other currency in the Borough of Manhattan, The City of New York on the Business Day preceding the day on which final judgment is given.

(e) The obligation of the Issuer in respect of any sum payable by it to a Noteholder shall, notwithstanding any judgment or order in a currency other than U.S. dollars (the "Judgment Currency"), be discharged only to the extent that, on the Business Day following receipt by such Noteholder of such security of any sum adjudged to be so due in the Judgment Currency, such Noteholder may in accordance with normal banking procedures purchase U.S. dollars with the Judgment Currency. If the amount of U.S. dollars so purchased is less than the sum originally due to such Noteholder in the Judgment Currency (determined in the manner set forth in Section 12.9(d)), the Issuer agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Noteholder against such loss, and, if the amount of the U.S. dollars so purchased exceeds the sum originally due to such Noteholder, such Noteholder agrees to remit to the Issuer such excess, provided that such Noteholder shall have no obligation to remit any such excess as long as the Issuer shall have failed to pay such Noteholder any obligations due

and payable under the Notes of such Noteholder, in which case such excess may be applied to such obligations of the Issuer under such Notes in accordance with the terms thereof. The foregoing indemnity shall constitute a separate and independent obligation of the Issuer and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid.

(f) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE OR ANY MATTER ARISING HEREUNDER.

Section 12.10 Counterparts. This Indenture may be executed in one or more counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

Section 12.11 Table of Contents and Headings. The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

Section 12.12 Trust Indenture Act. This Indenture shall not be qualified under the Trust Indenture Act and shall not be subject to the provisions of the Trust Indenture Act, although it shall incorporate such provisions for ease of reference.

Section 12.13 Confidential Information. The Trustee, in its individual capacity and as Trustee, agrees and acknowledges that all information (including Confidential Information) provided to the Trustee by an Equityholder, the Seller or the Issuer may be considered to be proprietary and confidential information of Counterparty. The Trustee agrees to take all reasonable precautions necessary to keep such information confidential, which precautions shall be no less stringent than those that the Trustee employs to protect its own confidential information. The Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Trustee's rights and the performance of its obligations under this Indenture, any such information without the prior written consent of Counterparty. In addition, the Trustee agrees to be bound by the provisions of Section 4.2 of the Purchase and Sale Agreement to the extent it receives confidential information of Counterparty pursuant to Section 3.1 of the Servicing Agreement or Section 5.3. The Trustee shall limit access to such information received hereunder to (a) its directors, officers, managers and employees and (b) its legal advisors, to each of whom disclosure of such information is necessary for the purposes described above; provided, however, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 12.13.

The Trustee agrees that Counterparty does not have any responsibility whatsoever for any reliance on such information by the Trustee or by any Person to whom such information is disclosed in connection with this Indenture, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, the Trustee agrees that Counterparty makes no representation or warranty whatsoever to it with respect to such information or its suitability for such purposes. The Trustee further agrees that it shall not acquire any rights

against Counterparty or any employee, officer, director, manager, representative or agent of Counterparty (together with Counterparty, "Confidential Parties") as a result of the disclosure of such information to the Trustee or to any Noteholder or Beneficial Holder and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

In the event the Trustee is required to disclose any such information received hereunder in order to comply with any laws, regulations or court orders, it may disclose such information only to the extent necessary for such compliance; provided, however, that it shall give Counterparty and the Issuer reasonable advance written notice of any such court proceeding in which such disclosure may be required pursuant to a court order so as to afford Counterparty a full and fair opportunity to oppose the issuance of such order and to appeal therefrom and shall cooperate reasonably with Counterparty in opposing such order and in securing confidential treatment of any such information to be disclosed and/or obtaining a protective order narrowing the scope of such disclosure.

The Trustee agrees that Counterparty is an express third-party beneficiary of the provisions of this Section 12.13.

Each of the Calculation Agent, the Paying Agent and the Registrar agrees to be bound by this Section 12.13 to the same extent as the Trustee.

Section 12.14 Limited Recourse. Each of the parties hereto accepts that the enforceability against the Issuer of the obligations of the Issuer hereunder and under the Notes shall be limited to the assets of the Issuer, whether tangible or intangible, real or personal (including the Collateral) and the proceeds thereof. Once all such assets have been realized upon and such assets (and proceeds thereof) have been applied in accordance with Article III, any outstanding obligations of the Issuer shall be extinguished. Each of the parties hereto further agrees that it shall take no action against any employee, director, officer or administrator of the Issuer, an Equityholder or the Trustee in relation to this Indenture; provided, that nothing herein shall limit the Issuer (or its permitted successors or assigns, including any party hereto that becomes such a successor or assign) from pursuing claims, if any, against any such Person. The provisions of this Section 12.14 shall survive termination of this Indenture; provided, further, that the foregoing shall not in any way limit, impair or otherwise affect any rights of the Trustee or the Noteholders to proceed against any such Person (a) for intentional and willful fraud or intentional and willful misrepresentations on the part of or by such Person or (b) for the receipt of any distributions or payments to which the Issuer or any successor in interest is entitled, other than distributions expressly permitted pursuant to this Indenture and the other Deal Documents.

Section 12.15 Tax Matters.

(a) The Issuer has entered into this Indenture, and the Notes will be issued, with the intention that, for U.S. federal, state and local income, single business and franchise Tax purposes, the Notes will qualify as indebtedness. The Issuer, by entering into this Indenture, and each Noteholder and Beneficial Holder, agree to treat the Notes as debt for U.S. federal, state and local income, single business and franchise Tax purposes.

(b) The Issuer shall not be obligated to pay any additional amounts to the Noteholders or Beneficial Holders as a result of any withholding or deduction for, or on account of, any present or future Taxes imposed on payments in respect of the Notes. If a Global Note is issued, in accordance with the procedures of DTC, the Issuer shall (or shall direct the Trustee in writing to) request the Notes to be coded as eligible for the “portfolio interest exemption”. Unless otherwise required by Applicable Law, if Definitive Notes are issued, so long as a Person shall have delivered to the Issuer a properly completed IRS Form W-9, IRS Form W-8BEN, IRS Form W-8ECI or other applicable IRS form or, in the case of a Person claiming the exemption from U.S. federal withholding tax under Section 871(h) of the Code or Section 881(c) of the Code with respect to payments of “portfolio interest”, the appropriate properly completed IRS form together with a certificate substantially in the form of Exhibit K, neither the Issuer nor the Trustee shall withhold Taxes on payments of interest made to any such Person. Any such IRS Form W-8BEN shall specify whether the Noteholder or Beneficial Holder to whom the form relates is entitled to the benefits of any applicable income tax treaty.

(c) Nothing in this Indenture shall impose an obligation on the part of the Trustee to determine the amount of any Tax or withholding obligation on the part of the Issuer or in respect of the Notes.

Section 12.16 Waiver. The Issuer waives any right to contest or otherwise assert that the Purchase and Sale Agreement is other than a true, absolute and irrevocable sale and assignment by the Seller to the Issuer of the Purchased Assets under Applicable Law.

Section 12.17 Distribution Reports. Each party hereto acknowledges and agrees that the Trustee may effect delivery of any Distribution Report (including the materials accompanying such Distribution Report) by making such Distribution Report and accompanying materials available by posting such Distribution Report and accompanying materials on IntraLinks or a substantially similar electronic transmission system; provided, however, that, upon written notice to the Trustee, any Noteholder may decline to receive such Distribution Report and accompanying materials via IntraLinks or a substantially similar electronic transmission system, in which case such Distribution Report and accompanying materials shall be provided as otherwise set forth in the Deal Documents. Subject to the conditions set forth in the proviso in the immediately preceding sentence, nothing in this Section 12.17 shall prejudice the right of the Trustee to make such Distribution Report and accompanying materials available in any other manner specified in the Deal Documents.

[SIGNATURE PAGE FOLLOWS]

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

QHP ROYALTY SUB LLC,
as Issuer

By: PDL BioPharma, Inc., its Member

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President and Chief Executive Officer

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: /s/ Alison D.B. Nadeau

Name: Alison D.B. Nadeau

Title: Vice President

SCHEDULE A

BASELINE NET SALES THRESHOLDS OF THE LICENSED PRODUCTS

<u>Payment Date</u>	<u>Baseline Net Sales Threshold</u>
March 15, 2010	\$ 3,702,014,896
June 15, 2010	\$ 3,795,830,837
September 15, 2010	\$ 3,881,947,905
December 15, 2010	\$ 3,989,640,771
March 15, 2011	\$ 4,052,821,229
June 15, 2011	\$ 4,102,737,012
September 15, 2011	\$ 4,141,719,489
December 15, 2011	\$ 4,209,178,845
March 15, 2012	\$ 4,232,464,200
June 15, 2012	\$ 4,253,305,389
September 15, 2012	\$ 4,276,396,516
December 15, 2012	\$ 4,335,944,820
March 15, 2013	\$ 4,362,155,069
June 15, 2013	\$ 4,392,120,188
September 15, 2013	\$ 4,410,007,097
December 15, 2013	\$ 4,200,667,117
March 15, 2014	\$ 4,223,358,276
June 15, 2014	\$ 4,245,957,382
September 15, 2014	\$ 4,270,646,841
December 15, 2014	\$ 4,025,993,579
March 15, 2015	\$ 3,321,425,879

SCHEDULE B

**ASSUMED AMORTIZATION SCHEDULE FOR OPTIONAL REDEMPTION
IN RESPECT OF THE ORIGINAL CLASS A NOTES**

<u>Payment Date</u>	<u>Principal Payment</u>	<u>Remaining Balance of the Notes</u>
		\$ 300,000,000.00
March 15, 2010	\$ 9,767,256.61	\$ 290,232,743.39
June 15, 2010	\$ 34,575,739.01	\$ 255,657,004.38
September 15, 2010	\$ 17,751,554.49	\$ 237,905,449.89
December 15, 2010	\$ 15,757,073.43	\$ 222,148,376.46
March 15, 2011	\$ 16,301,371.20	\$ 205,847,005.26
June 15, 2011	\$ 39,733,068.32	\$ 166,113,936.94
September 15, 2011	\$ 23,189,005.27	\$ 142,924,931.67
December 15, 2011	\$ 21,059,353.36	\$ 121,865,578.31
March 15, 2012	\$ 21,598,049.14	\$ 100,267,529.17
June 15, 2012	\$ 45,308,485.16	\$ 54,959,044.01
September 15, 2012	\$ 32,902,805.44	\$ 22,056,238.57
December 15, 2012	\$ 22,056,238.57	\$ 0.00
March 15, 2013	\$ 0.00	\$ 0.00
June 15, 2013	\$ 0.00	\$ 0.00
September 15, 2013	\$ 0.00	\$ 0.00
December 15, 2013	\$ 0.00	\$ 0.00
March 15, 2014	\$ 0.00	\$ 0.00
June 15, 2014	\$ 0.00	\$ 0.00
September 15, 2014	\$ 0.00	\$ 0.00
December 15, 2014	\$ 0.00	\$ 0.00
March 15, 2015	\$ 0.00	\$ 0.00

EXHIBIT A

FORM OF ORIGINAL CLASS A NOTE

[INSERT THE APPLICABLE LEGEND(S) SET FORTH IN SECTION 2.2]

QHP ROYALTY SUB LLC

QHP PhaRMASM Senior Secured 10.25% Notes due 2015

Class A

No. _____

CUSIP: _____

U.S.\$300,000,000

QHP ROYALTY SUB LLC, a limited liability company organized under the laws of the State of Delaware (herein referred to as the “Issuer”), for value received, hereby promises to pay to CEDE & CO., or registered assigns, the principal amount set forth on Schedule I hereto on or before March 15, 2015 (the “Final Legal Maturity Date”) and to pay interest quarterly in arrears on the Outstanding Principal Balance hereof at a rate per annum equal to 10.25% (the “Stated Rate of Interest”), from the date hereof until the Outstanding Principal Balance hereof is paid or duly provided for, which interest shall be due and payable on each Payment Date; provided, that, with respect to any Payment Date (other than the Final Legal Maturity Date or any Redemption Date), any such interest in excess of the portion of the Available Collections Amount available to pay such interest on such Payment Date and funds in the Capital Account (and available for interest payments pursuant to Section 3.8 of the Indenture (as defined below)) shall be payable in full not later than the immediately succeeding Payment Date (together with Additional Interest on the amount of unpaid interest from the Payment Date on which it was due until the date on which it is paid, compounded quarterly on each Payment Date). Interest on this Note in each Interest Accrual Period shall be calculated on the basis of a 360-day year consisting of twelve 30-day months on the Outstanding Principal Balance of this Note.

This Note is a duly authorized issue of Notes of the Issuer, designated as its “QHP PhaRMASM Senior Secured 10.25% Notes due 2015”, issued under the Indenture dated as of November 2, 2009 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Indenture”), by and between the Issuer and U.S. Bank National Association, as trustee (including any successor appointed in accordance with the terms of the Indenture, the “Trustee”). The Indenture also provides for the issuance of Refinancing Notes and Subordinated Notes. All capitalized terms used in this Note and not defined herein shall have the respective meanings assigned to such terms in the Indenture. Reference is made to the Indenture and all indentures supplemental thereto for a statement of the respective rights and obligations thereunder of the Issuer, the Trustee and the Noteholders. This Note is subject to all terms of the Indenture.

The Issuer will pay the Outstanding Principal Balance of this Note on or prior to the Final Legal Maturity Date on the Payment Date specified in the Indenture, subject to the availability of the Available Collections Amount therefor after making payments entitled to priority under Section 3.7 of the Indenture.

The indebtedness evidenced by the Original Class A Notes is, to the extent and in the manner provided in the Indenture, senior in right of payment to the right of payment of the Subordinated Notes, and this Note is issued subject to such provisions. The maturity of this Note is subject to acceleration upon the occurrence and during the continuance of the Events of Default specified in the Indenture.

The Issuer may redeem all or part of the Outstanding Principal Balance of this Note prior to the Final Legal Maturity Date on any Redemption Date, in the amounts and under the circumstances specified in the Indenture.

Any amount of Premium or interest on this Note that is not paid when due shall, to the fullest extent permitted by Applicable Law, bear interest (“Additional Interest”) at an interest rate per annum equal to the Stated Rate of Interest from the date when due until such amount is paid or duly provided for, compounded quarterly and payable on the next succeeding Payment Date, subject to the availability of the Available Collections Amount therefor (and, to the extent provided in Section 3.8, the Capital Account) after making payments entitled to priority under Section 3.7 of the Indenture.

This Note is and will be secured by the Collateral and the Issuer Pledged Equity pledged as security therefor as provided in the Indenture and the Pledge and Security Agreement, respectively.

Subject to and in accordance with the terms of the Indenture, there will be distributed quarterly from the Collection Account on each Payment Date commencing on March 15, 2010, to the Person in whose name this Note is registered at the close of business on the Record Date with respect to such Payment Date, in the manner specified in Section 3.7 of the Indenture, such Person’s pro rata share (based on the aggregate percentage of the Outstanding Principal Balance of the Original Class A Notes held by such Person) of the aggregate amount distributable to all Noteholders of Original Class A Notes on such Payment Date.

All amounts payable in respect of this Note shall be payable in U.S. dollars in the manner provided in the Indenture to the Noteholder hereof on the Record Date relating to such payment. The final payment with respect to this Note, however, shall be made only upon presentation and surrender of this Note by the Noteholder or its agent at an office or agency of the Trustee or Paying Agent in New York City. At such time, if any, as this Note is issued in the form of one or more Definitive Notes (other than by reason of Section 2.5(d) of the Indenture), payments on a Payment Date shall be made by check mailed to each Noteholder of such a Definitive Note on the applicable Record Date at its address appearing on the Register maintained with respect to the Original Class A Notes. Alternatively, upon application in writing to the Trustee or other Paying Agent, not later than the applicable Record Date, by a Noteholder, any such payments shall be made by wire transfer to an account designated by such Noteholder at a financial institution in New York City; provided, that, in each case, the final payment with respect to any such Definitive Note shall be made only upon presentation and surrender of such Definitive Note by the Noteholder or its agent at an office or agency of the Trustee or Paying Agent in New York

City. Notwithstanding the foregoing, payments in respect of this Note issued in the form of a Global Note (including principal, Premium, if any, and interest) shall be made by wire transfer of immediately available funds to the account specified by DTC. Any reduction in the Outstanding Principal Balance of this Note (or any one or more predecessor Original Class A Notes) effected by any payments made on any Payment Date shall be binding upon all future Noteholders of this Note and of any Original Class A Note issued upon the registration of transfer of, in exchange or in lieu of or upon the refinancing of this Note, whether or not noted hereon.

The Noteholder of this Note agrees, by acceptance hereof, to pay over to the Trustee any money (including principal, Premium, if any, and interest) paid to it in respect of this Note in the event that the Trustee, acting in good faith, determines subsequently that such monies were not paid in accordance with the priority of payment provisions of the Indenture or as a result of any other mistake of fact or law on the part of the Trustee in making such payment.

This Note is issuable only in registered form. A Noteholder or Beneficial Holder may transfer this Note or a Beneficial Interest herein only by delivery of a written application to the Registrar stating the name of the proposed transferee, a Confidentiality Agreement duly executed and delivered to the Registrar by such transferee and otherwise complying with the terms of the Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Noteholder only upon, final acceptance and registration of the transfer by the Registrar in the Register. When this Note is presented to the Registrar with a request to register the transfer or to exchange it for an equal principal amount of Original Class A Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including, in the case of a transfer, that such Note is duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee and Registrar duly executed by the Noteholder thereof or by an attorney who is authorized in writing to act on behalf of the Noteholder and that the transferee has executed and delivered to the Registrar a Confidentiality Agreement). No service charge shall be made for any registration of transfer or exchange of this Note, but the party requesting such new Original Class A Note or Original Class A Notes may be required to pay a sum sufficient to cover any transfer Tax or similar governmental charge payable in connection therewith.

Prior to the registration of transfer of this Note, the Issuer and the Trustee may deem and treat the Person in whose name this Note (as of the day of determination or as of such other date as may be specified in the Indenture) is registered as the absolute owner and Noteholder hereof for the purpose of receiving payment of all amounts payable with respect to this Note and for all other purposes, and neither the Issuer nor the Trustee shall be affected by notice to the contrary.

Subject to Section 3.7(b) of the Indenture, the Indenture permits the amendment or modification of the Indenture and the Original Class A Notes by the Issuer with the consent of the Noteholders of a majority of the Outstanding Principal Balance of the Notes (voting or acting as a single class); provided, however, that if there shall be Notes of more than one class Outstanding and if a proposed amendment, modification, consent or waiver shall directly affect the rights of Noteholders of one or more, but less than all, of such classes, then the consent only of the Noteholders of a majority of the Outstanding Principal Balance of each affected class of Notes, each voting or acting as a single class, shall be required; provided, further, however, that no amendment or modification of the Indenture or the Original Class A Notes may, without the

consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby, (i) reduce the percentage of Noteholders of any such class of Notes required to take or approve any action under the Indenture, (ii) reduce the amount or change the time of payment of any amount owing or payable with respect to any such class of Notes (including pursuant to any Redemption) or change the rate of interest or change the manner of calculation of interest payable with respect to any such class of Notes, (iii) alter or modify in any material adverse respect the provisions with respect to the Collateral or any Issuer Pledged Collateral for the Notes, the provisions of the Pledge and Security Agreement with respect to the related Issuer Pledged Collateral for the Notes or the manner of payment or the order of priorities in which payments or distributions under the Indenture will be made as between the Noteholders of such Notes and the Issuer or as among the Noteholders (including pursuant to Section 3.7 of the Indenture) or (iv) consent to any assignment of the Issuer's rights to a party other than the Trustee for the benefit of the Noteholders. Any such amendment or modification shall be binding on every Noteholder hereof, whether or not notation thereof is made upon this Note.

The subordination provisions contained in Article X of the Indenture may not be amended or modified without the consent of Noteholders of 100% of the Outstanding Principal Balance of the class of Notes affected thereby. In no event shall the provisions set forth in Section 3.7 of the Indenture relating to the priority of payment of Expenses be amended or modified.

The Indenture also contains provisions permitting the Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, on behalf of the Noteholders of all of the Original Class A Notes, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver shall be conclusive and binding upon all present and future Noteholders of this Note and of any Original Class A Note issued upon the registration of transfer of, in exchange or in lieu of or upon the refinancing of this Note, whether or not notation of such consent or waiver is made upon this Note.

The Original Class A Notes are issuable only in registered form in denominations as provided in the Indenture, subject to certain limitations therein set forth.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

The enforceability against the Issuer of the obligations of the Issuer under the Indenture and under the Notes shall be limited to the assets of the Issuer, whether tangible or intangible, real or personal (including the Collateral) and the proceeds thereof. Once all such assets have been realized upon and such assets (and proceeds thereof) have been applied in accordance with Article III of the Indenture, any outstanding obligations of the Issuer shall be extinguished. Each of the parties to the Indenture shall take no action against any employee, director, officer or administrator of the Issuer, an Equityholder or the Trustee in relation to the Indenture; provided,

that nothing therein shall limit the Issuer (or its permitted successors or assigns, including any party thereto that becomes such a successor or assign) from pursuing claims, if any, against any such Person. The provisions of Section 12.14 of the Indenture shall survive termination of the Indenture; provided, further, that the foregoing shall not in any way limit, impair or otherwise affect any rights of the Trustee or the Noteholders to proceed against any such Person (a) for intentional and willful fraud or intentional and willful misrepresentations on the part of or by such Person or (b) for the receipt of any distributions or payments to which the Issuer or any successor in interest is entitled, other than distributions expressly permitted pursuant to the Indenture and the other Deal Documents.

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

IN WITNESS WHEREOF, the Issuer has caused this Note to be signed manually or by facsimile by its duly authorized Member.

Date: November 2, 2009

QHP ROYALTY SUB LLC

By: PDL BioPharma, Inc., its Member

By: _____

Name: John P. McLaughlin

Title: President and Chief Executive Officer

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Note is one of the QHP PhaRMASM Senior Secured 10.25% Notes due 2015 designated above and referred to in the within-mentioned indenture.

Date: November 2, 2009

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

Authorized Signatory

A-6

FORM OF TRANSFER NOTICE

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s), assign(s) and transfer(s) unto

Insert Taxpayer Identification No. _____

(Please print or typewrite name and address including zip code of assignee)

the within Note and all rights thereunder, hereby irrevocably constituting and appointing _____ attorney to transfer said Note on the books of the Issuer with full power of substitution in the premises.

Date

Signature of Transferor

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

[THE FOLLOWING PROVISIONS TO BE INCLUDED ON ALL NOTES]

In connection with any transfer of the within-mentioned Note, the undersigned confirms without utilizing any general solicitation or general advertising that:

[Check One]

(a) the within-mentioned Note is being transferred in compliance with the exemption from registration under the Securities Act provided by Rule 144A thereunder

(b) the within-mentioned Note is being transferred other than in accordance with clause (a) above and documents are being furnished that comply with the conditions of transfer set forth in the within-mentioned Note and the Indenture

If neither of the foregoing boxes is checked, the Trustee or other Registrar shall not be obligated to register the within-mentioned Note in the name of any Person other than the Noteholder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 2.11 of the Indenture shall have been satisfied.

Date

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

TO BE COMPLETED BY PURCHASER IF CLAUSE (a) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing the within-mentioned Note for its own account or an account with respect to which it exercises sole investment discretion and that each of it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A and has executed and delivered to the Registrar a Confidentiality Agreement.

Dated: _____

Executive Officer

SCHEDULE I

QHP ROYALTY SUB LLC
QHP PhaRMASM Senior Secured 10.25% Notes due 2015

No. _____

<u>Date</u>	<u>Principal Amount</u>	<u>Notation Explaining Principal Amount Recorded</u>	<u>Authorized Signature of Trustee or Custodian</u>
		A-9	

EXHIBIT B

FORM OF CONFIDENTIALITY AGREEMENT

No. _____

QHP Royalty Sub LLC
c/o PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451

_____, 20__

CONFIDENTIALITY AGREEMENT

In connection with our possible interest in the purchase of the QHP PharmaSM Senior Secured Notes due 2015 (the "Notes") issued by QHP Royalty Sub LLC, a Delaware limited liability company (the "Company") (the "Transaction"), we have requested a copy of the Offering Memorandum relating to the Notes (the "Offering Memorandum"). In addition to receiving the Offering Memorandum, we may also request that you or your officers, managers, members, partners, employees, affiliates, assigns, representatives (including, without limitation, financial advisors, attorneys and accountants), investors, agents or similar persons (collectively, "your Representatives") furnish us or our directors, officers, managers, members, partners, employees, affiliates, assigns, representatives (including, without limitation, financial advisors, attorneys and accountants), investors, agents or similar persons (collectively, "our Representatives") with certain information relating to the Company, the Transaction and the rights acquired by the Company from PDL BioPharma, Inc., a Delaware corporation (the "Seller"). All such information (whether written or oral, and whether tangible or electronic) furnished on or after the date hereof by you or your Representatives (including any such information provided in a dataroom via IntraLinks or otherwise) to us or our Representatives, including, without limitation, any agreements between the Seller and Genentech, Inc. ("Genentech"), any royalty reports required to be delivered thereunder in respect of the related licensed products, including Avastin[®] (Bevacizumab), Herceptin[®] (Trastuzumab), Lucentis[®] (Ranibizumab) and Xolair[®] (Omalizumab), the Offering Memorandum, and any materials containing, based on or derived from any such information (including, without limitation, any financial models or other analyses, compilations, forecasts, studies or other documents based thereon) prepared by us or our Representatives in connection with our or our Representatives' review of, or our interest in, the Transaction is hereinafter referred to as the "Information".

As a condition to receiving the Information, we hereby agree as follows:

1. We and our Representatives hereby agree (i) to keep the Information confidential, (ii) that the Information will be used solely for the purpose of evaluating or monitoring participation in the Transaction and not for trading in the securities of the Seller (the "Seller Securities") or of Genentech, Roche Holding AG or any of their respective affiliates (the "Roche Securities"), acknowledging that any such use of Information for trading in the Seller Securities or the Roche Securities may violate applicable law, and (iii) not to, without your prior written consent, disclose any Information in any manner whatsoever; provided, however, that we may

reveal the Information to our Representatives who need to know the Information for the purpose of evaluating or monitoring participation in the Transaction, provided, that all of our Representatives shall agree to keep such Information confidential, and only to use such Information, on terms that are the same as the terms we are subject to herein, and, provided, further, that we shall be wholly responsible for the full compliance of such confidentiality agreement by any of our Representatives to which we disclosed Information. Notwithstanding and without limitation of the foregoing, we and our Representatives agree not to reveal Information to advisors who are principally engaged in the business of investment banking, capital markets or securitization of financial assets without the prior written consent of your Representative, Morgan Stanley & Co. Incorporated ("Morgan Stanley").

2. We and our Representatives agree, whether or not the Transaction is consummated, not to (except as required by applicable law, rule, regulation or legal process or pursuant to requests of governmental authorities or regulatory agencies having oversight over us or our Representatives, and only after compliance with paragraph 3 below), without your prior written consent, disclose to any person the fact that the Information or the Transaction exists or has been made available, that we are considering the Transaction, or that discussions or negotiations are taking or have taken place concerning the Transaction or any term, condition or other fact relating to the Transaction or such discussions or negotiations, including, without limitation, the status thereof.

3. The obligation of confidentiality contained herein shall not apply to the extent that (a) we are required to disclose information by order or regulation of a governmental agency or a court of competent jurisdiction, provided, that we shall not make any such disclosure (other than a filing of information or materials with the U.S. Securities and Exchange Commission made with a request for confidential treatment for portions of such material for which such treatment may reasonably be expected to be granted) without first notifying you and allowing you a reasonable opportunity to seek injunctive relief from the obligation to make such disclosure, or (b) we can demonstrate that (i) the Information was at the time of such disclosure to us or our Representatives already in the public domain other than as a result of actions of us or our Representatives in violation hereof, (ii) the Information was rightfully known by us (as shown by written records) prior to the date of disclosure to us or our Representatives or (iii) the Information was received by us or our Representatives on an unrestricted basis from a source unrelated to you and not under a duty of confidentiality to you.

4. If we determine not to proceed with the Transaction or we cease to have an interest arising from the Transaction, we will promptly inform you of that decision or event and, in that case, and at any time upon your request or the request of any of your Representatives, we and our Representatives agree to (i) promptly deliver to you all copies of the Information in our possession (except as described in the following proviso), (ii) promptly destroy all copies of any written Information (whether in tangible or electronic form, or otherwise) that we and our Representatives have created, including, without limitation, any notes we have taken on any discussions with you or your Representatives, and upon your request such destruction shall be certified in writing (including, without limitation, via email) to you by an authorized officer supervising such destruction (provided in each case that an appropriate person within our organization may retain one copy of the Information, subject to the provisions of this Confidentiality Agreement, if required to comply with internal record retention policies or regulatory considerations, in which case, regardless of paragraph 14 below, the confidentiality

provisions of this Confidentiality Agreement will continue to apply to such Information for so long as it is retained by such person or any other of our Representatives) and (iii) certify that clauses (i) and (ii) above have been complied with. Any oral Information will continue to be subject to the terms of this Confidentiality Agreement. Notwithstanding anything herein to the contrary, upon expiration of this Confidentiality Agreement, we will return promptly the Information to the Seller and destroy all copies thereof.

5. We acknowledge that you have not updated, and have no obligation to update, the Offering Memorandum in any respect for events, developments or circumstances. We further acknowledge that neither you nor any of your Representatives, nor any of your or their respective officers, directors, managers, members, partners, employees, agents or controlling persons within the meaning of Section 20 of the Securities Exchange Act of 1934, as amended, makes any express or implied representation or warranty as to the accuracy or completeness of the Information, and we agree that no such person will have any liability relating to the Information or for any errors therein or omissions therefrom. We further agree that we are not entitled to rely on the accuracy or completeness of the Information.

6. We acknowledge that we are aware of the restrictions imposed by the United States securities laws on the purchase or sale of securities of an issuer (such as the Seller) or an affiliate or controlling person of the issuer while in possession of material, non-public information and on the communication of such information to any other person. We represent that we maintain effective internal procedures with respect to maintaining the confidentiality and use of the Information and that we will not use the Information for any purpose in violation of United States securities laws or any other applicable laws. We further represent that we are a qualified institutional buyer (as defined in Rule 144A under the Securities Act of 1933, as amended) or an institutional accredited investor (as defined in subparagraph (a) (1), (2), (3) or (7) of Rule 501 under the Securities Act of 1933, as amended) and acknowledge and agree that, by our purchase of any Notes, we will be deemed to have made the representations, agreements and acknowledgements set forth in the Offering Memorandum under "Transfer Restrictions".

7. We hereby acknowledge and agree that neither we nor any of our Representatives is a Competitor of Genentech, where "Competitor" means any person or entity, together with any person or entity that controls, is controlled by or is under common control with such person or entity, in the biotechnology or pharmaceutical industries that (i) conducts scientific research or engages in development activities with respect to diagnostic or therapeutic products or (ii) manufactures, promotes, markets, distributes or sells any diagnostic or therapeutic products.

8. We acknowledge that remedies at law may be inadequate to protect you against any actual or threatened breach of this Confidentiality Agreement by us or our Representatives, and, without prejudice to any other rights and remedies otherwise available to you, we agree to permit you to seek the granting of injunctive relief in your favor without proof of actual damages.

9. We acknowledge and agree that each of the Seller, Genentech and Morgan Stanley is a third party beneficiary of this Confidentiality Agreement and shall have the right to enforce any provision of this Confidentiality Agreement against us.

10. We agree that no failure or delay by you in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

11. This Confidentiality Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. This Confidentiality Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of New York applicable to contracts performed solely in the State of New York.

13. This Confidentiality Agreement contains the entire agreement between you and us concerning the confidentiality of the Information, and no modifications of this Confidentiality Agreement or waiver of the terms and conditions hereof will be binding upon you or us, unless approved in writing by each of you and us.

14. This Confidentiality Agreement will terminate (i) if we do not proceed with the Transaction, two years after the date hereof, and (ii) if we do proceed with the Transaction, two years from the date we no longer participate in the Transaction, whether through a sale of our interest, the maturity or repayment of our interest or otherwise; provided, however, that, with respect to any Information contained in any agreement between the Seller and Genentech (other than any royalty reports required to be delivered thereunder in respect of the related licensed products, including Avastin® (Bevacizumab), Herceptin® (Trastuzumab), Lucentis® (Ranibizumab) and Xolair® (Omalizumab), which shall be subject to the two-year period set forth above), this Confidentiality Agreement will terminate five years following the expiration or termination of the Amended and Restated Patent Licensing Master Agreement (Queen Patents) between the Seller and Genentech dated as of July 27, 2009 (which agreement currently expires on October 21, 2015).

15. If we propose to purchase, transfer, sell or otherwise dispose of any of our interest at any time, we agree to (i) abide by any transfer restrictions described in the Offering Memorandum, (ii) inform any proposed transferee of such interest of any such transfer restrictions, including, without limitation, any requirement that such proposed transferee enter into a confidentiality agreement with the Company, and (iii) not furnish any Information to such proposed transferee. We acknowledge that the servicer for the Transaction shall be responsible for the delivery of all Information to any such prospective transferee following execution by such prospective transferee of an appropriate confidentiality agreement with the Company.

16. This Confidentiality Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

Please confirm your agreement with the foregoing by signing and returning to the undersigned the duplicate copy of this Confidentiality Agreement enclosed herewith. In accordance with Section 2.11(j) of the Indenture that will have been entered into by and between you and U.S. Bank National Association, as trustee (the "Indenture"), we will provide a fully executed copy of this Confidentiality Agreement to the Registrar (as defined in the Indenture) promptly after executing this Confidentiality Agreement.

Very truly yours,

[Please insert prospective purchaser's name on line above]

By: _____
Name:
Title:
Address:

Accepted and agreed as of the date first written above:

QHP ROYALTY SUB LLC

By: PDL BioPharma, Inc., its Member

By: _____
Name:
Title:

EXHIBIT C

AGENTS FOR SERVICE OF PROCESS

Party

QHP Royalty Sub LLC

Jurisdiction

Delaware

Appointed Agent

Corporation Service Company

EXHIBIT D

COVERAGE OF DISTRIBUTION REPORT

- (i) With respect to the current Payment Date, (A) the balances on deposit in the Collection Account and any other Account established under the Indenture on the Calculation Date immediately preceding the prior Payment Date (or, with respect to the first Payment Date, on the Closing Date) (the “Preceding Calculation Date”), (B) the aggregate amounts of deposits into and withdrawals from the Collection Account and any other Account established under the Indenture from but excluding the Preceding Calculation Date to and including the Calculation Date immediately preceding the Payment Date (the “Current Calculation Date”) and (C) the balances on deposit in the Collection Account and any other Account established under the Indenture on the Current Calculation Date.
- (ii) Analysis of Collection Account activity from the Preceding Calculation Date to the Current Calculation Date
 - Balance on the Preceding Calculation Date
 - Collections from but excluding the Preceding Calculation Date to and including the Current Calculation Date (“Current Collections”)
 - Aggregate Note payments from but excluding the Preceding Calculation Date to and including the Current Calculation Date
 - Expense payments payable on the Current Calculation Date, including normal and routine bank fees (“Current Expenses”)
 - Tax Distribution payments payable on the Current Calculation Date (“Current Tax Distributions”), including a schedule supporting the calculation of such Current Tax Distributions
 - Balance on the Current Calculation Date
- (iii) Payments on the current Payment Date
 - Current Tax Distributions
 - Current Expenses
 - Interest Amount
 - Additional Interest, if any
 - Principal payments, if any
- (iv) Outstanding Principal Balance
 - Opening Outstanding Principal Balance
 - Principal payments, if any, made on the current Payment Date
 - Closing Outstanding Principal Balance
- (v) Amount distributed to the Issuer from the Collection Account, if any, with respect to the current Payment Date
- (vi) A withholding obligation may be included

(vii) Appropriate modifications will be made to contemplate any Refinancing Notes and/or Subordinated Notes

EXHIBIT E

UCC FINANCING STATEMENTS

1. A Form UCC-1 Financing Statement will be filed with the Secretary of State of the State of Delaware naming the Issuer as debtor and the Trustee as secured party.

FORM OF CERTIFICATE OF EUROCLEAR OR CLEARSTREAM FOR
PERMANENT REGULATION S GLOBAL NOTE

_____, 20__

U.S. Bank National Association,
as Trustee
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (QHP Royalty Sub LLC)

QHP Royalty Sub LLC
c/o PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer

Re: QHP Royalty Sub LLC (the “Issuer”)

Ladies and Gentlemen:

This letter relates to U.S.\$_____ principal amount of QHP PhaRMASM Senior Secured 10.25% Notes due 2015 of the Issuer (the “Notes”) represented by a Note that bears a legend (the “Legended Note”) outlining restrictions upon transfer of such Legended Note. Pursuant to Section 2.1 of the Indenture dated as of November 2, 2009 (the “Indenture”) relating to the Notes and certain other classes of notes of the Issuer, we hereby certify that we are (or we will hold such securities on behalf of) an Institutional Accredited Investor (as defined in the Indenture) outside the United States to whom the Notes may be transferred in accordance with Rule 904 of Regulation S promulgated under the U.S. Securities Act of 1933, as amended (“Regulation S”). Accordingly, you are hereby requested to exchange the Legended Note for a Permanent Regulation S Global Note (as defined in the Indenture) representing an identical principal amount of Notes, all in the manner provided for in the Indenture.

Each of you is entitled to rely upon this letter and is irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby. Certain terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Euroclear Bank S.A./N.V.][Clearstream Banking]

By: _____
Authorized Signatory

EXHIBIT G

FORM OF CERTIFICATE OF BENEFICIAL OWNER OF TEMPORARY
REGULATION S GLOBAL NOTE

Euroclear Bank S.A./N.V.

[Address]

AND/OR

Clearstream Banking

[Address]

Re: QHP Royalty Sub LLC (the "Issuer")

Reference is hereby made to the Indenture, dated as of November 2, 2009 (the "Indenture"), made by and between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to U.S.\$_____ principal amount of QHP PhaRMASM Senior Secured 10.25% Notes due 2015 that are held in the form of a Beneficial Interest in the Temporary Regulation S Global Note (CUSIP No. _____) through DTC by the undersigned (the "Holder") in the name of _____. The Holder of such Temporary Regulation S Global Note hereby requests the receipt of payments due and payable on the applicable Payment Date pursuant to Section 2.5 of the Indenture.

The Holder hereby represents and warrants that it (i) is an Institutional Accredited Investor, (ii) is not a U.S. Person, (iii) does not hold the above-referenced Temporary Regulation S Global Note for the account or benefit of a U.S. Person (other than a distributor) and (iv) has executed and delivered to the Registrar a Confidentiality Agreement. Certain terms in this certificate not otherwise defined in the Indenture have the meanings given to them in Regulation S.

This certificate and the statements contained herein are made for your benefit and the benefit of the Paying Agent.

[Name of Holder]

By: _____
Name:
Title:

EXHIBIT H

FORM OF CERTIFICATE OF EUROCLEAR OR CLEARSTREAM FOR PAYMENTS

U.S. Bank National Association,
as Paying Agent
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (QHP Royalty Sub LLC)

Re: QHP Royalty Sub LLC (the “Issuer”)

Reference is hereby made to the Indenture, dated as of November 2, 2009 (the “Indenture”), made by and between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to U.S.\$ _____ principal amount of QHP PhaRMASM Senior Secured 10.25% Notes due 2015 that are held in the form of a Beneficial Interest in the Temporary Regulation S Global Note (CUSIP No. _____) through DTC by the undersigned (the “Holder”) in the name of _____. Certain Holders of the Beneficial Interests in such Temporary Regulation S Global Note have requested the receipt of payments due and payable on the applicable Payment Date pursuant to Section 2.5 of the Indenture.

We have received from such Holders certifications to the effect that they (i) are Institutional Accredited Investors, (ii) are not U.S. Persons, (iii) do not hold the above-referenced Temporary Regulation S Global Note for the account or benefit of U.S. Persons (other than distributors) and (iv) have executed and delivered to the Registrar a Confidentiality Agreement. Certain terms in this certificate not otherwise defined in the Indenture have the meanings given to them in Regulation S.

Accordingly, the Holders of the Beneficial Interests in the Temporary Regulation S Global Note are entitled to receive interest, principal and Premium, if any, in accordance with the terms of the Indenture in the amount of U.S.\$ _____.

[Clearstream Banking][Euroclear Bank S.A./N.V.]

By: _____
Name:
Title:

EXHIBIT I

FORM OF CERTIFICATE OF PROPOSED TRANSFEROR

_____, 20__

U.S. Bank National Association,
as Registrar
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (QHP Royalty Sub LLC)

QHP Royalty Sub LLC
c/o PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer

Re: QHP Royalty Sub LLC (the "Issuer")

Ladies and Gentlemen:

In connection with our proposed sale of U.S.\$_____ aggregate principal amount of QHP PharmaSM Senior Secured 10.25% Notes due 2015 of the Issuer (the "Notes"), we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended ("Regulation S") and, accordingly, we represent that:

(1) the offer of the Notes was not made to a person in the U.S.;

(2) at the time the buy order was originated, the transferee was an institutional accredited investor (as defined in subparagraph (a) (1), (2), (3) or (7) of Rule 501 under the U.S. Securities Act of 1933, as amended) outside the U.S. or we and any person acting on our behalf reasonably believed that the transferee was an institutional accredited investor outside the U.S.;

(3) no directed selling efforts have been made by us in the U.S. in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the U.S. Securities Act of 1933; and

(5) the transferee has entered into the confidentiality agreement required in connection with the purchase of the Notes.

Each of you is entitled to rely upon this letter and is irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby. Certain terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____
Authorized Signatory

FORM OF CERTIFICATE OF CERTAIN PROPOSED INSTITUTIONAL
ACCREDITED INVESTOR TRANSFEREES

_____, 20__

U.S. Bank National Association,
as Registrar
One Federal Street, 3rd Floor
Boston, Massachusetts 02110
Attention: Corporate Trust Services (QHP Royalty Sub LLC)

QHP Royalty Sub LLC
c/o PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer

Ladies and Gentlemen:

In connection with our proposed purchase of Notes (the “Notes”) of QHP Royalty Sub LLC (the “Issuer”), we confirm that:

1. We have duly executed and delivered to the Registrar (as defined in that certain Indenture dated as of November 2, 2009 (the “Indenture”) by and between the Issuer and U.S. Bank National Association, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof) a Confidentiality Agreement and have subsequently received a copy of the Offering Memorandum dated October 27, 2009 (the “Offering Memorandum”) relating to the Notes and such other information as we deem necessary in order to make our investment decision. We acknowledge that we have read and agreed to the matters stated in the section entitled “Transfer Restrictions” of such Offering Memorandum and the restrictions on duplication and circulation of such Offering Memorandum.

2. We understand that any subsequent transfer of the Notes is subject to certain restrictions and conditions set forth in the Offering Memorandum under “Transfer Restrictions” and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes except in compliance with, such restrictions and conditions and the U.S. Securities Act of 1933, as amended (the “Securities Act”).

3. We understand that the offer and sale of the Notes have not been registered under the Securities Act, that the Notes will only be in the form of definitive physical certificates and that the Notes may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that, if we should sell any Notes in the future, we will do so only (1) (A) to the Issuer or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a qualified institutional buyer (as defined therein), (C) to an institutional accredited investor (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) (“Institutional”).

Accredited Investor”) that, prior to such transfer, furnishes to the Trustee (as defined in the Indenture) a signed letter containing certain representations and agreements relating to the restrictions on transfer of the Notes (the form of which letter can be obtained from the Trustee) and an opinion of counsel acceptable to the Issuer that such transfer is in compliance with the Securities Act, (D) to an Institutional Accredited Investor in an offshore transaction in compliance with Rule 904 of Regulation S under the Securities Act or (E) to an Institutional Accredited Investor after the relevant time period referred to in Rule 144 under the Securities Act expires, and we further agree to provide to any entity purchasing any of the Notes from us a notice advising such purchaser that resales of the Notes are restricted as stated herein and (2) in each case, in accordance with any applicable securities laws of any state in the U.S. or any other applicable jurisdiction and in accordance with the legend to be set forth in the Notes, which will reflect the substance of this paragraph.

4. We understand that, on any proposed resale of any Notes, we will be required to furnish to the Issuer and the Trustee such certifications, legal opinions and other information as the Issuer and the Trustee may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that a confidentiality agreement is required under the Indenture to be executed and delivered by any proposed transferee to whom we wish to sell any Notes.

5. We are an Institutional Accredited Investor and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are able to bear the economic risks of our or their investment.

6. We are acquiring the Notes purchased by us for our own account or for one or more accounts (each of which is an Institutional Accredited Investor) as to each of which we exercise sole investment discretion.

7. We are not acquiring the Notes with a view to distribution thereof or with any present intention of offering or selling the Notes, except as permitted above, provided that the disposition of our property and property of any accounts for which we are acting as fiduciary shall remain at all times within our control.

You, the Issuer and the Trustee are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceeding or official inquiry with respect to the matters covered hereby.

Very truly yours,

By: _____
Name:
Title

EXHIBIT K

FORM OF PORTFOLIO INTEREST CERTIFICATE

_____ hereby certifies that:

1. It is (*one must be checked*):
 - (1) a natural individual person;
 - (2) treated as a corporation for U.S. federal income tax purposes;
 - (3) disregarded for U.S. federal income tax purposes (in which case a copy of this certificate is completed and signed by its sole beneficial owner); or
 - (4) treated as a partnership for U.S. federal income tax purposes (in which case each partner also has completed as to itself and signed a copy of this certificate and an appropriate IRS Form W-8, a copy of each of which is attached, or, if applicable, has completed as to itself and signed an IRS Form W-9, a copy of which is attached).
2. It is not a bank, as such term is used in Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "Code").
3. It is not a 10-percent shareholder of QHP Royalty Sub LLC (the "Issuer") or PDL BioPharma, Inc. (the "Equityholder") within the meaning of Section 871(h)(3) of the Code or Section 881(c)(3)(B) of the Code.
4. It is not a controlled foreign corporation that is related to the Issuer or the Equityholder within the meaning of Section 881(c)(3)(C) of the Code.
5. Amounts received by it on the QHP PhaRMASM Senior Secured 10.25% Notes due 2015 are not effectively connected with its conduct of a trade or business in the United States.

[Fill in name of holder]

By: _____
Name:
Title:
Date:

PURCHASE AND SALE AGREEMENT

dated as of November 2, 2009

between

PDL BIOPHARMA, INC.

and

QHP ROYALTY SUB LLC

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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Purchase and Sale Agreement") dated as of November 2, 2009 is between PDL BIOPHARMA, INC., a Delaware corporation ("Seller"), and QHP ROYALTY SUB LLC, a Delaware limited liability company ("Purchaser").

WITNESSETH:

WHEREAS, Seller has the right to receive royalties based on Net Sales of the Licensed Products worldwide under the Counterparty Agreements; and

WHEREAS, Seller desires to sell, transfer, convey, assign, contribute and grant to Purchaser, and Purchaser desires to purchase, acquire and accept from Seller, the Purchased Assets, upon and subject to the terms and conditions set forth in this Purchase and Sale Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties set forth herein and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINED TERMS AND RULES OF CONSTRUCTION

Section 1.1 Defined Terms. The following terms, as used herein, shall have the following respective meanings:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director, officer or manager of such Person. For purposes of this definition, "control" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative to the foregoing. For purposes hereof, the term "Affiliate" when used in respect of Seller shall be deemed to exclude Purchaser.

"Bankruptcy Event" means the occurrence of any of the following in respect of a Person: (i) an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; (ii) the filing of any petition or answer by such Person seeking to adjudicate itself as bankrupt or insolvent, or seeking for itself any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of such Person or its debts under any law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization, examination, relief of debtors or other similar law now or hereafter in effect, or seeking, consenting to or acquiescing in the entry of an order for relief in any case under any such law, or the appointment of or taking possession by a receiver, trustee, custodian, liquidator, examiner, assignee, sequestrator or other similar official for such Person or for any substantial part of its property; (iii) corporate or other entity action

taken by such Person to authorize any of the actions set forth above; or (iv) without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against such Person, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the property of such Person, in each case where such petition or order shall remain unstayed or shall not have been stayed or dismissed within 90 days from entry thereof.

“Bill of Sale” means that certain bill of sale dated as of the Closing Date executed by Seller and Purchaser substantially in the form of Exhibit A.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by applicable law to remain closed.

“Capital Securities” means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person’s capital, whether now outstanding or issued after the Closing Date, including common shares, ordinary shares, preferred shares, membership interests or share capital in a limited liability company or other Person, limited or general partnership interests in a partnership, beneficial interests in trusts or any other equivalent of such ownership interest or any options, warrants and other rights to acquire such shares or interests, including rights to allocations and distributions, dividends, redemption payments and liquidation payments.

“Closing” has the meaning set forth in Section 5.1.

“Closing Date” has the meaning set forth in Section 5.1.

“Collection Account” has the meaning set forth in Section 3.1(a) of the Indenture.

“Confidential Information” means, as it relates to Seller and its Affiliates, the Licensed Products and the Licensed Patents, all information (whether written or oral, or in electronic or other form) furnished after the date of this Purchase and Sale Agreement involving or relating in any way, directly or indirectly, to the Purchased Assets or the Royalties, including (a) any license, sublicense, assignment, product development, royalty, sale, supply or other agreements (including the Counterparty Agreements) involving or relating in any way, directly or indirectly, to the Purchased Assets, the Royalties or the intellectual property, compounds or products giving rise to the Purchased Assets, and including all terms and conditions thereof and the identities of the parties thereto, (b) any reports, data, materials or other documents of any kind concerning or relating in any way, directly or indirectly, to Seller, the Purchased Assets, the Royalties or the intellectual property, compounds or products giving rise to the Purchased Assets, and including reports, data, materials or other documents of any kind delivered pursuant to or under any of the agreements referred to in clause (a) above, and (c) any inventions, devices, improvements, formulations, discoveries, compositions, ingredients, patents, patent applications, know-how, processes, trial results, research, developments or any other intellectual property, trade secrets or

information involving or relating in any way, directly or indirectly, to the Purchased Assets or the compounds or products giving rise to the Purchased Assets. Notwithstanding the foregoing definition, Confidential Information shall not include information that is (i) already in the public domain at the time the information is disclosed, (ii) lawfully obtainable from other sources, (iii) required to be disclosed in any document to be filed with any Governmental Authority or (iv) required to be disclosed by court or administrative order or under securities laws, rules and regulations applicable to Seller or Purchaser or their respective Affiliates, as the case may be, or pursuant to the rules and regulations of any stock exchange or stock market on which securities of Seller or Purchaser or their respective Affiliates may be listed for trading.

“Counterparty” means Genentech, Inc., a Delaware corporation and a wholly-owned subsidiary of Roche Holding, Ltd.

“Counterparty Agreements” means, collectively, the Master Agreement, the License Agreements, the Settlement Agreement, the letter agreement entitled “Re: Amendments to Product Licenses and Settlement Agreement” dated July 27, 2009 from Counterparty to Seller executed by Seller and Counterparty, the letter agreement dated July 27, 2009 from Seller to Counterparty executed by Seller and Counterparty and the letter agreement dated September 22, 2009 from Seller to Counterparty executed by Seller and Counterparty.

“Counterparty Instruction” means the irrevocable direction to Counterparty in the form set forth in Exhibit B.

“Defaulting Party” has the meaning set forth in Section 4.5(e).

“Discrepancy” has the meaning set forth in Section 2.2(b).

“Disputes” has the meaning set forth in Section 3.10(d).

“Event of Default” has the meaning set forth in Section 4.1 of the Indenture.

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

“Excluded Liabilities and Obligations” has the meaning set forth in Section 2.4.

“FDA” means the U.S. Food and Drug Administration and any successor agency thereto.

“GAAP” means generally accepted accounting principles in effect in the United States from time to time.

“Governmental Authority” means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority (including supranational authority), commission, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including each Patent Office, the FDA and any other government authority in any country.

“Indenture” means that certain indenture, dated as of the Closing Date, by and between Purchaser and U.S. Bank National Association, a national banking association, as initial trustee thereunder, and any successor appointed in accordance with the terms thereof.

“Initial Purchaser” means Morgan Stanley & Co. Incorporated.

“Initial Purchaser Purchase Agreement” means that certain purchase agreement dated October 27, 2009 among Purchaser, Seller and the Initial Purchaser.

“Issuer Pledged Collateral” has the meaning set forth in Section 2.1 of the Pledge and Security Agreement.

“License Agreements” means, collectively, (a) the PDL License Agreement dated as of November 3, 1998 between Seller and Counterparty (re HER-2/neu protein), as amended, (b) the PDL License Agreement dated as of December 18, 2003 between Seller and Counterparty (re IgE), as amended, (c) the PDL License Agreement dated as of March 5, 2004 between Seller and Counterparty (re VEGF), as amended, and (d) any other existing or future license agreements entered into under the Master Agreement.

“Licensed Patents” means the PDL Licensed Patents as defined in Exhibit C.

“Licensed Products” means Avastin® (Bevacizumab), Herceptin® (Trastuzumab), Lucentis® (Ranibizumab), Xolair® (Omalizumab) and any other products subject to the Master Agreement.

“Lien” means any security interest, mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property or other priority or preferential arrangement of any kind or nature whatsoever, including any conditional sale, any sale with recourse or any agreement to give any security interest, but shall not include any licenses (exclusive or non-exclusive) under the Licensed Patents granted in the ordinary course.

“Loss” means any loss, Set-off, cost, charge, expense, interest, fee, payment, demand, liability, claim, action, proceeding, penalty, fine, damages, judgment, order or other sanction.

“Master Agreement” means the Amended and Restated Patent Licensing Master Agreement (Queen Patents) dated as of July 27, 2009 between Seller and Counterparty, as amended.

“Material Adverse Change” means any event, circumstance or change that could reasonably be expected to result, individually or in the aggregate, in a material adverse effect, in any respect, on (a) the legality, validity or enforceability of any of the Transaction Documents, the Counterparty Agreements or the back-up security interest granted pursuant to Section 2.1(d), (b) the right or ability of Seller (or any permitted assignee), Purchaser or the Servicer to perform any of its obligations under any of the Transaction Documents or the Counterparty Agreements, in each case to which it is a party and where the timing, amount or duration of the Royalties is reasonably expected to be adversely affected, or to consummate the transactions contemplated under this Purchase and Sale Agreement, any other Transaction Document or any of the

Counterparty Agreements, (c) the rights or remedies of Purchaser under any of the Transaction Documents or the Counterparty Agreements in a manner that adversely impacts the Purchased Assets, (d) the timing, amount or duration of the Royalties, (e) the Purchased Assets, (f) the Licensed Patents where the timing, amount or duration of the Royalties is reasonably expected to be adversely affected or (g) the ability of the Trustee to realize the practical benefit of the Pledge and Security Agreement (including any failure to have a perfected Lien on any of the Issuer Pledged Collateral as required by the Indenture).

“Net Sales” has the meaning set forth in Section 1.09 (or the equivalent provision) of each License Agreement.

“Noteholder” means any Person in whose name a Note is registered from time to time in the Register for such Note.

“Notes” means any notes issued under the Indenture from time to time, including the QHP PharmaSM Senior Secured 10.25% Notes due 2015 of Purchaser in the initial outstanding principal balance of \$300,000,000 issued on the Closing Date.

“Offering Memorandum” means the offering memorandum of Purchaser dated October 27, 2009.

“Patent Office” means the applicable patent office, including the United States Patent and Trademark Office and any comparable foreign patent office, for any Licensed Patents.

“Person” means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other legal entity, including public bodies, whether acting in an individual, fiduciary or other capacity.

“Pledge and Security Agreement” means that certain pledge and security agreement dated as of the Closing Date made by Seller to the Trustee.

“Purchase and Sale Agreement” has the meaning set forth in the preamble.

“Purchased Assets” means, collectively, (a) Seller’s rights under (i) the Counterparty Agreements to (1) receive the Purchased Counterparty Agreements Royalties, (2) receive the reports produced by Counterparty pursuant to the Counterparty Agreements in respect of worldwide sales of the Licensed Products, (3) audit the records of Counterparty in respect of such sales pursuant to the Counterparty Agreements and receive an audit report summarizing the results of any such audit and (4) make indemnification claims against Counterparty pursuant to the Counterparty Agreements and (ii) the Settlement Agreement to receive the Purchased Settlement Agreement Royalties, (b) to the extent permitted by the Counterparty Agreements, Seller’s right to (i) pay directly to Counterparty any amounts due and payable under the Counterparty Agreements from Seller to Counterparty, (ii) provide any reports to Counterparty that may be due under the Counterparty Agreements from Seller and (iii) to the extent possible, cure any breach of or default under the Counterparty Agreements by Seller, (c) Seller’s right to receive any Set-off pursuant to Section 2.2(c), (d) Seller’s right to disapprove of an assignment of the Counterparty Agreements by Counterparty and (e) Seller’s right to transfer, assign or pledge the foregoing, in whole or in part, and the proceeds of and the rights to enforce each of the foregoing.

“Purchased Counterparty Agreements Royalties” means 60% of the Royalties under the Counterparty Agreements.

“Purchased Royalties” means, collectively, the Purchased Counterparty Agreements Royalties and the Purchased Settlement Agreement Royalties.

“Purchased Settlement Agreement Royalties” means 60% of the Royalties (except liquidated damages payments) under the Settlement Agreement if Counterparty breaches its obligations thereunder in respect of the Licensed Products.

“Purchase Price” has the meaning set forth in Section 2.3.

“Purchaser” has the meaning set forth in the preamble.

“Purchaser Indemnified Party” has the meaning set forth in Section 6.1.

“Register” has the meaning set forth in Section 2.3(a) of the Indenture.

“Regulatory Agency” means a Governmental Authority with responsibility for the approval of the marketing and sale of pharmaceuticals or other regulation of pharmaceuticals in any country.

“Regulatory Approvals” means, collectively, all regulatory approvals, registrations, certificates, authorizations, permits and supplements thereto, as well as associated materials (including the product dossier) pursuant to which the Licensed Products may be marketed, sold and distributed in a jurisdiction, issued by the appropriate Regulatory Agency.

“Royalties” means (a) all amounts or fees paid, owed, accrued or otherwise required to be paid to Seller or any of its Affiliates as a result of the sale by Counterparty or any Sublicensees of any of the Licensed Products (including not only from the sale of currently approved indications for each Licensed Product, but also from any additionally approved indications and from any off-label usage for such Licensed Product) and attributable to the period commencing on the Royalties Commencement Date, including all amounts due or to be paid to Seller or any of its Affiliates in lieu thereof (whether based upon sales of the Licensed Products or otherwise), (b) all indemnity payments, recoveries, damages or award or settlement amounts paid or payable to Seller or any of its Affiliates by any third party and arising out of or relating to the Licensed Products or as a result of a breach by Counterparty of any of the Counterparty Agreements with respect to any Licensed Product and attributable to the period commencing on the Royalties Commencement Date (except for liquidated damages payments under the Settlement Agreement), (c) all other amounts paid by Counterparty, any Sublicensee or any other Person arising out of, related to or resulting from the Licensed Products or the Counterparty Agreements and attributable to the period commencing on the Royalties Commencement Date (except for liquidated damages payments under the Settlement Agreement), (d) all accounts (as defined under the UCC) evidencing the rights to the payments and amounts described herein and (e) all proceeds (as defined under the UCC) of any of the foregoing.

“Royalties Commencement Date” means October 1, 2009.

“SEC” means the U.S. Securities and Exchange Commission.

“Seller” has the meaning set forth in the preamble.

“Seller Account” has the meaning set forth in Section 4.4(d).

“Seller Indemnified Party” has the meaning set forth in Section 6.2.

“Seller’s SEC Filings” means Seller’s Form 10-K for the year ended December 31, 2008 filed with the SEC and any Forms 10-Q and Forms 8-K filed by Seller with the SEC subsequent thereto.

“Senior Class” has the meaning set forth in the Indenture.

“Servicer” means Seller, acting in its capacity as servicer pursuant to the Servicing Agreement (or any other Person appointed to succeed Seller as such or any successor thereto pursuant to the Servicing Agreement).

“Servicing Agreement” means that certain servicing agreement dated as of the Closing Date between Purchaser and Seller.

“Set-off” means any set-off, off-set, rescission, counterclaim, reduction, deduction or defense.

“Settlement Agreement” means the Settlement Agreement dated December 18, 2003 between Seller and Counterparty, as amended.

“Sublicensee” means any sublicensee of Counterparty under the Counterparty Agreements.

“Subsidiary” means, with respect to any Person, any other Person of which more than 50% of the outstanding Voting Securities of such other Person (irrespective of whether at the time Capital Securities of any other class or classes of such other Person shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more other Subsidiaries of such Person or by one or more other Subsidiaries of such Person. For purposes hereof, the term “Subsidiary” when used in respect of Seller shall be deemed to exclude Purchaser.

“Transaction Documents” means this Purchase and Sale Agreement, the Bill of Sale, the Counterparty Instruction, the Indenture, the Notes, the Servicing Agreement, the Pledge and Security Agreement and the Initial Purchaser Purchase Agreement.

“Trustee” means U.S. Bank National Association, a national banking association, as initial trustee of the Notes under the Indenture, and any successor appointed in accordance with the terms of the Indenture.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of Delaware; provided, that, if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the back-up security interest granted pursuant to Section 2.1(d) is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of Delaware, then “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Purchase and Sale Agreement and any financing statement relating to such perfection or effect of perfection or non-perfection.

“Voting Securities” means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

Section 1.2 Rules of Construction. Unless the context otherwise requires, in this Purchase and Sale Agreement:

- (a) A term has the meaning assigned to it and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.
- (b) Unless otherwise defined, all terms used herein that are defined in the UCC shall have the meanings stated in the UCC.
- (c) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words in the singular shall include the plural, and vice versa.
- (d) The terms “include”, “including” and similar terms shall be construed as if followed by the phrase “without limitation”.
- (e) References to an agreement or other document include references to such agreement or document as amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof and include any annexes, exhibits and schedules attached thereto, and the provisions thereof apply to successive events and transactions.
- (f) References to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor.
- (g) References to any Person shall be construed to include such Person’s successors and permitted assigns.
- (h) The word “will” shall be construed to have the same meaning and effect as the word “shall”.
- (i) The words “hereof”, “herein”, “hereunder” and similar terms when used in this Purchase and Sale Agreement shall refer to this Purchase and Sale Agreement as a whole and not to any particular provision hereof, and Article, Section and Exhibit references herein are references to Articles and Sections of, and Exhibits to, this Purchase and Sale Agreement unless otherwise specified.

(j) In the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and each of the words “to” and “until” means “to but excluding”.

(k) Where any payment is to be made, any funds are to be applied or any calculation is to be made under this Purchase and Sale Agreement on a day that is not a Business Day, unless this Purchase and Sale Agreement otherwise provides, such payment shall be made, such funds shall be applied and such calculation shall be made on the next succeeding Business Day, and payments shall be adjusted accordingly.

(l) Any reference herein to a term that is defined by reference to its meaning in a Counterparty Agreement shall refer to such term’s meaning in such Counterparty Agreement as in existence on the date hereof (and not to any new, substituted or amended version thereof).

ARTICLE II
PURCHASE AND SALE OF THE PURCHASED ASSETS

Section 2.1 Purchase and Sale.

(a) Subject to the terms and conditions of this Purchase and Sale Agreement, on the Closing Date, Seller shall sell, transfer, convey, assign, contribute and grant to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, all of the Purchased Assets, free and clear of any and all Liens, other than those Liens created in favor of Purchaser by the Transaction Documents.

(b) Seller and Purchaser intend and agree that the sale, transfer, conveyance, assignment, contribution and granting of the Purchased Assets under this Purchase and Sale Agreement shall be, and are, a true, complete, absolute and irrevocable assignment and sale by Seller to Purchaser of the Purchased Assets and that such assignment and sale shall provide Purchaser with the full benefits of ownership of the Purchased Assets. Neither Seller nor Purchaser intends the transactions contemplated hereunder to be, or for any purpose characterized as, a loan from Purchaser to Seller or a pledge or assignment of only a security agreement. Seller waives any right to contest or otherwise assert that this Purchase and Sale Agreement is other than a true, complete, absolute and irrevocable sale and assignment by Seller to Purchaser of the Purchased Assets under applicable law, which waiver shall be enforceable against Seller in any Bankruptcy Event relating to Seller. The sale, transfer, conveyance, assignment, contribution and granting of the Purchased Assets shall be reflected on Seller’s financial statements and other records as a sale of assets to Purchaser.

(c) Seller hereby authorizes Purchaser or its designee to execute, record and file, and consents to Purchaser or its designee executing, recording and filing, at Purchaser’s sole cost and expense, financing statements in the appropriate filing offices under the UCC (and continuation statements with respect to such financing statements when applicable), and amendments thereto or assignments thereof, meeting the requirements of applicable law in such manner and in such jurisdictions as are necessary or appropriate to evidence the purchase, acquisition and acceptance by Purchaser of the Purchased Assets and to perfect the security interest in the Purchased Assets granted by Seller to Purchaser pursuant to Section 2.1(d).

(d) Notwithstanding that Seller and Purchaser expressly intend for the sale, transfer, conveyance, assignment, contribution and granting of the Purchased Assets to be a true, complete, absolute and irrevocable sale and assignment, Seller hereby grants, conveys, pledges and assigns to Purchaser, as security for its obligations created hereunder in the event that the transfer contemplated by this Purchase and Sale Agreement is held not to be a sale, a security interest in and to all of Seller's right under the Purchased Assets and any and all additions and accessions thereto, all improvements thereto, all substitutions and replacements therefor and all products and proceeds thereof, whether now owned or hereafter acquired or arising, and wherever located, and, in such event, this Purchase and Sale Agreement shall constitute a security agreement.

Section 2.2 Entitlement to Payments. Purchaser shall be entitled to receive the following transfers and payments in respect of the Purchased Assets:

(a) Seller agrees that Purchaser is entitled to the Purchased Assets and, notwithstanding any claim or Set-off that Seller may have against Purchaser or that Counterparty may have against Seller, Seller agrees and will use its commercially reasonable efforts to ensure (including taking such actions as Purchaser shall reasonably request) that Counterparty remits all payments that Counterparty is required to pay to Seller under the Counterparty Agreements with respect to the Purchased Assets directly to the Collection Account, pursuant to the Counterparty Instruction.

(b) For the avoidance of doubt, the parties hereto understand and agree that if Counterparty fails to pay any Purchased Royalties when Seller or Purchaser reasonably believes such Purchased Royalties are due under the Counterparty Agreements, except for any Set-off contemplated by Section 2.2(c) (each such unpaid amount, a "Discrepancy"), and if such Discrepancy is not the result of a default or breach by Seller under the Counterparty Agreements, then Seller shall not be obligated to pay to Purchaser or otherwise compensate or make Purchaser whole with respect to any such Discrepancy so long as Seller is in compliance with the provisions of this Purchase and Sale Agreement; provided, however, that nothing in this Section 2.2(b) shall limit or affect in any respect the rights of any Purchaser Indemnified Party under Article VI.

(c) Seller agrees that it will promptly (and in any event within three Business Days) pay to Purchaser in accordance with Section 4.4 the amount of any Set-off by Counterparty against any Purchased Royalties or other Purchased Assets to the extent that such Set-off arises out of or relates to any period prior to the Royalties Commencement Date or to any events occurring, circumstances existing or actions taken prior to the Royalties Commencement Date and that in each case has the effect of reducing amounts to be paid to Purchaser following the Closing Date.

Section 2.3 Purchase Price. In full consideration for the sale, transfer, conveyance, assignment, contribution and granting of the Purchased Assets, and subject to the terms and conditions set forth herein, Purchaser shall pay (or cause to be paid) to Seller, or Seller's designee, on the Closing Date, the sum of \$300,000,000, in immediately available funds by wire transfer to the Seller Account (the "Purchase Price"), it being understood that any excess portion of the consideration for the Purchased Assets, where the total consideration for the Purchased Assets is equal to the fair market value of the Purchased Assets as agreed at arm's length by Seller and Purchaser, shall be deemed a capital contribution by Seller to Purchaser in an amount equal to such excess portion.

Section 2.4 No Assumed Obligations. Notwithstanding any provision in this Purchase and Sale Agreement or any other writing to the contrary, Purchaser is purchasing, acquiring and accepting only the Purchased Assets and is not assuming any liability or obligation of Seller or any of Seller's Affiliates of whatever nature, whether presently in existence or arising or asserted hereafter, whether under any Counterparty Agreement (including any obligation to pay any amounts to, or accept any Set-off by, Counterparty or any of Counterparty's Affiliates), any Transaction Document or otherwise. All such liabilities and obligations shall be retained by and remain liabilities and obligations of Seller or Seller's Affiliates (the "Excluded Liabilities and Obligations").

Section 2.5 Excluded Assets. Purchaser does not, by purchase, acquisition or acceptance of the rights granted hereunder or otherwise pursuant to any of the Transaction Documents, purchase, acquire or accept any assets or contract rights of Seller under the Counterparty Agreements, other than the Purchased Assets, or any other assets of Seller.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as of the date hereof as follows:

Section 3.1 Organization. Seller is a Delaware corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and, except where the failure to do so would not be a Material Adverse Change, has all corporate powers, and all licenses, permits, franchises, authorizations, consents and approvals of all Governmental Authorities, required to own its property and carry on its business as described in Seller's SEC Filings, to execute and deliver, and perform its obligations under, the Transaction Documents to which it is party and to exercise its rights and to perform its obligations under the Counterparty Agreements. Seller is duly licensed or qualified to do business as a foreign entity and is in good standing in every jurisdiction in which such license or qualification is required by law, except where the failure to do so would not be a Material Adverse Change.

Section 3.2 No Subsidiaries. Seller has no Subsidiaries other than Purchaser.

Section 3.3 Seller Authorization. Each Transaction Document to which Seller is party has been duly authorized, executed and delivered by Seller. When each Transaction Document to which Seller is party has been duly executed and delivered by all other parties thereto, such Transaction Document constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, general equitable principles and principles of public policy.

Section 3.4 Governmental and Third Party Authorizations. The execution and delivery by Seller of the Transaction Documents to which Seller is party, the performance by Seller of its obligations hereunder and thereunder and the consummation of any of the transactions contemplated hereunder and thereunder do not require any consent, approval, license, order, authorization or declaration from, notice to, action or registration by or filing with any Governmental Authority or any other Person, except for the filing of a Current Report on Form 8-K with the SEC, the filing of the UCC financing statements referred to in Section 2.1 and the notice to Counterparty contained in the Counterparty Instruction.

Section 3.5 Ownership. Seller (or Protein Design Labs, Inc.) is the exclusive owner of the entire right, title (legal and equitable) and interest in, to and under the Purchased Assets and the Licensed Patents and has good and valid title thereto, free and clear of all Liens (except for licenses of the Licensed Patents granted in the ordinary course of business). Seller has duly and legally filed or applied for registration for its ownership interest in the Licensed Patents in the appropriate agencies in the jurisdictions set forth on Exhibit C, and Seller is the exclusive “owner of record” of the Licensed Patents in each such jurisdiction. The Purchased Assets sold, transferred, conveyed, assigned, contributed and granted to Purchaser on the Closing Date have not been pledged, sold, transferred, conveyed, assigned, contributed or granted by Seller to any other Person. Seller has full right to sell, transfer, convey, assign, contribute and grant the Purchased Assets to Purchaser. Upon the sale, transfer, conveyance, assignment, contribution and granting by Seller of the Purchased Assets to Purchaser, Purchaser shall acquire good and marketable title to the Purchased Assets free and clear of all Liens, other than Liens in favor of the Trustee, and shall be the exclusive owner of the Purchased Assets. Purchaser has or shall have the same rights as Seller would have with respect to the Purchased Assets (if Seller were still the owner of such Purchased Assets) against any other Person.

Section 3.6 Solvency. Seller has determined that, and by virtue of its entering into the transactions contemplated by the Transaction Documents and its authorization, execution and delivery of the Transaction Documents to which Seller is a party, Seller’s incurrence of any liability hereunder or thereunder or contemplated hereby or thereby is in its own best interests. Upon consummation of the transactions contemplated by the Transaction Documents and the application of the proceeds therefrom as described in the Offering Memorandum, (a) the fair saleable value of Seller’s assets will be greater than the sum of its debts and other obligations, including contingent liabilities, (b) the present fair saleable value of Seller’s assets will be greater than the amount that would be required to pay its probable liabilities on its existing debts and other obligations, including contingent liabilities, as they become absolute and matured, (c) Seller will be able to realize upon its assets and pay its debts and other obligations, including contingent obligations, as they mature, (d) Seller will not be rendered insolvent, have unreasonably small capital with which to engage in its business or be unable to pay its debts as they mature, (e) Seller has not incurred, will not incur and does not have present plans or intentions to incur debts or other obligations or liabilities beyond its ability to pay such debts or other obligations or liabilities as they become absolute and matured, (f) Seller will not have become subject to any Bankruptcy Event and (g) Seller will not have been rendered insolvent within the meaning of Section 101(32) of the United States Bankruptcy Code. No step has been taken or is intended by Seller or, so far as it is aware, any other Person to make Seller subject to a Bankruptcy Event or any merger or consolidation.

Section 3.7 No Litigation. Except as disclosed in Seller's SEC Filings, there is no (a) action, suit, arbitration proceeding, claim, demand, citation, summons, subpoena, investigation or other proceeding (whether civil, criminal, administrative, regulatory, investigative or informal) pending or, to the knowledge of Seller, threatened by or against Seller or any of its Subsidiaries or, to the knowledge of Seller, pending or threatened by or against Counterparty or any Sublicensees with respect to the Licensed Products, at law or in equity, or (b) inquiry or investigation (whether civil, criminal, administrative, regulatory, investigative or informal) by or before a Governmental Authority pending or, to the knowledge of Seller, threatened against Seller or any of its Subsidiaries or, to the knowledge of Seller, pending or threatened against Counterparty or any Sublicensees with respect to the Licensed Products, that, in each case, (i) if adversely determined, would be a Material Adverse Change, or (ii) challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the transactions contemplated by any of the Transaction Documents. Except as disclosed in Seller's SEC Filings, to the knowledge of Seller, no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such action, suit, arbitration, claim, investigation, proceeding or inquiry.

Section 3.8 Compliance with Laws. Seller (a) is not in violation of, and, to the knowledge of Seller, is not under investigation with respect to and has not been threatened to be charged with or been given notice of any violation of, any law, statute, rule, ordinance or regulation of, or any judgment, order, writ, decree, injunction, stipulation, consent order, permit or license granted, issued or entered by, any Governmental Authority and (b) is not subject to any judgment, order, writ, decree, injunction, stipulation, consent order, permit or license granted, issued or entered by any Governmental Authority, in each case, that would be a Material Adverse Change. Seller is in compliance with the requirements of all applicable laws, a breach of any of which would be a Material Adverse Change.

Section 3.9 No Conflicts.

(a) None of the execution and delivery by Seller of any of the Transaction Documents to which Seller is party, the performance by Seller of the obligations contemplated hereby or thereby or consummation of the transactions contemplated hereby or thereby: (i) contravene, conflict with, result in a breach or violation of, constitute a default (with or without notice or lapse of time, or both) under, require prepayment under, or accelerate the performance provided by, in any respect, (A) any statute, law, rule, ordinance or regulation of any Governmental Authority, or any judgment, order, writ, decree, permit or license of any Governmental Authority, to which Seller or its assets or properties may be subject or bound, (B) any term or provision of any contract, agreement, indenture, lease, license, deed, commitment or instrument to which Seller is a party or by which Seller or its assets or properties is bound or committed, other than the Counterparty Agreements, or (C) any term or provision of any of the organizational documents of Seller; (ii) give rise to any additional right of termination, cancellation or acceleration of any right or obligation of Seller; (iii) except as provided in any of the Transaction Documents to which it is party, result in or require the creation or imposition of any Lien on the Licensed Patents, the Counterparty Agreements or the Purchased Assets; or (iv) contravene, conflict with, result in a breach or violation of, constitute a default (with or without notice or lapse of time, or both) under, give to any other Person the right to terminate, or accelerate the performance provided by, in any respect, any term or provision of any of the Counterparty Agreements, except, in the case of clauses (i)(A) and (i)(B) above, where such contravention, conflict, breach, violation, default, requirement, acceleration, additional right, creation or imposition would not be a Material Adverse Change.

(b) Seller has not granted, nor does there exist, any Lien on the Transaction Documents, the Counterparty Agreements or the Purchased Assets.

Section 3.10 Intellectual Property Rights.

(a) Exhibit C sets forth an accurate and complete list of all Licensed Patents. For each Licensed Patent, Seller has indicated (i) the countries in which such Licensed Patent is pending, allowed, granted or issued, (ii) the patent number or patent serial number, (iii) the scheduled expiration date of such Licensed Patent, (iv) the scheduled expiration date of the pending patent applications once issued and (v) the owner of such Licensed Patent.

(b) To the knowledge of Seller, each claim that has been issued or granted by the appropriate Patent Office included in the Licensed Patents that are patents and that covers any of the Licensed Products is valid and enforceable.

(c) There are no unpaid maintenance or renewal fees payable by Seller to any third party that currently are overdue for any of the Licensed Patents. No Licensed Patent has lapsed or been abandoned, cancelled or expired. To the knowledge of Seller, each individual associated with the filing and prosecution of the Licensed Patents, including the named inventors of the Licensed Patents, has complied in all material respects with all applicable duties of candor and good faith in dealing with any Patent Office, including any duty to disclose to any Patent Office all information known by such inventors to be material to the patentability of each of the Licensed Patents (including any relevant prior art), in those jurisdictions where such duties exist.

(d) Except as set forth in Seller's SEC Filings and except as would not be a Material Adverse Change, there is no pending or, to the knowledge of Seller, threatened opposition, interference, reexamination, injunction, claim, suit, action, citation, summon, subpoena, hearing, inquiry, investigation (by the International Trade Commission or otherwise), complaint, arbitration, mediation, demand, decree or other dispute, disagreement, proceeding or claim (collectively, "Disputes") challenging the legality, validity, enforceability or ownership of any of the Licensed Patents or that could give rise to a credit against the payments due to Seller under the Counterparty Agreements for the use of the Licensed Patents. There are no Disputes by any third party against Seller involving any of the Licensed Products. The Licensed Patents are not subject to any outstanding injunction, judgment, order, decree, ruling, change, settlement (other than the Settlement Agreement and Seller's settlement with Alexion Pharmaceuticals, Inc.) or other disposition of a Dispute.

(e) To the knowledge of Seller, except as would not be a Material Adverse Change and except as disclosed in Seller's SEC Filings, there is no pending or threatened action, suit or proceeding, or any investigation or claim by any Person to which Seller or, to the knowledge of Seller, to which Counterparty or any Sublicensee is or could be a party, and Seller has not received any written notice of the foregoing, that claims that the manufacture, use, marketing, sale, offer for sale, importation or distribution of any of the Licensed Products by Counterparty, any Affiliates of Counterparty or any Sublicensees pursuant to the Counterparty

Agreements does or could infringe on any patent or other intellectual property rights of any other Person or constitute misappropriation of any other Person's trade secrets or other intellectual property rights. To the knowledge of Seller and except as would not be a Material Adverse Change and except as disclosed in Seller's SEC Filings, there are no pending United States, international or foreign patent applications owned by any third party that, if issued, would limit or prohibit, in any material respect, the manufacture, use or sale of any of the Licensed Products by Counterparty or any Sublicensees.

(f) Avastin® (Bevacizumab), Herceptin® (Trastuzumab), Lucentis® (Ranibizumab) and Xolair® (Omalizumab) are approved Licensed Products.

(g) Except as set forth in Seller's SEC Filings, to the knowledge of Seller, there is no third party infringing any Licensed Patents, nor has Seller received any notice under any of the Counterparty Agreements of infringement of any of the Licensed Patents.

(h) The Licensed Patents constitute all of the intellectual property owned or licensed by Seller necessary for the sale of the Licensed Products worldwide.

(i) The information set forth under "The Licensed Patents and the Licensed Products" in the Offering Memorandum contains a fair and accurate description of the Licensed Patents.

Section 3.11 Regulatory Approval, Manufacturing and Marketing. To the knowledge of Seller, each Licensed Product has received Regulatory Approval for marketing and distribution in the countries listed on Exhibit C, except where failure to receive such regulatory approval would not be a Material Adverse Change.

Section 3.12 No Subordination. The claims and rights of Purchaser created by any Transaction Document in and to the Purchased Assets are not and shall not, at any time, be subordinated to any creditor of Seller.

Section 3.13 Counterparty Agreements.

(a) Other than the Transaction Documents and the Counterparty Agreements, there is no contract, agreement or other arrangement (whether written or oral) to which Seller is a party or by which any of its assets or properties is bound or committed (i) that creates a Lien on, affects or otherwise relates to the Purchased Assets or the Counterparty Agreements or (ii) for which breach, nonperformance, cancellation or failure to renew would be a Material Adverse Change.

(b) Seller has provided to Purchaser a true, correct and complete copy of the Counterparty Agreements and any confidentiality agreement relating to any of the foregoing.

(c) Each of the Counterparty Agreements is in full force and effect and is the legal, valid and binding obligation of Seller and, to the knowledge of Seller based on the representations made to Seller by Counterparty, Counterparty, enforceable against Seller and, to the knowledge of Seller based on the representations made to Seller by Counterparty, Counterparty, in accordance with its respective terms, subject, as to enforcement of remedies, to

bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general equitable principles. The execution, delivery and performance of each of the Counterparty Agreements was and is within the powers of Seller and, to the knowledge of Seller based on the representations made to Seller by Counterparty, Counterparty. Each of the Counterparty Agreements was duly authorized by all necessary action on the part of, and validly executed and delivered by, Seller and, to the knowledge of Seller based on the representations made to Seller by Counterparty, Counterparty. To the knowledge of Seller, Seller is not in breach or violation of or in default under any of the Counterparty Agreements.

(d) Seller has not waived any rights or defaults under the Counterparty Agreements or released Counterparty, in whole or in part, from any of its obligations under any of the Counterparty Agreements. To the knowledge of Seller, there are no oral waivers or modifications (or pending requests therefor) in respect of any of the Counterparty Agreements.

(e) To the knowledge of Seller and except as disclosed in Seller's SEC Filings, no event has occurred that would give Seller or Counterparty the right to terminate any of the Counterparty Agreements or cease paying Royalties thereunder. Seller has not received any notice of an intention by Counterparty or any other Person to terminate or breach any of the Counterparty Agreements, in whole or in part, or challenging the validity or enforceability of any of the Counterparty Agreements or the obligation to pay the Royalties under the Counterparty Agreements, or that Seller or Counterparty is in default of its obligations under any of the Counterparty Agreements. Seller is not aware of any default by Counterparty under any of the Counterparty Agreements. Seller has no intention of terminating any of the Counterparty Agreements and has not given Counterparty any notice of termination of any of the Counterparty Agreements, in whole or in part.

(f) Seller has not consented to an assignment by Counterparty of Counterparty's rights or obligations under any of the Counterparty Agreements and Seller does not have knowledge of any such assignment by Counterparty.

(g) Neither Seller nor Counterparty has made any claim of indemnification under any of the Counterparty Agreements.

(h) Since January 1, 2003, Seller has not exercised its rights to conduct an audit under any of the Counterparty Agreements.

(i) To the knowledge of Seller, Seller has received all amounts owed to it under the Counterparty Agreements.

Section 3.14 Set-off and Other Sources of Royalty Reduction. Except as provided in the Counterparty Agreements, Counterparty has no right of Set-off under any contract or other agreement against the Royalties or any other amounts payable to Seller under the Counterparty Agreements. Counterparty has not exercised, and, to the knowledge of Seller, Counterparty has not had the right to exercise and no event or condition exists that, upon notice or passage of time or both, would reasonably be expected to permit Counterparty to exercise, any Set-off against the Royalties or any other amounts payable to Seller under the Counterparty Agreements. To the knowledge of Seller, there are no third party patents that would provide a basis for a reduction in the royalties due to Seller pursuant to the Counterparty Agreements. There are no compulsory licenses granted or, to the knowledge of Seller, threatened with respect to the Licensed Patents.

Section 3.15 UCC Matters. Seller's exact legal name is, and has been since 2006, "PDL BioPharma, Inc.", and, from 1986 until 2006, was "Protein Design Labs, Inc." Seller's jurisdiction of organization is, and has been since 1986, located in Delaware. Seller's principal place of business is, and has been since December 18, 2008, located in Nevada, and, from 1986 until December 18, 2008, was located in California. For the immediately preceding 10 years, Seller has not been the subject of any merger or other corporate or other reorganization in which its identity or status was materially changed, except in each case when it was the surviving or resulting entity.

Section 3.16 Tax Matters. No deduction or withholding for or on account of any tax has been made, or was required under applicable law to be made, from any payment to Seller under the Counterparty Agreements. Seller has filed (or caused to be filed) all tax returns and reports required by law to have been filed by it and has paid all taxes required to be paid by it, except any such taxes that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books, and Seller has never filed any tax return or report under any name other than its exact legal name.

Section 3.17 Margin Stock. Seller is not engaged in the business of extending credit for the purpose of buying or carrying margin stock, and no portion of the Purchase Price shall be used by Seller for a purpose that violates Regulation T, U or X promulgated by the Board of Governors of the Federal Reserve System from time to time.

ARTICLE IV COVENANTS

So long as the Notes are outstanding, the parties hereto covenant and agree as follows:

Section 4.1 Books and Records; Notices.

(a) After receipt by Seller of notice of any action, claim, demand, dispute, investigation, arbitration or proceeding (commenced or threatened) relating to the transactions contemplated by any Transaction Document, the Purchased Assets or any Counterparty Agreement or any default or termination by any Person under the Counterparty Agreements, Seller shall (i) promptly inform Purchaser in writing of the receipt of such notice and the substance thereof and (ii) if such notice is in writing, promptly furnish Purchaser with a copy of such notice and any related materials with respect thereto.

(b) Seller shall keep and maintain, or cause to be kept and maintained, at all times full and accurate books and records adequate to reflect accurately all financial information it has received from Counterparty with respect to the Royalties.

(c) Promptly after receipt by Seller (but in no event more than five Business Days following receipt by Seller) of any written notice, certificate, offer, proposal, correspondence, report or other communication relating to the Counterparty Agreements, the Royalties, the Purchased Assets or the Licensed Products, Seller shall (i) inform Purchaser in writing of such receipt, (ii) provide to Purchaser in writing a reasonably detailed description of the substance thereof and (iii) furnish Purchaser with a copy of such notice, certificate, offer, proposal, correspondence, report or other communication.

(d) Seller shall provide Purchaser with written notice as promptly as practicable (and in any event within five Business Days) after becoming aware of any of the following: (i) the occurrence of a Bankruptcy Event in respect of Seller; (ii) any material breach or default by Seller of any covenant, agreement or other provision of this Purchase and Sale Agreement or any other Transaction Document; (iii) any representation or warranty made by Seller in any of the Transaction Documents or in any certificate delivered to Purchaser pursuant hereto shall prove to be untrue, inaccurate or incomplete in any material respect on the date as of which made; or (iv) any change, effect, event, occurrence, state of facts, development or condition that would be a Material Adverse Change.

(e) Seller shall notify Purchaser in writing not less than 30 days prior to any change in, or amendment or alteration of, Seller's (i) legal name, (ii) form or type of organization or corporate structure or (iii) jurisdiction of organization.

(f) Subject to applicable confidentiality restrictions and securities laws, Seller shall make available such other information as Purchaser may, from time to time, reasonably request with respect to (i) the Purchased Assets or (ii) the condition or operations, financial or otherwise, of Seller that is reasonably likely to impact or affect the performance of Seller's obligations hereunder or Seller's compliance with the terms, provisions and conditions of this Purchase and Sale Agreement.

Section 4.2 Confidentiality; Public Announcement.

(a) Except as otherwise required by law, by the rules and regulations of any securities exchange or trading system or by the FDA or any other Governmental Authority with similar regulatory authority and except as otherwise set forth in this Section 4.2, all Confidential Information furnished by Seller to Purchaser, as well as the terms, conditions and provisions of this Purchase and Sale Agreement and any other Transaction Document, shall be kept confidential by Purchaser and shall be used by Purchaser only in connection with this Purchase and Sale Agreement and any other Transaction Document and the transactions contemplated hereby and thereby. Notwithstanding the foregoing, Purchaser may disclose such information to its actual and potential investors and lenders and their respective Affiliates or representatives who have a need to know the Confidential Information; provided, that such Persons (i) shall be informed of the confidential nature of such information and shall be obligated to keep such information confidential pursuant to obligations of confidentiality no less onerous than those set out herein or (ii) shall have executed and delivered the Confidentiality Agreement attached as Exhibit B to the Indenture.

(b) Seller and Purchaser agree that, after the Closing, public announcements may be issued in the form of one or more press releases, in each case subject to Purchaser or Seller having a reasonable prior opportunity to review such public announcement, and which announcement shall be in a form mutually acceptable to Purchaser and Seller, and either party hereto may thereafter disclose any information contained in such press release at any time without the consent of the other party hereto.

Section 4.3 Commercially Reasonable Efforts; Further Assurances.

(a) Subject to the terms and conditions of this Purchase and Sale Agreement, each party hereto will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable laws and regulations to consummate the transactions contemplated by the Transaction Documents, including to perfect the sale, transfer, conveyance, assignment, contribution and granting of the Purchased Assets to Purchaser pursuant to this Purchase and Sale Agreement. Purchaser and Seller agree to execute and deliver such other documents, certificates, instruments, agreements and other writings and to take such other actions as may be necessary or desirable, or reasonably requested by the other party hereto, in order to consummate or implement expeditiously the transactions contemplated by any Transaction Document and to perfect, protect, more fully evidence, vest and maintain in Purchaser good, valid and marketable rights and interests in and to the Purchased Assets free and clear of all Liens (other than those permitted by the Transaction Documents) or enable Purchaser to exercise or enforce any of Purchaser's rights under any Transaction Document, including following the Closing.

(b) Seller and Purchaser shall cooperate and provide assistance as reasonably requested by the other party hereto, at the expense of such other party hereto, in connection with any litigation, arbitration or other proceeding (whether threatened, existing, initiated or contemplated prior to, on or after the date hereof) to which the other party hereto, any of its Affiliates or controlling Persons or any of their respective officers, directors, equityholders, members, controlling Persons, managers, agents or employees is or may become a party or is or may become otherwise directly or indirectly affected or as to which any such Persons have a direct or indirect interest, in each case relating to any Transaction Document, the Purchased Assets or the transactions described herein or therein but in all cases excluding any litigation brought by Seller against Purchaser or brought by Purchaser against Seller.

(c) Seller shall comply with all applicable laws with respect to the Transaction Documents, the Counterparty Agreements, the Purchased Assets and all ancillary agreements related thereto, the violation of which would be a Material Adverse Change.

Section 4.4 Payments on Account of the Purchased Assets.

(a) Notwithstanding the terms of the Counterparty Instruction, if Counterparty, any Sublicensee or any other Person makes any payment to Seller (or any of its Subsidiaries other than Purchaser) directly and not to the Collection Account, including payments made in respect of the Settlement Agreement, on account of the Purchased Assets (except for liquidated damages payments under the Settlement Agreement), then (i) the portion of such payment that represents the Purchased Royalties shall be held by Seller (or such Subsidiary) in trust for the benefit of Purchaser in a segregated account, (ii) Seller (or such Subsidiary) shall have no right, title or interest whatsoever in such portion of such payment and shall not create or suffer to exist any Lien thereon and (iii) Seller (or such Subsidiary) promptly, and in any event no later than two Business Days following the receipt by Seller (or such Subsidiary) of such portion of such payment, shall remit such portion of such payment to the Collection Account pursuant to Section 4.4(b) in the exact form received with all necessary endorsements.

(b) Seller shall make all payments to be made by Seller pursuant to this Purchase and Sale Agreement by wire transfer of immediately available funds, without Set-off, to the Collection Account.

(c) If Counterparty, any Sublicensee or any other Person makes any payment to Purchaser of Royalties relating to periods prior to the Royalties Commencement Date, then (i) such payment shall be held by Purchaser in trust for the benefit of Seller in a segregated account, (ii) Purchaser shall have no right, title or interest whatsoever in such payment and shall not create or suffer to exist any Lien thereon and (iii) Purchaser promptly, and in any event no later than two Business Days following the receipt by Purchaser of such payment, shall remit such payment to the Seller Account pursuant to Section 4.4(d) in the exact form received with all necessary endorsements.

(d) Purchaser shall make all payments of Royalties relating to periods prior to the Royalties Commencement Date to be made by Purchaser pursuant to this Purchase and Sale Agreement by wire transfer of immediately available funds, without Set-off, to the following account (or to such other account as Seller shall notify Purchaser in writing from time to time) (the "Seller Account"):

Bank Name:	Wells Fargo Bank, NA
ABA Number:	121000248
Account Number:	4040016214
Account Name:	PDL BioPharma, Inc.
Attention:	Christine Larson, CFO

(e) If Counterparty takes any Set-off in accordance with the terms of the Counterparty Agreements where such Set-off (or any portion thereof) is made in respect of any event occurring, circumstance existing or action taken prior to the Royalties Commencement Date but has the effect of reducing amounts to be paid to Purchaser following the Closing Date, then Seller shall cause the amount of such Set-off (or portion thereof, as the case may be) to be paid promptly (but in no event later than three Business Days following such Set-off) to the Collection Account.

Section 4.5 Counterparty Agreements.

(a) Seller shall fully and timely perform and comply with its duties and obligations under the Counterparty Agreements and, without the prior written consent of Purchaser, shall not (i) forgive, release or compromise any amount owed to or becoming owing to Seller or Purchaser under the Counterparty Agreements, (ii) waive, amend, cancel, terminate or fail to exercise any rights or options constituting or involving the right to receive the Royalties, (iii) except as contemplated by the Transaction Documents, create or permit to exist any Lien on the Counterparty Agreements or the Purchased Assets or (iv) agree to do any of the foregoing.

(b) Except with the prior written consent of Purchaser, Seller shall not assign, amend, modify, supplement or restate any Counterparty Agreement, enter into any new agreement in respect of the Purchased Assets or the Licensed Products or exercise or waive any right or option, fail to exercise any right or option, grant any consent or exercise or fail to exercise any action in respect of the Purchased Assets, the Licensed Products or the Counterparty Agreements in any manner that would, in each case, (i) be a Material Adverse Change or (ii) conflict with or cause an event of default under, or breach or termination of, this Purchase and Sale Agreement, any other Transaction Document or any of the Counterparty Agreements.

(c) Except with the prior written consent of Purchaser, Seller shall not terminate (or consent to any termination of) any Counterparty Agreement in whole or in part.

(d) Promptly after (i) receiving notice from Counterparty or any other Person (A) terminating any of the Counterparty Agreements (in whole or in part), (B) alleging any breach of or default under any of the Counterparty Agreements by Seller or (C) asserting the existence of any facts, circumstances or events that, alone or together with other facts, circumstances or events, could reasonably be expected (with or without the giving of notice or passage of time, or both) to give rise to a breach of or default under any of the Counterparty Agreements by Seller or the right to terminate any of the Counterparty Agreements (in whole or in part) by Counterparty or any other Person or (ii) Seller otherwise has knowledge of any fact, circumstance or event that, alone or together with other facts, circumstances or events, could reasonably be expected (with or without the giving of notice or passage of time, or both) to give rise to a breach of or default under any of the Counterparty Agreements by Seller or give the right to terminate any of the Counterparty Agreements (in whole or in part) by Counterparty or any other Person, in each case, Seller shall (A) promptly give a written notice to Purchaser describing in reasonable detail the relevant breach, default or termination event, including a copy of any written notice received from Counterparty or the other relevant Person, and, in the case of any breach or default or alleged breach or default by Seller, describing in reasonable detail any corrective action Seller proposes to take, and (B) use its commercially reasonable efforts to promptly cure such breach or default and shall give written notice to Purchaser upon curing such breach or default; provided, however, that, if Seller fails to promptly take reasonable actions to cure such breach or default, Purchaser shall, to the extent possible and to the extent permitted by the Counterparty Agreements, be entitled to take any and all actions Purchaser considers reasonably necessary to promptly cure such breach or default, and Seller shall cooperate with Purchaser for such purpose and reimburse Purchaser promptly (but in no event later than two Business Days following notice thereof) for all costs and expenses incurred in connection therewith.

(e) Promptly after Seller obtains knowledge of a breach or default or alleged breach or default under any of the Counterparty Agreements by Counterparty or any other Person (each, a "Defaulting Party") or of the existence of any facts, circumstances or events that, alone or together with other facts, circumstances or events, could reasonably be expected (with or without the giving of notice or passage of time, or both) to give rise to a breach or default under any of the Counterparty Agreements by a Defaulting Party or the right to terminate any of the Counterparty Agreements (in whole or in part) by Seller, in each case, if such breach or default would be a Material Adverse Change, Seller shall (i) promptly give a written notice to Purchaser describing in reasonable detail the relevant breach, default or termination event and (ii) proceed in consultation with Purchaser and take such permissible actions (including commencing legal

action against the Defaulting Party) to enforce compliance by the Defaulting Party with the relevant provisions of the Counterparty Agreements and to exercise any or all of Seller's rights and remedies, whether under the Counterparty Agreements or by operation of law, with respect thereto. Seller acknowledges and agrees that, if an Event of Default occurs and is continuing, Seller and Purchaser shall, at the request of the Trustee (at the direction of Noteholders of a majority of the outstanding principal balance of the Notes), jointly with the Trustee enforce their respective contractual rights under the Counterparty Agreements.

(f) If Counterparty violates or fails to comply with certain provisions of the Settlement Agreement in any respect, Seller shall notify Counterparty of such violation or failure to comply in accordance with the provisions of the Settlement Agreement and, if Counterparty fails to cure such violation, continues to violate or fails to comply with such provisions 10 days following notice thereof, then Seller shall promptly make certain written requests authorized by the Settlement Agreement in such event.

(g) Except with the prior written consent of Purchaser, Seller shall not exercise or waive any right, fail to exercise any right or take or fail to take any action in respect of the Licensed Patents that would be a Material Adverse Change.

(h) Except in connection with the Transaction Documents or an assignment by Seller to any other Person with which Seller may merge or consolidate or to which Seller may sell all or substantially all of its assets or all of its assets related to the Licensed Products in accordance with the provisions of Section 7.4, Seller shall not dispose of or encumber the Licensed Patents in whole or in part, except for non-exclusive licenses.

Section 4.6 Mergers, Consolidations and Asset Sales Involving Counterparty. If there occurs a merger or consolidation of Seller, on the one hand, and Counterparty or its Affiliates, on the other hand, a sale of all or substantially all of Seller's assets to Counterparty or a sale or assignment of any of the Counterparty Agreements or the Licensed Patents by Seller to Counterparty, and in any such case one or more Counterparty Agreements are terminated in connection therewith, Seller (or its successor) shall pay to Purchaser royalties on Net Sales of the applicable Licensed Products for the term of such Counterparty Agreements on the same basis as if such Counterparty Agreements had continued (but only with respect to 60% of such royalties) and Purchaser's rights with respect to the Purchased Assets and the covenants of Seller under this Purchase and Sale Agreement shall continue to apply on the same basis as if such Counterparty Agreements were in place between Seller and Counterparty.

Section 4.7 Existence. Seller shall (i) preserve and maintain its existence, (ii) preserve and maintain its rights, franchises and privileges, (iii) qualify and remain qualified in good standing in each jurisdiction where it is currently qualified and (iv) comply with its organizational documents unless failure to do any of the foregoing would not be a Material Adverse Change.

Section 4.8 Jurisdiction of Organization and Principal Place of Business. Seller agrees to maintain its jurisdiction of organization in the State of Delaware and its principal place of business in the State of Nevada; provided, however, that Seller may change its principal place of business from the State of Nevada to another state within the United States so long as the tax rate applicable to Seller as a result of such change would be equal to or less than the tax rate applicable to Seller as a result of having its principal place of business in the State of Nevada.

Section 4.9 Exercise of Audit Rights. If at any time Seller is not the Servicer, Seller agrees to audit the records of Counterparty in accordance with Section 3.1(c)(v) of the Servicing Agreement at the direction (a) through the Trustee of Noteholders of at least 25% of the outstanding principal balance of the Senior Class of Notes or (b) of the then-current Servicer.

Section 4.10 Approval of Actions of Purchaser. To the extent approval by the members of Purchaser is required prior to any action by Purchaser to perform its obligations under the Transaction Documents to which Purchaser is a party, Seller, as long as it is the holder of a majority of the Capital Securities of Purchaser, shall approve any such action.

ARTICLE V THE CLOSING

Section 5.1 Closing. The closing of the transactions contemplated hereby (the “Closing”) shall take place on the date hereof (the “Closing Date”) at the offices of Pillsbury Winthrop Shaw Pittman LLP located at 1540 Broadway, New York, New York 10036, or such other place as the parties mutually agree.

Section 5.2 Closing Deliverables of Seller. At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following:

- (a) the Bill of Sale, the Servicing Agreement and the Pledge and Security Agreement, each executed by Seller;
- (b) an irrevocable direction to Counterparty to pay the Purchased Royalties directly to the Collection Account, and as to such other matters, in the form set forth in Exhibit B signed by Seller;
- (c) a certificate of an executive officer of Seller (the statements made in which shall be true and correct on and as of the Closing Date): (i) attaching copies, certified by such officer as true and complete, of resolutions of the governing body of Seller authorizing and approving the execution, delivery and performance by Seller of the Transaction Documents and the transactions contemplated herein and therein; (ii) setting forth the incumbency of the officer or officers of Seller who have executed and delivered the Transaction Documents including therein a signature specimen of each officer or officers; and (iii) attaching a copy, certified by such officer as true and complete, of a good standing certificate of the appropriate Governmental Authority of Seller’s jurisdiction of organization, stating that Seller is in good standing under the laws of such jurisdiction; and
- (d) such other certificates, documents and financing statements as Purchaser may reasonably request, including (i) the documents contemplated by Section 6 of the Initial Purchaser Purchase Agreement and (ii) a financing statement satisfactory to Purchaser to create, evidence and perfect the sale of the Purchased Assets pursuant to Section 2.1(c) and the back-up security interest granted pursuant to Section 2.1(d).

Section 5.3 Closing Deliverables of Purchaser. At the Closing, Purchaser shall deliver or cause to be delivered to Seller the following:

- (a) the Bill of Sale executed by Purchaser; and
- (b) payment of the Purchase Price in accordance with Section 2.3.

ARTICLE VI
INDEMNIFICATION

Section 6.1 Indemnification by Seller. Seller hereby indemnifies and holds each of Purchaser and its Affiliates and any and all of their respective partners, directors, managers, members, officers, employees, agents (other than the Initial Purchaser) and controlling Persons (each, a "Purchaser Indemnified Party") harmless from and against, and will pay to each Purchaser Indemnified Party the amount of, any and all Losses (including attorneys' fees) awarded against or incurred or suffered by such Purchaser Indemnified Party, whether or not involving a third party claim, demand, action or proceeding, arising out of (i) any breach of any representation, warranty or certification made by Seller in any of the Transaction Documents to which Seller is party or certificates given by Seller to Purchaser in writing pursuant to this Purchase and Sale Agreement or any other Transaction Document, (ii) any breach of or default under any covenant or agreement by Seller to Purchaser pursuant to any Transaction Document to which Seller is party or any of the Counterparty Agreements, (iii) any Excluded Liabilities and Obligations (unless such Excluded Liabilities and Obligations are due to Purchaser not complying with the confidentiality provisions set forth in the Counterparty Agreements), (iv) claims arising on or after the Closing Date and asserted against a Purchaser Indemnified Party relating to the transactions contemplated in any Transaction Document or any of the Counterparty Agreements and (v) any fees, expenses, costs, liabilities or other amounts incurred or owed by Seller to any brokers, financial advisors or comparable other Persons retained or employed by it in connection with the transactions contemplated by this Purchase and Sale Agreement; provided, however, that the foregoing shall exclude any indemnification to any Purchaser Indemnified Party that (A) has the effect of imposing on Seller any recourse liability for Purchased Royalties because of the insolvency or other creditworthiness problems of Counterparty or the insufficiency of the Purchased Royalties, whether as a result of the amount of cash flow arising from sales of the Licensed Products or otherwise, unless resulting from the failure of Seller to perform its obligations under this Purchase and Sale Agreement, (B) results from the bad faith, gross negligence or willful misconduct of such Purchaser Indemnified Party, (C) results from the failure of any Person other than Seller to perform any of its obligations under any of the Transaction Documents or (D) results from Seller's acts or omissions based upon the written instructions from any Purchaser Indemnified Party. Any amounts due to any Purchaser Indemnified Party hereunder shall be payable by Seller to such Purchaser Indemnified Party upon demand. In addition to the foregoing obligations of Seller, Seller agrees (a) to pay to Purchaser on demand all reasonable costs and expenses incurred by Purchaser in connection with the enforcement of the Transaction Documents against Seller or its Affiliates, but not in connection with any enforcement against any other Person, (b) to indemnify Purchaser on an after-tax basis for any stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of the Transaction Documents, and to indemnify each Purchaser Indemnified Party on an after-tax basis in respect of any liabilities

with respect to such taxes and fees, and (c) to indemnify Purchaser on an after-tax basis for any U.S. federal, state or local or any foreign income, franchise or other taxes imposed on income or assets (including any interest, penalties or reasonable accountant or counsel fees incurred in connection with such taxes) asserted against, withheld from or required to be withheld by Purchaser at any time that the Notes are outstanding.

Section 6.2 Indemnification by Purchaser. Purchaser hereby indemnifies and holds each of Seller and its Affiliates and any and all of their respective partners, directors, managers, members, officers, employees, agents and controlling Persons (each, a “Seller Indemnified Party”) harmless from and against, and will pay to each Seller Indemnified Party the amount of, any and all Losses (including attorneys’ fees) awarded against or incurred or suffered by such Seller Indemnified Party, whether or not involving a third party claim, demand, action or proceeding, arising out of any breach of or default under any covenant or agreement by Purchaser pursuant to any Transaction Document; provided, however, that the foregoing shall exclude any indemnification to any Seller Indemnified Party that (A) results from the bad faith, gross negligence or willful misconduct of such Seller Indemnified Party, (B) results from the performance by any other Person (including Seller) or the failure of any other Person (including Seller) to perform any of its obligations under any of the Transaction Documents, or (C) results from Purchaser’s acts or omissions based upon the written instructions from any Seller Indemnified Party. Any amounts due to any Seller Indemnified Party hereunder shall be payable by Purchaser to such Seller Indemnified Party upon demand.

Section 6.3 Procedures. If any claim, demand, action or proceeding (including any investigation by any Governmental Authority) shall be brought or alleged against an indemnified party in respect of which indemnity is to be sought against an indemnifying party pursuant to Section 6.1 or Section 6.2, the indemnified party shall, promptly after receipt of notice of the commencement of any such claim, demand, action or proceeding, notify the indemnifying party in writing of the commencement of such claim, demand, action or proceeding, enclosing a copy of all papers served, if any; provided, that the omission to so notify such indemnifying party will not relieve the indemnifying party from any liability that it may have to any indemnified party under Section 6.1 or Section 6.2 unless, and only to the extent that, such omission results in the forfeiture of, or has a material adverse effect on the exercise or prosecution of, substantive rights or defenses by the indemnifying party. In case any such action is brought against an indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled, at the indemnifying party’s sole cost and expense, to participate therein and, to the extent that it may wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Article VI for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. In any such proceeding, an indemnified party shall have the right to retain its own counsel, but the reasonable fees and expenses of such counsel shall be at the expense of such indemnified party unless (a) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (b) the indemnifying party has assumed the defense of such proceeding and has failed within a reasonable time to retain counsel reasonably satisfactory to such indemnified party or (c) the named parties to any such proceeding

(including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential conflicts of interests between them based on the advice of counsel to the indemnifying party. It is agreed that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate law firm (in addition to local counsel where necessary) for all such indemnified parties. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but, if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any Loss by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or discharge of any claim or pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement, compromise or discharge, as the case may be, (i) includes an unconditional written release of such indemnified party, in form and substance reasonably satisfactory to the indemnified party, from all liability on claims that are the subject matter of such claim or proceeding, (ii) does not include any statement as to an admission of fault, culpability or failure to act by or on behalf of any indemnified party and (iii) does not impose any continuing material obligation or restrictions on any indemnified party.

Section 6.4 Exclusive Remedy. Except in the case of fraud or intentional breach, following the Closing, the indemnification afforded by this Article VI shall be the sole and exclusive remedy for any and all Losses sustained or incurred by a party hereto in connection with the transactions contemplated by the Transaction Documents, including with respect to any breach of any representation, warranty or certification made by a party hereto in any of the Transaction Documents or certificates given by a party hereto in writing pursuant hereto or thereto or any breach of or default under any covenant or agreement by a party hereto pursuant to any Transaction Document. Notwithstanding anything in this Purchase and Sale Agreement to the contrary, in the event of any breach or failure in performance of any covenant or agreement contained in any Transaction Document, the non-breaching party shall be entitled to specific performance, injunctive or other equitable relief pursuant to Section 7.2.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Survival. All representations, warranties and covenants made herein and in any other Transaction Document or any certificates delivered pursuant to this Purchase and Sale Agreement shall survive the execution and delivery of this Purchase and Sale Agreement and the Closing. The rights hereunder to indemnification, payment of Losses or other remedies based on such representations, warranties and covenants shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time (whether before or after the execution and delivery of this Purchase and Sale Agreement or the Closing) in respect of the accuracy or inaccuracy of or compliance with, any such representation, warranty or covenant. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant, shall not affect the rights hereunder to indemnification, payment of Losses or other remedies based on such representations, warranties and covenants.

Section 7.2 Specific Performance. Each of the parties hereto acknowledges that the other party hereto will have no adequate remedy at law if it fails to perform any of its obligations under any of the Transaction Documents. In such event, each of the parties hereto agrees that the other party hereto shall have the right, in addition to any other rights it may have (whether at law or in equity), to specific performance of this Purchase and Sale Agreement.

Section 7.3 Notices. All notices, consents, waivers and other communications hereunder shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent or (d) on the date transmitted by legible telecopier transmission with a confirmation of receipt, in all cases, with a copy emailed to the recipient at the applicable address, addressed to the recipient as follows:

if to Seller (including as Servicer under the Servicing Agreement), to:

PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer
Telephone: 775-832-8500
Facsimile: 775-832-8501
Email: cris.larson@pdl.com

With a copy to:

Attention: General Counsel
Email: chris.stone@pdl.com

if to Purchaser, to:

QHP Royalty Sub LLC
c/o PDL BioPharma, Inc.
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer
Telephone: 775-832-8500
Facsimile: 775-832-8501
Email: cris.larson@pdl.com

With a copy to:

Attention: General Counsel
Email: chris.stone@pdl.com

Each party hereto may, by notice given in accordance herewith to each of the other party hereto, designate any further or different address to which subsequent notices, consents, waivers and other communications shall be sent.

Section 7.4 Successors and Assigns.

(a) The provisions of this Purchase and Sale Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) Seller shall not be entitled to assign any of its obligations under any of the Transaction Documents without the prior written consent of Purchaser; provided, however, that Seller may, without the consent of Purchaser, assign any of its obligations under the Transaction Documents to any other Person with which it may merge or consolidate or to which it may sell all or substantially all of its assets, provided that the assignee under such assignment agrees to be bound by the terms of the Transaction Documents, as applicable, and furnish a written agreement to Purchaser in form and substance reasonably satisfactory to Purchaser to that effect.

(c) Purchaser shall not be entitled to assign any of its obligations under any of the Transaction Documents or the Counterparty Agreements without the prior written consent of Seller; provided, however, that, if an Event of Default has occurred and is continuing, Purchaser may, without the consent of Seller, assign any of its obligations under the Transaction Documents or the Counterparty Agreements to any other Person and Purchaser shall give notice of any such assignment to Seller promptly after the occurrence thereof. Seller shall be under no obligation to reaffirm any representations, warranties or covenants made in this Purchase and Sale Agreement or any of the other Transaction Documents or take any other action in connection with any such assignment by Purchaser.

Section 7.5 Independent Nature of Relationship. Except for any Capital Securities of Purchaser held by Seller, the relationship between Seller and Purchaser is solely that of seller and purchaser, and neither Seller nor Purchaser has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. Nothing contained herein or in any other Transaction Document shall be deemed to constitute Seller and Purchaser as a partnership, an association, a joint venture or any other kind of entity or legal form.

Section 7.6 Entire Agreement. This Purchase and Sale Agreement, together with the Exhibits hereto (which are incorporated herein by reference), and the other Transaction Documents constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties hereto with respect to the subject matter of this Purchase and Sale Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein (or in the Exhibits hereto or the other Transaction Documents) has been made or relied upon by either party hereto. Neither this Purchase and Sale Agreement nor any provision hereof is intended to confer upon any Person other than the parties hereto and the other Persons referenced in Article VI any rights or remedies hereunder.

Section 7.7 Governing Law.

(a) THIS PURCHASE AND SALE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Purchase and Sale Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Purchase and Sale Agreement in any court referred to in Section 7.7(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each of the parties hereto irrevocably consents to service of process in the manner provided for notices in Section 7.3. Nothing in this Purchase and Sale Agreement will affect the right of any party hereto to serve process in any other manner permitted by law. Each of the parties hereto waives personal service of any summons, complaint or other process, which may be made by any other means permitted by New York law.

Section 7.8 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS PURCHASE AND SALE AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY HERETO WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS PURCHASE AND SALE AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.8.

Section 7.9 Severability. If one or more provisions of this Purchase and Sale Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be excluded from this Purchase and Sale Agreement and the balance of this Purchase and Sale Agreement shall be interpreted as if such provision were so excluded and shall remain in full force and effect be enforceable in accordance with its terms. Any provision of this Purchase and Sale Agreement held invalid or unenforceable only in part or degree by a court of competent jurisdiction shall remain in full force and effect to the extent not held invalid or unenforceable.

Section 7.10 Counterparts. This Purchase and Sale Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Purchase and Sale Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

Section 7.11 Amendments; No Waivers. Neither this Purchase and Sale Agreement nor any term or provision hereof may be amended, supplemented, restated, waived, changed or modified except with the written consent of the parties hereto. No waiver of any right hereunder shall be effective unless such waiver is signed in writing by the party hereto against whom such waiver is sought to be enforced. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No notice to or demand on either party hereto in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval hereunder shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.12 Limited Recourse. Seller accepts that the enforceability against Purchaser of any obligations of Purchaser hereunder shall be limited to the assets of Purchaser, whether tangible or intangible, real or personal and the proceeds thereof. Once all such assets have been realized upon and such assets (and proceeds thereof) have been applied in accordance with the Indenture, any outstanding obligations of Purchaser to Seller hereunder shall be extinguished. Seller further agrees that it shall take no action against any employee, director, officer or administrator of Purchaser in relation to this Purchase and Sale Agreement; provided, that nothing herein shall limit Purchaser (or its permitted successors or assigns) from pursuing claims, if any, against any such Person; provided, further, that the foregoing shall not in any way limit, impair or otherwise affect any rights of Seller to proceed against any employee, director, officer or administrator of Purchaser (a) for intentional and willful fraud or intentional and willful misrepresentations on the part of or by such employee, director, officer or administrator or (b) for the receipt of any distributions or payments to which Seller or any successor in interest is entitled, other than distributions expressly permitted pursuant to the other Transaction Documents.

Section 7.13 Cumulative Remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. Without limiting the foregoing, Seller hereby authorizes Purchaser, at any time and from time to time, to the fullest extent permitted by law, to offset any amounts payable by Purchaser to, or for the account of, Seller against any obligations of Seller to Purchaser arising in connection with the Transaction Documents (including amounts payable pursuant to Article VI) that are then due and payable.

Section 7.14 Table of Contents and Headings. The Table of Contents and headings of the Articles and Sections of this Purchase and Sale Agreement 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 7.15 Acknowledgment and Agreement. Seller expressly acknowledges and agrees that all of Purchaser's right, title and interest in, to and under this Purchase and Sale Agreement shall be pledged and assigned to the Trustee as collateral by Purchaser pursuant to the Indenture, and Seller consents to such pledge and assignment, without regard to whether an event of default has occurred and is continuing under the Indenture. Each of the parties hereto acknowledges and agrees that the Trustee, acting on behalf of the Noteholders, is a third party beneficiary of the rights of Purchaser arising hereunder and shall be entitled to exercise and/or enforce certain rights of Purchaser hereunder.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement as of the day and year first written above.

PDL BIOPHARMA, INC.

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President and Chief Executive Officer

QHP ROYALTY SUB LLC

By: PDL BioPharma, Inc., its Member

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President and Chief Executive Officer

EXHIBIT A

FORM OF BILL OF SALE

This BILL OF SALE is dated as of November 2, 2009 (the "Closing Date") by PDL BIOPHARMA, INC., a Delaware corporation ("Seller"), in favor of QHP ROYALTY SUB LLC, a Delaware limited liability company ("Purchaser").

RECITALS

WHEREAS, Seller and Purchaser are parties to that certain Purchase and Sale Agreement, dated as of the Closing Date (the "Purchase and Sale Agreement"), pursuant to which, among other things, Seller agrees to sell, transfer, convey, assign, contribute and grant to Purchaser, and Purchaser agrees to purchase, acquire and accept from Seller, all of Seller's right, title and interest in, to and under the Purchased Assets, for the consideration described in the Purchase and Sale Agreement; and

WHEREAS, the parties hereto now desire to carry out the purposes of the Purchase and Sale Agreement by the execution and delivery of this instrument evidencing Purchaser's purchase, acquisition and acceptance of the Purchased Assets;

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth in the Purchase and Sale Agreement and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Seller, by this Bill of Sale, does hereby sell, transfer, convey, assign, contribute, grant, release, set over, confirm and deliver to Purchaser, and Purchaser does hereby purchase, acquire and accept, all of Seller's right, title and interest in, to and under the Purchased Assets.
2. The parties hereto acknowledge that Purchaser is not assuming any of the Excluded Liabilities and Obligations.
3. Seller hereby covenants that, at any time or from time to time after the Closing Date, at Purchaser's reasonable request and without further consideration, Seller shall execute and deliver to Purchaser such other instruments of sale, transfer, conveyance, assignment, contribution, granting and confirmation, provide such materials and information and take such other actions, each as Purchaser may reasonably deem necessary to sell, transfer, convey, assign, contribute, grant, release, set over, confirm and deliver to Purchaser, and to confirm Purchaser's title to, the Purchased Assets and to put Purchaser in actual possession of such Purchased Assets and assist Purchaser in exercising all rights with respect thereto.
4. This Bill of Sale shall be binding upon and inure to the benefit of Seller, Purchaser and their respective successors and assigns, for the uses and purposes set forth and referred to above, effective immediately upon its delivery to Purchaser.

5. THIS BILL OF SALE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.
6. This Bill of Sale may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument.
7. The following terms as used herein shall have the following respective meanings:
 - “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director, officer or manager of such Person. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative to the foregoing. For purposes hereof, the term “Affiliate” when used in respect of Seller shall be deemed to exclude Purchaser.
 - “Capital Securities” means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person’s capital, whether now outstanding or issued after the Closing Date, including common shares, ordinary shares, preferred shares, membership interests or share capital in a limited liability company or other Person, limited or general partnership interests in a partnership, beneficial interests in trusts or any other equivalent of such ownership interest or any options, warrants and other rights to acquire such shares or interests, including rights to allocations and distributions, dividends, redemption payments and liquidation payments.
 - “Counterparty” means Genentech, Inc., a Delaware corporation and a wholly-owned subsidiary of Roche Holding, Ltd.
 - “Counterparty Agreements” means, collectively, the Master Agreement, the License Agreements, the Settlement Agreement, the letter agreement entitled “Re: Amendments to Product Licenses and Settlement Agreement” dated July 27, 2009 from Counterparty to Seller executed by Seller and Counterparty, the letter agreement dated July 27, 2009 from Seller to Counterparty executed by Seller and Counterparty and the letter agreement dated September 22, 2009 from Seller to Counterparty executed by Seller and Counterparty.

“Excluded Liabilities and Obligations” has the meaning set forth in Section 2.4 of the Purchase and Sale Agreement.

“FDA” means the U.S. Food and Drug Administration and any successor agency thereto.

“Governmental Authority” means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority (including supranational authority), commission, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including each Patent Office, the FDA and any other government authority in any country.

“License Agreements” means, collectively, (a) the PDL License Agreement dated as of November 3, 1998 between Seller and Counterparty (re HER-2/neu protein), as amended, (b) the PDL License Agreement dated as of December 18, 2003 between Seller and Counterparty (re IgE), as amended, (c) the PDL License Agreement dated as of March 5, 2004 between Seller and Counterparty (re VEGF), as amended, and (d) any other existing or future license agreements entered into under the Master Agreement.

“Licensed Patents” means the PDL Licensed Patents as defined in Exhibit C of the Purchase and Sale Agreement.

“Licensed Products” means Avastin® (Bevacizumab), Herceptin® (Trastuzumab), Lucentis® (Ranibizumab), Xolair® (Omalizumab) and any other products subject to the Master Agreement.

“Master Agreement” means the Amended and Restated Patent Licensing Master Agreement (Queen Patents) dated as of July 27, 2009 between Seller and Counterparty, as amended.

“Patent Office” means the applicable patent office, including the United States Patent and Trademark Office and any comparable foreign patent office, for any Licensed Patents.

“Person” means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other legal entity, including public bodies, whether acting in an individual, fiduciary or other capacity.

“Purchased Assets” means, collectively, (a) Seller’s rights under (i) the Counterparty Agreements to (1) receive the Purchased Counterparty Agreements Royalties, (2) receive the reports produced by Counterparty pursuant to the Counterparty Agreements in respect of worldwide sales of the Licensed Products, (3) audit the records of Counterparty in respect of such sales pursuant to the Counterparty Agreements and receive an audit report summarizing the results of

any such audit and (4) make indemnification claims against Counterparty pursuant to the Counterparty Agreements and (ii) the Settlement Agreement to receive the Purchased Settlement Agreement Royalties, (b) to the extent permitted by the Counterparty Agreements, Seller's right to (i) pay directly to Counterparty any amounts due and payable under the Counterparty Agreements from Seller to Counterparty, (ii) provide any reports to Counterparty that may be due under the Counterparty Agreements from Seller and (iii) to the extent possible, cure any breach of or default under the Counterparty Agreements by Seller, (c) Seller's right to receive any Set-off pursuant to Section 2.2(c) of the Purchase and Sale Agreement, (d) Seller's right to disapprove of an assignment of the Counterparty Agreements by Counterparty and (e) Seller's right to transfer, assign or pledge the foregoing, in whole or in part, and the proceeds of and the rights to enforce each of the foregoing.

"Purchased Counterparty Agreements Royalties" means 60% of the Royalties under the Counterparty Agreements.

"Purchased Settlement Agreement Royalties" means 60% of the Royalties (except liquidated damages payments) under the Settlement Agreement if Counterparty breaches its obligations thereunder in respect of the Licensed Products.

"Royalties" means (a) all amounts or fees paid, owed, accrued or otherwise required to be paid to Seller or any of its Affiliates as a result of the sale by Counterparty or any Sublicensees of any of the Licensed Products (including not only from the sale of currently approved indications for each Licensed Product, but also from any additionally approved indications and from any off-label usage for such Licensed Product) and attributable to the period commencing on the Royalties Commencement Date, including all amounts due or to be paid to Seller or any of its Affiliates in lieu thereof (whether based upon sales of the Licensed Products or otherwise), (b) all indemnity payments, recoveries, damages or award or settlement amounts paid or payable to Seller or any of its Affiliates by any third party and arising out of or relating to the Licensed Products or as a result of a breach by Counterparty of any of the Counterparty Agreements with respect to any Licensed Product and attributable to the period commencing on the Royalties Commencement Date (except for liquidated damages payments under the Settlement Agreement), (c) all other amounts paid by Counterparty, any Sublicensee or any other Person arising out of, related to or resulting from the Licensed Products or the Counterparty Agreements and attributable to the period commencing on the Royalties Commencement Date (except for liquidated damages payments under the Settlement Agreement), (d) all accounts (as defined under the UCC) evidencing the rights to the payments and amounts described herein and (e) all proceeds (as defined under the UCC) of any of the foregoing.

"Royalties Commencement Date" means October 1, 2009.

"Set-off" means any set-off, off-set, rescission, counterclaim, reduction, deduction or defense.

“Settlement Agreement” means the Settlement Agreement dated December 18, 2003 between Seller and Counterparty, as amended.

“Sublicensee” means any sublicensee of Counterparty under the Counterparty Agreements.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of Delaware; provided, that, if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the back-up security interest granted pursuant to Section 2.1(d) of the Purchase and Sale Agreement is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of Delaware, then “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of the Purchase and Sale Agreement and any financing statement relating to such perfection or effect of perfection or non-perfection.

“Voting Securities” means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale as of the day and year first written above.

PDL BIOPHARMA, INC.

By: _____

Name: John P. McLaughlin

Title: President and Chief Executive Officer

QHP ROYALTY SUB LLC

By: PDL BioPharma, Inc., its Member

By: _____

Name: John P. McLaughlin

Title: President and Chief Executive Officer

EXHIBIT B

FORM OF COUNTERPARTY INSTRUCTION

November 2, 2009

VIA FEDEX

Genentech, Inc.
1 DNA Way
South San Francisco, California 94080
Attention: Corporate Secretary

Ladies and Gentlemen:

Reference is hereby made to the following:

- (i) that certain Amended and Restated Patent Licensing Master Agreement (Queen Patents) dated as of July 27, 2009 (the "Master Agreement") by and between PDL BioPharma, Inc., a Delaware corporation ("PDL"), and Genentech, Inc., a Delaware corporation ("Genentech");
- (ii) that certain PDL License Agreement dated as of November 3, 1998 by and between PDL and Genentech (re HER-2/neu/erbB2), as amended;
- (iii) that certain PDL License Agreement dated as of December 18, 2003 by and between PDL and Genentech (re IgE), as amended;
- (iv) that certain PDL License Agreement dated as of March 5, 2004 by and between PDL and Genentech (re VEGF), as amended;
- (v) that certain letter agreement entitled "Re: Amendments to Product Licenses and Settlement Agreement" dated July 27, 2009 from Genentech to PDL executed by PDL and Genentech;
- (vi) that certain letter agreement dated July 27, 2009 from PDL to Genentech executed by PDL and Genentech;
- (vii) that certain letter agreement dated September 22, 2009 from PDL to Genentech executed by PDL and Genentech; and
- (viii) that certain Settlement Agreement dated December 18, 2003 between PDL and Genentech, as amended.

Each of the documents set forth in clause (ii), clause (iii) and clause (iv) above and any other existing or future license agreement entered into under the Master Agreement is referred to herein as a "License Agreement".

Effective as of November 2, 2009, PDL is selling, transferring, conveying, assigning, contributing and granting the “Purchased Assets” described in the Bill of Sale dated as of November 2, 2009 attached hereto as Appendix A to QHP Royalty Sub LLC, a Delaware limited liability company and a wholly-owned subsidiary of PDL (“Royalty Sub”):

PDL controls the management of Royalty Sub.

Attached hereto as Appendix A is the Bill of Sale dated as of November 2, 2009 evidencing such sale, transfer, conveyance, assignment, contribution and granting of the Purchased Assets to Royalty Sub.

In addition, Royalty Sub has granted a security interest in the Purchased Assets to U.S. Bank National Association, as trustee (the “Trustee”), for the benefit of certain noteholders of Royalty Sub.

Accordingly, you are hereby irrevocably and unconditionally directed to make all payments of Purchased Royalties to PDL by Genentech on or after October 1, 2009 by wire transfer in United States dollars to the following account:

U.S. Bank National Association
ABA No. 091 000 022
Acct. No. 731 0332 1092
Ref: QHP Royalty Coll. #133970000
Attn. Ron Chin

In addition, you are hereby irrevocably and unconditionally instructed to send all reports sent or required to be sent to PDL pursuant to Section 3.08(a) and Section 3.08(b) of each License Agreement to the following party at the following address, beginning immediately:

PDL BioPharma, Inc., as servicer of QHP Royalty Sub LLC
932 Southwood Boulevard
Incline Village, Nevada 89451
Attention: Chief Financial Officer

Attached hereto as Appendix B is the form of confidentiality agreement required to be signed by any existing or potential noteholder of Royalty Sub.

Attached hereto as Appendix C is a Form W-9 for PDL, updated to include Royalty Sub. Please note that Royalty Sub will be treated by PDL for U.S. federal income tax purposes as a disregarded entity separate from PDL. To the extent this changes, PDL will promptly notify you in writing of such change.

Thank you for your cooperation regarding this matter. Please sign at the space provided below to indicate your acknowledgement of the foregoing, and fax a signed copy of this letter to Christine Larson, Chief Financial Officer, at 775-832-8501, for our records.

Very truly yours,

PDL BIOPHARMA, INC.

By: _____
Name: Christopher Stone
Title: Vice President and General Counsel

Acknowledged:

GENENTECH, INC.

By: _____
Name:
Title:
Date:

APPENDIX A

Bill of Sale

See attached.

B-A-1

APPENDIX B

Form of Confidentiality Agreement

See attached.

B-B-1

APPENDIX C

Form W-9

See attached.

B-C-1

EXHIBIT C

INTELLECTUAL PROPERTY MATTERS

The following is a list of Seller's humanization patents (the "PDL Licensed Patents") required to develop, make, market and sell the Licensed Products worldwide. As discussed in greater detail below, Seller has applied for and obtained Supplemental Protection Certificates ("SPCs") with respect to the Licensed Products in the European Union countries denoted by an asterisk (*) below. Seller is the owner of each PDL Licensed Patent listed below.

<u>Patent or Publication Number</u>	<u>Application Serial Number</u>	<u>Country</u>	<u>Issuance / Grant / Expiration</u>
5,585,089	08/477,728	United States	Issued December 17, 1996 Expires June 25, 2013
5,693,761	08/474,040		Issued December 2, 1997 Expires December 2, 2014
5,693,762	08/487,200		Issued December 2, 1997 Expires June 25, 2013
6,180,370	08/484,537		Issued January 20, 2001 Expires June 25, 2013
7,022,500	09/718,998		Issued April, 4, 2006 Expires April 23, 2010
AR 254487 V1	315679	Argentina	Granted September 29, 2000 Expires September 29, 2015
647383	51532/90	Australia	Granted July 12, 1994 Expires December 28, 2009
AT E133452	90903576.8	Austria*	Granted January 25, 1996 Expires December 28, 2009
BE 0 451 216	90903576.8	Belgium*	Granted January 25, 1996 Expires December 28, 2009
PI1101125-4	PI1101125-4	Brazil	Granted January 14, 2003 Expires June 25, 2013
61095	95784	Bulgaria*	Granted October 27, 1997 Expires December 28, 2009
2006865	2006865	Canada	Granted August 20, 2002 Expires December 28, 2009
2328851	2328851		Granted August 13, 2002 Expires December 28, 2009
40279	983-89	Chile	Granted October 7, 1999 Expires October 7, 2014
58770	89109618.3	China	Granted July 21, 2000 Expires December 28, 2009
P920500	P20500A	Croatia	Granted November 4, 1999 Expires September 29, 2012
174317	PA 1998 00941	Denmark*	Granted December 2, 2002 Expires December 28, 2009

<u>Patent or Publication Number</u>	<u>Application Serial Number</u>	<u>Country</u>	<u>Issuance / Grant / Expiration</u>
0451216	90903576.8	European Patent Office Validated countries*: Austria Belgium France Germany Italy Luxembourg Netherlands Spain Sweden Switzerland United Kingdom	Granted January 24, 1996 Expires December 28, 2009
108797	912436	Finland*	Granted March 28, 2002 Expires December 28, 2009
FR 0 451 216	90903576.8	France*	Granted January 24, 1996 Expires December 28, 2009
68925536.5	90903576.8	Germany*	Granted January 24, 1996 Expires December 28, 2009
68929061.6	95105609.2		Granted August 25, 1999 Expires December 28, 2009
1001050	900100009	Greece*	Granted January 5, 1993 Expires January 9, 2010
HK 1014718	98115967	Hong Kong	Granted July 14, 2000 Expires December 28, 2009
211174	P/P00236	Hungary*	Granted March 22, 1996 Expires December 28, 2009
82755	4206/89	Ireland*	Granted February 3, 2003 Expires December 28, 2009
	2000/0031		Pending If Granted, Expires December 28, 2009
162181	162181	Israel	Granted July 11, 2006 Expires December 27, 2009
IT 04 451 216	90903576.8	Italy*	Granted January 24, 1996 Expires December 28, 2009
LU 0 451 216	90903576.8	Luxembourg*	Granted January 24, 1996 Expires December 28, 2009
92.2146	89/05857	Monaco	Granted February 18, 1992 Expires December 28, 2009
48700	P2489/89	Montenegro	Granted January 5, 1999 Expires December 28, 2009
NL 0 451 216	90903576.8	Netherlands*	Granted January 24, 1996 Expires December 28, 2009
231984	231984	New Zealand	Granted October 20, 1997 Expires January 4, 2010
314793	314793		Granted June 8, 2000 Expires January 4, 2010
310473	19912385	Norway*	Granted July 9, 2001 Expires December 28, 2009
29729	39812	Philippines	Granted May 17, 1996 Expires May 17, 2013
92758	92758	Portugal*	Granted October 20, 1995 Expires October 20, 2010

<u>Patent or Publication Number</u>	<u>Application Serial Number</u>	<u>Country</u>	<u>Issuance / Grant / Expiration</u>
2.216T	98-20287	Romania	Granted July 31, 2002 Expires December 19, 2010
2126046	4895847.13	Russia	Granted February 10, 1999 Expires December 28, 2009
48700	2489/89	Serbia	Granted December 30, 1998 Expires December 28, 2009
SG 0451216	9691819-8	Singapore	Granted August 30, 1996 Expires December 28, 2009
78258	9607855-5		Granted May 22, 2001 Expires December 28, 2009
8912489	P-8912489	Slovenia*	Granted February 28, 1999 Expires December 28, 2009
89/9956	89/9956	South Africa	Granted October 31, 1990 Expires December 28, 2009
P178385	90-701939	South Korea	Granted November 23, 1998 Expires November 23, 2013
P178385	90-701939	Spain*	Granted January 24, 1996 Expires December 28, 2009
2081974 T3	90903576.8		Granted August 25, 1999 Expires December 28, 2009
SE 0 451 216	90903576.8	Sweden*	Granted August 25, 1999 Expires December 28, 2009
CH 0 451 216	90903576.8	Switzerland*	Granted August 25, 1999 Expires December 28, 2009
NI-50034	78109870	Taiwan	Granted August 11, 1991 Expires December 15, 2009
GB 0 451 216	90903576.8	United Kingdom*	Granted January 24, 1996 Expires December 28, 2009
13349	23024	Uruguay	Granted May 19, 1993 Expires December 28, 2009
56.455	1923/89	Venezuela	Granted February 9, 1996 Expires December 15, 2009

The following is a list of SPCs that Seller has applied for and (except as denoted by "SPC Pending" below) obtained with respect to the Licensed Products in the European Union countries set forth below.

<u>Approved Licensed Product</u>	<u>Country</u>	<u>SPC Expiration</u>
Avastin® (Bevacizumab)	France	December 27, 2014
	Ireland	
	Netherlands	
	Switzerland	
	United Kingdom	
	Austria	December 28, 2014
	Belgium	
	Denmark	
	Finland	
	Germany	
	Hungary	
	Italy	
	Luxembourg	
	Norway	
	Slovenia	
Spain		
Sweden		
Herceptin® (Trastuzumab)	Portugal	October 21, 2015
	Finland	July 28, 2014
	Ireland	
	Netherlands	
	United Kingdom	
	Austria	July 29, 2014
	Denmark	
	Italy	
	Luxembourg	
	Norway	
Spain		
Lucentis® (Ranibizumab)	France	December 27, 2014
	Belgium	December 28, 2014
	Germany	
	Sweden	
	Greece	January 10, 2015
	Portugal	October 21, 2015
	Austria	SPC Pending
	Bulgaria	Expected Expiration: December 28, 2014
	Germany	
	Norway	
Xolair® (Omalizumab)	France	December 27, 2014
	Ireland	
	Netherlands	
	United Kingdom	
	Belgium	December 28, 2014
	Denmark	
	Finland	
	Hungary	
	Italy	
	Luxembourg	
Slovenia		
Spain		
Sweden		
Portugal	SPC Pending Expected Expiration: October 21, 2015	
Xolair® (Omalizumab)	France	December 27, 2014
	Ireland	
	Netherlands	
	Switzerland	
	United Kingdom	

Approved Licensed Product

<u>Country</u>	<u>SPC Expiration</u>
Austria	December 28, 2014
Belgium Denmark	
Finland Germany	
Hungary	
Italy Luxembourg	
Norway	
Slovenia	
Spain	
Sweden	
Portugal	October 21, 2015

PLEDGE AND SECURITY AGREEMENT
MADE BY
EACH UNDERSIGNED EQUITYHOLDER
TO
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
DATED AS OF NOVEMBER 2, 2009

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PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT, dated as of November 2, 2009, is made by each undersigned Equityholder in favor of U.S. Bank National Association, a national banking association, as the Trustee under the Indenture, as grantee hereunder.

WITNESSETH:

WHEREAS, contemporaneous with the execution and delivery of this Pledge and Security Agreement, pursuant to the Purchase and Sale Agreement, the Seller has sold, transferred, conveyed, assigned, contributed and granted all of the Purchased Assets to the Issuer, in consideration of the payment by the Issuer to the Seller of the Purchase Price and the issuance by the Issuer to the Seller of all of the Capital Securities of the Issuer owned by the Seller;

WHEREAS, contemporaneous with the execution and delivery of this Pledge and Security Agreement, pursuant to the Indenture, the Issuer has issued its Original Class A Notes to the Noteholders;

WHEREAS, in order to secure the repayment of such Original Class A Notes, the Issuer shall, except as otherwise expressly provided in the Indenture, grant a security interest in all of its property and rights to the Trustee for the benefit of the Noteholders, including the Purchased Assets, its rights under the Purchase and Sale Agreement, any Accounts and certain other collateral in accordance with the terms and conditions thereof; and

WHEREAS, in addition to the grant of security interest by the Issuer to the Trustee as set forth in the immediately preceding recital, in order to further secure repayment of the Original Class A Notes, the Trustee desires that each Equityholder pledge all of the Capital Securities of the Issuer owned by such Equityholder to the Trustee for the benefit of the Noteholders;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to induce the Noteholders to purchase the Original Class A Notes issued pursuant to the Indenture, each Equityholder agrees, severally but not jointly, for the benefit of the Trustee on behalf of each Noteholder, as follows:

ARTICLE I
RULES OF CONSTRUCTION AND DEFINED TERMS

Section 1.1 Rules of Construction and Defined Terms. The rules of construction set forth in Annex A shall apply to this Pledge and Security Agreement and are hereby incorporated by reference into this Pledge and Security Agreement as if set forth fully in this Pledge and Security Agreement. Capitalized terms used but not otherwise defined in this Pledge and Security Agreement shall have the respective meanings given to such terms in Annex A, which is hereby incorporated by reference into this Pledge and Security Agreement as if set forth fully in this Pledge and Security Agreement. Not all terms defined in Annex A are used in this Pledge and Security Agreement.

ARTICLE II
PLEDGE

Section 2.1 Pledge. As security for the payment and performance of the Secured Obligations and subject to and in accordance with the provisions of this Pledge and Security Agreement, each Equityholder hereby pledges, grants, assigns, hypothecates, transfers and delivers (subject to Section 3.1) to the Trustee, its successors and assigns, for the security and benefit of the Noteholders, a continuing security interest in all of such Equityholder's right, title and interest in, to and under the following property, whether now owned or hereafter acquired (the "Issuer Pledged Collateral"):

(a) all of such Equityholder's Capital Securities in the Issuer, whether now owned or acquired in the future, and all certificates, agreements or other instruments, if any, representing such Capital Securities (the "Issuer Pledged Equity");

(b) subject to Section 6.4, the right to receive all monies and property representing a distribution in respect of the Issuer Pledged Equity of such Equityholder (except for proceeds of the Notes to the extent not applicable to any Redemption of the Notes), whether by way of dividend, redemption, liquidation payments, repurchase or otherwise; and

(c) subject to Section 6.4, all proceeds of and to the Issuer Pledged Equity of such Equityholder and any of the foregoing, including all shares, securities, rights, monies or other property accruing, offered or issued at any time by way of redemption, conversion, exchange, substitution, preference, option or otherwise in respect of the Issuer Pledged Equity of such Equityholder; provided, however, that all of the proceeds received or unbilled but to be received by such Equityholder in respect of any sale, transfer or other disposition of such Issuer Pledged Equity shall be excluded (x) to the extent such Issuer Pledged Equity remains or concurrently therewith becomes subject to this Pledge and Security Agreement and (y) such sale, transfer or other disposition is permitted pursuant to Sections 6.1 and 17.1;

TO HAVE AND TO HOLD the Issuer Pledged Collateral of such Equityholder, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Trustee, its successors and assigns, subject to the terms and conditions set forth herein.

ARTICLE III
DELIVERY OF ISSUER PLEDGED COLLATERAL

Section 3.1 Delivery of Issuer Pledged Collateral. Contemporaneously with the execution of this Pledge and Security Agreement, each Equityholder shall deliver or cause to be delivered to the Trustee, to the extent not previously delivered, (a) any and all certificates and other instruments evidencing the Issuer Pledged Equity then held in the form of certificates or other instruments by such Equityholder, together with undated stock powers or assignments of such certificates duly executed and signed in blank, (b) any and all certificates or other instruments or documents representing any of the Issuer Pledged Collateral then held by such Equityholder and (c) all other property comprising part of the Issuer Pledged Collateral then held in the form of certificates or other instruments by such Equityholder with proper instruments of assignment or transfer duly executed and such other instruments or documents as the Trustee may reasonably request to effect the purposes contemplated hereby.

Section 3.2 Capital Securities. If any Equityholder shall become entitled to receive or shall receive, in respect of the Issuer Pledged Equity, any Capital Securities, options, warrants, rights or other similar property, including any certificate representing any distribution in connection with any recapitalization, reclassification or increase or reduction of capital (whether as an addition to, in substitution of or in exchange for such Issuer Pledged Equity or otherwise), such Equityholder agrees:

(a) to accept the same as the agent of the Trustee;

(b) to hold the same in trust on behalf of and for the benefit of the Trustee and separate and apart from its other property; and

(c) to deliver any and all certificates or instruments evidencing the same to the Trustee on or before the close of business on the tenth Business Day following the receipt thereof by such Equityholder, in the exact form received, with the endorsement or assignment in blank of such Equityholder when necessary and with appropriate undated irrevocable proxies duly executed in blank (with signatures properly guaranteed), to be held by the Trustee, subject to the terms of this Pledge and Security Agreement, as additional Issuer Pledged Collateral.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties. Each Equityholder represents and warrants to the Trustee, as of the date such Equityholder becomes a party to this Pledge and Security Agreement, severally but not jointly, as follows:

(a) If such Equityholder is not a natural person, such Equityholder has been duly organized, is validly existing and is in good standing under the laws of its jurisdiction of organization and, except where the failure to do so would be a Material Adverse Change, has all licenses, permits, franchises and governmental authorizations necessary to carry on its business as now being conducted and shall appoint and employ agents or attorneys in each jurisdiction where it shall be necessary to take action under this Pledge and Security Agreement. Such Equityholder is duly licensed or qualified to do business in good standing in each jurisdiction in which such qualification is required by law, except where the failure to do so would be a Material Adverse Change. Such Equityholder has the full power and authority to own the property it purports to own and to carry on its business as presently conducted and as proposed to be conducted, except where the failure to do so would be a Material Adverse Change. The jurisdiction of organization and principal place of business of such Equityholder as of the date hereof is set forth under such Equityholder's signature hereto.

(b) Such Equityholder is the sole legal and beneficial owner of the Issuer Pledged Collateral of such Equityholder, free and clear of any Lien other than the Lien created pursuant to this Pledge and Security Agreement and the Indenture or other Permitted Liens. No security agreement, financing statement or other public notice with respect to all or any part of

the Issuer Pledged Collateral of such Equityholder is on file or of record in any public office, except such as may have been filed in favor of the Trustee pursuant to this Pledge and Security Agreement and the Indenture.

(c) The consummation of the transactions contemplated hereby has been duly and validly authorized by such Equityholder. Such Equityholder has full power to execute and deliver this Pledge and Security Agreement and to perform its obligations hereunder and to pledge all the Issuer Pledged Collateral of such Equityholder pursuant to this Pledge and Security Agreement. This Pledge and Security Agreement has been duly authorized, executed and delivered by such Equityholder. This Pledge and Security Agreement constitutes a legal, valid and binding obligation of such Equityholder enforceable against such Equityholder in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally and except as enforceability may be limited by general principles of equity (whether considered in a suit at law or in equity). All requisite action has been taken by such Equityholder to make this Pledge and Security Agreement valid and binding upon such Equityholder.

(d) No consent of any other party (including directors, officers, partners, members, managers or creditors of such Equityholder) and no government approval is required that in each case has not been obtained (i) for the execution, delivery and performance by such Equityholder of this Pledge and Security Agreement or (ii) for the pledge by such Equityholder of the Issuer Pledged Collateral of such Equityholder pursuant to this Pledge and Security Agreement (except as may be required (w) in connection with filings of any UCC financing statements, (x) in connection with any disposition of all or any part of the Issuer Pledged Collateral of such Equityholder under any laws affecting the offering and sale of securities generally, (y) under applicable federal and state laws, rules and regulations and applicable interpretations thereof providing for the supervision or regulation of the banking or trust businesses generally and applicable to the Trustee and (z) with respect to the Trustee as a result of any relationship that the Trustee may have with Persons not parties to, or any activity or business the Trustee may conduct other than pursuant to, any of the Deal Documents).

(e) This Pledge and Security Agreement creates a valid security interest in the Issuer Pledged Collateral of such Equityholder securing the Secured Obligations, and such Equityholder has done such other acts, if any, reasonably requested by the Trustee to perfect the security interest in the Issuer Pledged Collateral of such Equityholder granted hereunder (including permitting the Trustee to file any appropriate UCC financing statement against such Equityholder).

(f) The execution, delivery and performance by such Equityholder of this Pledge and Security Agreement and the consummation of the transactions contemplated by this Pledge and Security Agreement with respect to such Equityholder do not (i) violate the provisions of the organizational documents of such Equityholder, (ii) violate the provisions of any Applicable Law (including any usury law), regulation or order of any Governmental Authority applicable to such Equityholder except where such violation would not be a Material Adverse Change, (iii) result in a breach of, or constitute a default under, any material agreement relating to the management or affairs of such Equityholder, or any indenture, credit agreement or loan agreement or any other similar material agreement, lease or instrument to which such Equityholder is a party or by

which such Equityholder or any of its material properties may be bound (which default or breach has not been permanently waived by the other party to such document), except where such breach or default would not be a Material Adverse Change, or (iv) result in or create any Lien (other than Permitted Liens) under any indenture (including the Indenture), credit agreement or loan agreement or any other material agreement, instrument or document or the provisions of any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority, binding upon the Issuer Pledged Collateral of such Equityholder.

(g) There are no proceedings and there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending against such Equityholder or, to the knowledge of such Equityholder, threatened against such Equityholder that questions the validity or legality of or seeks damages in connection with this Pledge and Security Agreement or that seeks to prevent the consummation of any of the transactions contemplated by this Pledge and Security Agreement.

(h) The percentage of limited liability company interests of Issuer Pledged Equity held by such Equityholder is set forth under such Equityholder's signature hereto.

ARTICLE V
SUPPLEMENTS; FURTHER ASSURANCES

Section 5.1 Supplements. Each Equityholder agrees that, at any time and from time to time, at such Equityholder's expense and upon the Trustee's reasonable request and without assuming any obligation for which it is not otherwise liable, such Equityholder will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, in order to perfect the security interest of the Trustee in the Issuer Pledged Collateral of such Equityholder and to carry out the provisions of this Pledge and Security Agreement or to enable the Trustee to exercise and enforce its rights and remedies hereunder with respect to any Issuer Pledged Collateral of such Equityholder. Each Equityholder hereby authorizes the Trustee to file (or cause to be filed) such UCC financing statements or continuation statements, or amendments thereto, and such other instruments or notices as may be necessary to perfect and preserve the security interests and other rights granted or purported to be granted to the Trustee hereby in respect of the Issuer Pledged Collateral of such Equityholder. With respect to the foregoing and the grant of the security interest hereunder, each Equityholder hereby authorizes the Trustee to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Issuer Pledged Collateral of such Equityholder.

Section 5.2 Further Assurances. If any Equityholder fails to perform any agreement contained herein on its part after receipt of a written request to do so from the Trustee (it being understood that no such request need be given after the occurrence and during the continuance of an Event of Default), the Trustee may itself perform, or cause performance of, such agreement, in which case the reasonable expenses of the Trustee, including the fees and expenses of its counsel, incurred in connection therewith shall be payable by such Equityholder under Section 12.1 to the extent such Equityholder would have otherwise been responsible therefor under this Pledge and Security Agreement.

ARTICLE VI
COVENANTS

Section 6.1 No Sale and No Liens. Each Equityholder agrees that, without the consent of the Trustee pursuant to Section 9.1 or Section 9.2 of the Indenture, as applicable, it will not (a) sell or otherwise dispose of the Issuer Pledged Collateral of such Equityholder or any interest therein or (b) except for Permitted Liens, create or permit to exist any Lien upon or with respect to any of the Issuer Pledged Collateral of such Equityholder or any interest therein; provided, however, that, so long as no Event of Default has occurred and is continuing in respect of which such Equityholder has received written notice from the Trustee or otherwise has actual knowledge thereof, each Equityholder will be entitled to sell, transfer, assign, convey, contribute or grant the Issuer Pledged Equity of such Equityholder (x) subject to the lien of this Pledge and Security Agreement and (y) so long as (i) such Issuer Pledged Equity in the hands of each transferee remains subject to the pledge under this Pledge and Security Agreement, (ii) the Trustee shall have been provided with an Opinion of Counsel as to the continuing validity of such pledge and perfection of the security interest of the Trustee therein and a written acknowledgement from the transferee that it is acquiring such Issuer Pledged Equity subject to such pledge and security interest and making representations and warranties to the effect set forth in Article IV, (iii) the Trustee shall have been provided with an Opinion of Counsel from a law firm with a nationally recognized tax practice that such sale, transfer, assignment, conveyance, contribution or granting should not cause a "significant modification" of the Notes for U.S. federal income tax purposes; provided, however, that, notwithstanding the foregoing, the Trustee shall not be required to be provided with such an Opinion of Counsel if there has been a Change in Law and counsel to such Equityholder determines in good faith that it is unable to render such an Opinion of Counsel (whereas it would have been able to render such an Opinion of Counsel had the Change in Law not occurred), (iv) the transferee agrees in writing for the benefit of the Trustee to be bound by the provisions of this Pledge and Security Agreement, (v) the transferee is not subject to U.S. federal withholding tax in respect of the Purchased Royalties and (vi) the Seller retains a majority of the issued and outstanding Capital Securities of the Issuer if required by the Counterparty Agreements.

Section 6.2 Notices. Each Equityholder shall promptly provide the Trustee with copies of all notices and other communications received by such Equityholder with respect to any Issuer Pledged Collateral registered in the name of such Equityholder that could adversely affect in any material respect the validity, perfection or priority of the pledge of the Issuer Pledged Collateral owned by it pursuant to this Pledge and Security Agreement.

Section 6.3 Voting Rights. So long as any Equityholder is the owner of the Issuer Pledged Collateral of such Equityholder, notwithstanding anything to the contrary in this Pledge and Security Agreement or any other Deal Document, unless an Event of Default has occurred and is continuing in respect of which such Equityholder has received written notice from the Trustee or otherwise has actual knowledge thereof, such Equityholder may exercise any and all voting and consensual powers pertaining to the Issuer Pledged Collateral of such Equityholder or any part thereof. If an Event of Default has occurred and is continuing in respect of which such Equityholder has received written notice from the Trustee, no Equityholder shall be entitled to exercise any of the powers described in the preceding sentence, which shall be exercised exclusively by the Trustee.

Section 6.4 Dividends and Distributions. So long as no Event of Default has occurred and is continuing in respect of which such Equityholder has received written notice from the Trustee or otherwise has actual knowledge thereof, each Equityholder may receive and retain any dividends and other distributions, including Tax Distributions, on the Issuer Pledged Equity of such Equityholder. If an Event of Default has occurred and is continuing in respect of which such Equityholder has received written notice from the Trustee or otherwise has actual knowledge thereof, such Equityholder shall not be entitled to receive any subsequent dividends or other distributions on the Issuer Pledged Equity of such Equityholder and, unless otherwise agreed by the Senior Trustee at the Direction of Noteholders of a majority of the Outstanding Principal Balance of the Senior Class of Notes, all such subsequent dividends and other distributions otherwise payable or distributable in respect of such Equityholder's Issuer Pledged Collateral shall constitute Issuer Pledged Collateral of such Equityholder.

Section 6.5 Capital Securities. Each Equityholder agrees that it will not accept any Capital Securities of the Issuer or any rights or options to acquire any such Capital Securities, each in addition to or in substitution for the Issuer Pledged Collateral of such Equityholder, without prior written consent from the Trustee pursuant to Section 9.1 or Section 9.2 of the Indenture, as applicable, unless the foregoing are pledged to the Trustee pursuant hereto.

Section 6.6 Legal Existence. Each Equityholder shall preserve and maintain (a) its legal existence as an entity in good standing under the laws of its jurisdiction of organization and (b) its qualification to do business in every jurisdiction where the ownership of its properties and the nature of its business require it to be so qualified and where the failure to be so qualified would have a material adverse effect on the security interest created by this Pledge and Security Agreement in respect of the Issuer Pledged Collateral owned by it; provided, however, that a Change of Control shall not be deemed a violation of this Section 6.6.

Section 6.7 Compliance with Laws. Each Equityholder shall use commercially reasonable efforts to comply with all laws, and obtain, maintain and comply with all government approvals as shall now or hereafter be necessary under Applicable Law, in each case in connection with the making and performance by such Equityholder of any material provision of this Pledge and Security Agreement in respect of the Issuer Pledged Collateral owned by it.

Section 6.8 Modifications. No Equityholder shall agree to or permit (a) the amendment, supplement, modification, cancellation or termination of, or waiver with respect to, any of the organizational documents of the Issuer, except upon the expiration of the stated term thereof (but in no event prior to the Final Legal Maturity Date), or (b) any amendment, supplement or modification of, or waiver with respect to, any of the provisions of any of such organizational documents, if any such amendment, supplement, modification or waiver would result in a material adverse change in respect of the validity, perfection or priority of the pledge of the Issuer Pledged Collateral owned by it pursuant to this Pledge and Security Agreement or the exercise of the rights by the Trustee of the rights granted to it hereunder in respect thereof.

Section 6.9 No Liquidation or Dissolution. Without the prior written direction by the Trustee pursuant to Section 9.1 or Section 9.2 of the Indenture, as applicable, no Equityholder shall take any action to liquidate, dissolve or terminate the Issuer, or to authorize or cause any such liquidation, dissolution or termination, until all of the Secured Obligations are paid in full.

Section 6.10 Monies Held in Trust. Subject to Section 2.1(c) and Section 6.4, each Equityholder shall hold all monies received by it that constitute Issuer Pledged Collateral of such Equityholder (including any payment or other benefit in breach of this Section 6.10 or Section 6.11) in trust for the Trustee.

Section 6.11 No Claims. Subject to Section 6.4, no Equityholder shall claim payment, whether directly or by set-off, lien, counterclaim or otherwise, of any amount that may be or has become due to such Equityholder from the Issuer (other than Expenses in accordance with Section 3.7(a) of the Indenture and net proceeds from any Subordinated Note Issuance) until all of the Secured Obligations have been paid in full, other than if any amount received in respect thereof becomes Issuer Pledged Collateral or to prevent a claim from becoming time-barred.

Section 6.12 Notice to Trustee. Upon any sale, transfer, assignment, conveyance, contribution or granting of any Issuer Pledged Equity by an Equityholder, such Equityholder shall cause the transferee (and, if any Issuer Pledged Equity is retained by such Equityholder, the Equityholder) to provide the Trustee with executed signature pages to this Pledge and Security Agreement, which shall set forth the percentage of limited liability company interests of Issuer Pledged Equity held by the transferee and, if applicable, such Equityholder.

Section 6.13 Other Covenants. Each Equityholder shall:

(a) file all tax returns and reports required by law to be filed by it and pay all taxes required to be paid by it, except any such taxes that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books, and it shall not file any tax return or report under any name other than its exact legal name;

(b) maintain, and shall cause the Issuer to maintain, the status of the Issuer as an entity that is not classified as a corporation or publicly traded partnership taxable as a corporation for U.S. federal income tax purposes;

(c) cause the Issuer to use commercially reasonable efforts to file any form (or comply with any other administrative formalities) required for an exemption from or a reduction of any withholding tax for which the Issuer is eligible;

(d) treat the Notes as debt for U.S. federal income tax purposes;

(e) maintain in place all policies and procedures, and take and continue to take all actions, described in the assumptions as to facts relating to the separateness of the Issuer and the Seller set forth in, and forming the basis of, the true sale and non-consolidation opinion delivered pursuant to Section 6(e) of the Initial Purchaser Purchase Agreement, and comply with the provisions of Section 5.2(o) of the Indenture (as to the Issuer);

(f) not take any action or cause or permit the Issuer (except as required by law) to take any action to cause the Issuer to become subject to any Voluntary Bankruptcy or Involuntary Bankruptcy;

(g) not institute against the Issuer, or join any Person in instituting against the Issuer, any Voluntary Bankruptcy or Involuntary Bankruptcy until one year and one day after the date on which the Notes have been paid in full;

(h) not cause the Issuer to petition for a Voluntary Bankruptcy or an Involuntary Bankruptcy before one year and one day have elapsed since the Notes have been paid in full or, if longer, the applicable preference period then in effect; and

(i) not pass a resolution to cause the Issuer to be liquidated before one year and two days have elapsed since the Notes have been paid in full.

ARTICLE VII
TRUSTEE APPOINTED ATTORNEY-IN-FACT

Section 7.1 Trustee Appointed Attorney-In-Fact. Each Equityholder hereby appoints the Trustee, or any Person (including any officer or agent) whom the Trustee may designate, as such Equityholder's true and lawful attorney-in-fact, with full irrevocable power and authority in the place and stead of such Equityholder and in the name of such Equityholder or in its own name, at such Equityholder's cost and expense, from time to time in the Trustee's reasonable discretion to take any action and to execute any instrument that the Trustee may reasonably deem necessary or advisable to enforce its rights under this Pledge and Security Agreement, including authority to receive, endorse and collect all instruments made payable to such Equityholder representing any distribution, interest payment or other payment in respect of the Issuer Pledged Collateral of such Equityholder or any part thereof and to give full discharge for the same and to sign, complete and deliver all transfers, proxies and letters of resignation; provided, however, that the Trustee will not exercise its powers under this Section 7.1 unless so instructed by the Noteholders pursuant to and in accordance with the Indenture; provided, further, that if there is more than one Equityholder, the Trustee will enforce its rights and exercise its remedies against all Equityholders ratably and shall not enforce its rights or exercise its remedies against one Equityholder without similarly enforcing its rights and exercising its remedies against all Equityholders in the same manner.

ARTICLE VIII
REASONABLE CARE

Section 8.1 Reasonable Care. The Trustee shall be deemed to have exercised reasonable care in the custody and preservation of the Issuer Pledged Collateral in its possession if the Issuer Pledged Collateral is accorded treatment substantially equivalent to that which the Trustee accords its own property of the type of which the Issuer Pledged Collateral consists, it being understood that the Trustee shall have no responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Issuer Pledged Collateral, whether or not the Trustee has or is deemed to have knowledge of such matters, or (b) taking any necessary steps to preserve rights against any parties with respect to any Issuer Pledged Collateral absent its bad faith, gross negligence or willful misconduct.

ARTICLE IX
NO LIABILITY

Section 9.1 No Liability. Neither the Trustee nor any of its directors, officers, employees or agents shall be deemed to have assumed any of the liabilities or obligations of any Equityholder as a result of the pledge and security interest granted under or pursuant to this Pledge and Security Agreement. In the absence of bad faith, gross negligence or willful misconduct, the Trustee or any of its directors, officers, employees or agents shall not be liable for any failure to collect or realize upon the Secured Obligations or any collateral security or guarantee therefor, or any part thereof, or for any delay in so doing nor shall it be under any obligation to take any action whatsoever with regard thereto.

ARTICLE X
REMEDIES UPON EVENT OF DEFAULT

Section 10.1 Remedies Upon Event of Default. Subject to Section 4.3 of the Indenture and to the extent permitted by Applicable Law, if an Event of Default shall have occurred and be continuing and the Trustee shall have given written notice of such Event of Default to the Equityholders:

(a) The Trustee may exercise the power of attorney described in Section 7.1 with respect to any of the certificates or other instruments delivered pursuant to Section 3.1 with respect to the Issuer Pledged Collateral and may sign, complete and deliver all transfers, proxies and letters of resignation and do all acts and things that the Trustee may in its absolute discretion specify to enable or assist the Trustee to perfect or improve its security over the Capital Securities, to vest ownership of the Capital Securities in the Trustee or its nominee, to provide that the Trustee is registered as the holder of the Capital Securities, to exercise any rights or powers attaching to the Capital Securities, to sell the Capital Securities or otherwise to enforce any of the rights of the Trustee under this Pledge and Security Agreement.

(b) The Trustee may exercise in respect of the Issuer Pledged Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC, to the extent permitted by Applicable Law or the UCC as then in effect in any applicable jurisdiction, and the Trustee may also in its sole discretion, without notice except as specified below or except as required by mandatory provisions of the UCC and other Applicable Law, sell, subject to Section 11.1, the Issuer Pledged Collateral or any part thereof in one or more parcels at public or private sale or at any of the Trustee's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Trustee may deem commercially reasonable, irrespective of the impact of any such sales on the market price of the Issuer Pledged Collateral at any such sale. Each purchaser at any such sale shall hold the property, sold absolutely, free from any claim or right on the part of any Equityholder, and each Equityholder hereby waives (to the extent permitted by law) all rights of redemption, stay and/or appraisal that it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Equityholder agrees that, to the extent notice of sale shall be required by law, at least 20 days' notice to such Equityholder of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Trustee shall not be

obligated to make any sale of Issuer Pledged Collateral regardless of notice of sale having been given. The Trustee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Trustee shall incur no liability as a result of the sale of the Issuer Pledged Collateral, or any part thereof, at any public or private sale, absent bad faith, gross negligence or willful misconduct.

(c) Each Equityholder recognizes that the Trustee may elect in its sole discretion to sell all or a part of the Issuer Pledged Collateral to one or more purchasers in privately negotiated transactions in which the purchasers will be obligated to agree, among other things, to acquire the Issuer Pledged Collateral for their own account, for investment and not with a view to the distribution or resale thereof. Each Equityholder acknowledges that any such private sales may be at prices and on terms less favorable than those obtainable through a public sale (including a public offering made pursuant to a registration statement under the Securities Act), and the Equityholders and the Trustee agree that such private sales shall be deemed to have been made in a commercially reasonable manner and that the Trustee has no obligation to engage in public sales or to delay sale of any Issuer Pledged Collateral to permit the Issuer to register the Issuer Pledged Collateral for a form of public sale thereof requiring registration under the Securities Act.

(d) Any cash held by the Trustee as Issuer Pledged Collateral and all cash proceeds received by the Trustee in respect of any sale of, collection from or other realization upon all or any part of the Issuer Pledged Collateral shall, as soon as reasonably practicable, be applied (after payment of any amounts payable to the Trustee pursuant to Section 12.1) by the Trustee first to the payment of the costs and expenses of such sale, collection or other realization, if any, including reasonable out-of-pocket costs and expenses of the Trustee (including the reasonable fees and out-of-pocket expenses of its counsel), and all reasonable expenses, liabilities and advances made or incurred by the Trustee in connection therewith, second to the payment of the Secured Obligations in accordance with the terms of the Indenture and third to each Equityholder or its successors or assigns in respect to its respective Issuer Pledged Collateral as indicated in the signature page hereto (or pursuant to Section 6.12) and in respect to its respective portion of the proceeds from any sale of, collection from or other realization upon all or any part of the Issuer Pledged Collateral.

(e) Each Equityholder agrees that:

(i) in any sale of any of the Issuer Pledged Collateral, whenever an Event of Default shall have occurred and be continuing, the Trustee is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to:

(A) avoid any violation of Applicable Law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications and restrict such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Issuer Pledged Collateral); or

(B) obtain any required approval of the sale or of the purchaser by any Governmental Authority or official; and

(ii) such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Trustee be liable or accountable to any Equityholder for any discount allowed by the reason of the fact that such Issuer Pledged Collateral is sold in compliance with any such limitation or restriction.

ARTICLE XI
PURCHASE OF THE ISSUER PLEDGED COLLATERAL

Section 11.1 Purchase of the Issuer Pledged Collateral. In connection with the potential foreclosure or sale of any Issuer Pledged Collateral upon the occurrence and continuation of an Event of Default, the Seller (as long as it holds any of the Capital Securities of the Issuer) shall have a right of first offer to purchase all or any portion of such Issuer Pledged Collateral and shall also have the right, but not the obligation, to match any offer from a third party. In the event that the Seller does not offer to purchase any Issuer Pledged Collateral within 10 Business Days of such occurrence and continuation or offer, as the case may be, the Trustee may offer any remaining Issuer Pledged Collateral to third parties; provided, that such third parties shall have first executed a confidentiality agreement substantially similar to the Confidentiality Agreement and delivered such confidentiality agreement to the Trustee and the Seller. Subject to the immediately preceding sentence, any Equityholder may, but shall not be required to, bid on and be a purchaser of the Issuer Pledged Collateral or any part thereof (including any Issuer Pledged Collateral of such Equityholder) or any right or interest therein at any sale thereof, whether pursuant to foreclosure, power of sale or otherwise. In connection with any such sale of any Issuer Pledged Collateral by the Trustee pursuant to this Section 11.1, the Trustee may apply the purchase price to the payment of the Secured Obligations secured hereby. Any purchaser of all or any part of the Issuer Pledged Collateral shall, upon any such purchase, acquire good title to the Issuer Pledged Collateral so purchased, free of the security interests created by this Pledge and Security Agreement.

ARTICLE XII
EXPENSES

Section 12.1 Expenses. Each Equityholder will upon demand pay to the Trustee the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and the Trustee, and any transfer taxes, in each case payable upon sale of the Issuer Pledged Collateral of such Equityholder, which the Trustee may incur solely in connection with (a) the custody or preservation of, or the sale of, collection from or other realization upon, any of the Issuer Pledged Collateral of such Equityholder, (b) the exercise or enforcement of any of the rights of the Trustee hereunder against such Equityholder or the Issuer Pledged Collateral of such Equityholder, (c) the failure by such Equityholder to perform or observe any of the provisions hereof or (d) the administration of this Pledge and Security Agreement in respect of such Equityholder. Any amount payable by an Equityholder pursuant to this Section 12.1 shall constitute Secured Obligations secured hereby; provided, however, that in no event shall the Issuer Pledged Collateral of one Equityholder be used to satisfy the failure by another Equityholder to make any such payment.

ARTICLE XIII
NO WAIVER; REMEDIES

Section 13.1 No Waiver; Remedies. No failure or delay on the part of the Trustee to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Trustee of any right, power or remedy preclude any additional exercise by the Trustee of such right, power or remedy. The remedies herein provided are to the fullest extent permitted by law cumulative and are not exclusive of any remedies provided by law. No notice to or demand on any Equityholder in any case shall entitle such Equityholder to any other or further notice or demand in similar or other circumstances.

ARTICLE XIV
AMENDMENTS

Section 14.1 Amendments.

(a) No waiver, amendment, modification or termination of any provision of this Pledge and Security Agreement, or consent to any departure by any Equityholder therefrom, shall in any event be effective without the written concurrence of the Trustee pursuant to Section 9.1 or Section 9.2 of the Indenture, as applicable, and (except as otherwise provided in Section 15.1) none of the Issuer Pledged Collateral shall be released without the written consent of the Trustee pursuant to Section 9.1 or Section 9.2 of the Indenture, as applicable. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No amendment, modification or termination of any provision of this Pledge and Security Agreement shall be effective without the written concurrence of the Seller, as long as it is the holder of any Capital Securities of the Issuer; provided, however, that if any such amendment, modification or termination would materially adversely affect one Equityholder without proportionately so affecting all Equityholders, then such amendment, modification or termination shall also require the written concurrence of the Equityholder so disproportionately affected.

ARTICLE XV
RELEASE; TERMINATION

Section 15.1 Release; Termination. Upon payment and performance in full of the Secured Obligations or discharge of the Indenture pursuant to Section 11.1 of the Indenture, this Pledge and Security Agreement shall terminate automatically, and the Trustee (a) upon written request by any Equityholder shall promptly deliver to such Equityholder any remaining Issuer Pledged Collateral of such Equityholder and money received in respect thereof in its possession, and all documents, agreements or instruments representing the Issuer Pledged Collateral of such

Equityholder held by the Trustee prior to such termination, and (b) upon written request by any Equityholder, shall promptly execute and deliver to such Equityholder and, if necessary, file or record, at such Equityholder's expense, all such documentation (including UCC termination statements) necessary to release, and evidence the release of, the liens on the Issuer Pledged Collateral of such Equityholder, such documentation to be prepared by such Equityholder and delivered to the Trustee. If the Trustee fails to promptly deliver or file or record the UCC termination statements referred to in, and in accordance with, clause (b) in the immediately preceding sentence, then such Equityholder may file or record such UCC termination statements.

ARTICLE XVI
NOTICES

Section 16.1 Notices. All Notices shall be in writing and shall be effective (a) upon receipt when sent through the mails, registered or certified mail, return receipt requested, postage prepaid, with such receipt to be effective the date of delivery indicated on the return receipt, (b) upon receipt when sent by an overnight courier, (c) on the date personally delivered to an authorized officer of the party to which sent, (d) on the date transmitted by legible telecopier transmission with a confirmation of receipt or (e) in the case of any report that is of a routine nature, on the date sent by first class mail or overnight courier or transmitted by legible telecopier transmission, in all cases, with a copy emailed to the recipient at the applicable address, addressed to an Equityholder as set forth under such Equityholder's signature hereto and to the Trustee in accordance with Section 12.5 of the Indenture. Each party hereto may, by notice given in accordance herewith to each other party hereto, designate any further or different address to which subsequent Notices shall be sent.

ARTICLE XVII
CONTINUING SECURITY INTEREST

Section 17.1 Continuing Security Interest. Subject to the provisions of Section 6.1, this Pledge and Security Agreement shall create a continuing Lien in the Issuer Pledged Collateral and remain in full force and effect until the release thereof pursuant to Section 15.1 or the sale thereof pursuant to Section 11.1, shall be binding upon each Equityholder and its respective successors, transferees and assigns and shall inure to the benefit of and be enforceable by the Trustee and its successors, transferees and assigns; provided, however, that no Equityholder may (unless otherwise permitted hereunder) assign any of its obligations hereunder without the prior written consent of the Noteholders or the Trustee pursuant to the Indenture. The Trustee and the Noteholders may assign or otherwise transfer any indebtedness held by any of them secured by this Pledge and Security Agreement to any other Person in accordance with the Indenture, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Trustee herein or otherwise.

ARTICLE XVIII
SECURITY INTEREST ABSOLUTE

Section 18.1 Security Interest Absolute. All rights of the Trustee and security interests hereunder, and all obligations of each Equityholder hereunder, shall be absolute and unconditional irrespective of, and each Equityholder hereby irrevocably waives vis-à-vis the Trustee any defenses it may now have or may hereafter acquire in any way relating to, any or all of the following:

- (a) any lack of validity or enforceability of any of the Deal Documents or any other agreement or instrument relating thereto (other than against the Trustee);

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Deal Documents or any other agreement or instrument relating thereto, including any increase in the Secured Obligations resulting from the extension of additional credit;

(c) any taking, exchange, surrender, release or non-perfection of any Issuer Pledged Collateral or any other collateral securing the Secured Obligations, or any release or amendment or waiver of or consent to any departure from any guaranty, for all or any of the Secured Obligations;

(d) any manner of application of any other collateral, or proceeds thereof, to all or any of the Secured Obligations, or any manner of sale or other disposition of any other collateral securing all or any of the Secured Obligations or any other obligations of the Issuer under or in respect of the Deal Documents or of any other assets of the Issuer;

(e) any change, restructuring or termination of the limited liability company structure or existence of the Issuer;

(f) the release or reduction of liability of any guarantor or surety with respect to the Secured Obligations; or

(g) any other circumstance (including any statute of limitations) or any existence of or reliance on any representation to the Trustee that might otherwise constitute a defense available to, or a discharge of, the obligations of any Equityholder.

Section 18.2 Obligations of Equityholders Several and Not Joint. Notwithstanding any other provision of this Pledge and Security Agreement, the obligations of each Equityholder hereunder shall be several and not joint and in no event shall the Issuer Pledged Collateral of one Equityholder be used to satisfy the failure by any other Equityholder to perform any obligation hereunder.

ARTICLE XIX INDEMNITY

Section 19.1 Indemnity. Each Equityholder agrees, severally and not jointly, to indemnify, reimburse, defend and save and hold the Trustee and its officers, directors, employees, trustees, agents, advisors and affiliates (each, an "Indemnitee" and, collectively, the "Indemnitees") harmless from and against, and shall pay on demand, any and all liabilities, losses, obligations, damages, injuries, penalties, claims, demands, actions, suits, judgments and

any and all costs and expenses (including attorneys' fees and disbursements) of whatsoever kind and nature imposed on, asserted against or incurred by any of the Indemnitees solely (a) in connection with the custody or preservation of, or the sale of, collection from or other realization upon, any of the Issuer Pledged Collateral of such Equityholder pursuant to the exercise or enforcement of any of the rights of the Trustee hereunder, (b) in connection with the failure by such Equityholder to perform or observe any of the provisions hereof to be performed by it or (c) arising out of or in connection with or resulting from this Pledge and Security Agreement and the transactions contemplated hereby in respect of such Equityholder, excluding those arising out of the bad faith, gross negligence or willful misconduct of any Indemnitee. Each Indemnitee agrees to use its commercially reasonable efforts to promptly notify the indemnitor(s) of any assertion of any such liability, damage, injury, penalty, claim, demand, action, judgment or suit of which such Indemnitee has knowledge.

The obligations of each Equityholder in this Section 19.1 shall survive the termination of this Pledge and Security Agreement.

ARTICLE XX
OBLIGATIONS SECURED BY ISSUER PLEDGED COLLATERAL

Section 20.1 Obligations Secured by Issuer Pledged Collateral. Any amounts paid by any Indemnitee as to which such Indemnitee has the right to indemnification, and any amounts paid by the Trustee in preservation of any of its rights or interest in the Issuer Pledged Collateral, shall constitute Secured Obligations secured by the Issuer Pledged Collateral.

ARTICLE XXI
SEVERABILITY

Section 21.1 Severability. Any provision of this Pledge and Security Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without, to the extent permitted by Applicable Law, invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not, to the extent permitted by Applicable Law, invalidate or render unenforceable such provision in any other jurisdiction. Where provisions of any law or regulation resulting in such prohibition or unenforceability may be waived, they are hereby waived by the parties hereto to the full extent permitted by law so that this Pledge and Security Agreement shall be deemed a valid, binding agreement in accordance with its terms, to the extent permitted by Applicable Law.

ARTICLE XXII
COUNTERPARTS; EFFECTIVENESS

Section 22.1 Counterparts; Effectiveness. This Pledge and Security Agreement and any amendments, waivers, consents or supplements may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. This Pledge and Security Agreement shall become effective upon the execution and delivery of a counterpart hereof by each of the original parties hereto and, with respect to any Person becoming a party hereto after the date hereof, upon the execution and delivery hereof by such Person.

ARTICLE XXIII
REINSTATEMENT

Section 23.1 Reinstatement. This Pledge and Security Agreement shall continue to be effective or be reinstated, as the case may be, with respect to any Equityholder if at any time any amount received by the Trustee hereunder or pursuant hereto is rescinded or must otherwise be restored or returned by the Trustee, as the case may be, upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of such Equityholder or upon the appointment of any intervenor or conservator of, or trustee or similar official for, such Equityholder or any substantial part of its assets, or upon the entry of an order by a bankruptcy court avoiding the payment of such amount, or otherwise, all as though such payments had not been made.

ARTICLE XXIV
SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL

Section 24.1 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS PLEDGE AND SECURITY AGREEMENT OR ANY DOCUMENT RELATED HERETO MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE BOROUGH OF MANHATTAN, THE CITY OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND EACH EQUITYHOLDER HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS RESPECTIVE PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH EQUITYHOLDER AND THE TRUSTEE HEREBY IRREVOCABLY WAIVE TRIAL BY JURY, AND EACH EQUITYHOLDER HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(b) EACH EQUITYHOLDER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE SENDING OF COPIES THEREOF BY FEDERAL EXPRESS OR OTHER OVERNIGHT COURIER COMPANY, TO SUCH EQUITYHOLDER AT ITS ADDRESS SPECIFIED BY SECTION 16.1, SUCH SERVICE TO BECOME EFFECTIVE UPON DELIVERY THEREOF TO SUCH EQUITYHOLDER.

(c) NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE TRUSTEE TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY EQUITYHOLDER IN ANY OTHER JURISDICTION.

ARTICLE XXV
GOVERNING LAW

Section 25.1 GOVERNING LAW. THIS PLEDGE AND SECURITY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS, EXCEPT TO THE EXTENT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR THE REMEDIES HEREUNDER, ARE GOVERNED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK.

ARTICLE XXVI
TABLE OF CONTENTS AND HEADINGS

Section 26.1 Table of Contents and Headings. The Table of Contents and headings of the Articles and Sections of this Pledge and Security Agreement 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Pledge and Security Agreement as of the day and year first written above.

U.S. BANK NATIONAL ASSOCIATION,
not in its individual capacity but solely as Trustee

By: /s/ Alison D.B. Nadeau
Name: Alison D.B. Nadeau
Title: Vice President

PDL BIOPHARMA, INC.

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President and Chief Executive Officer

Percentage of Limited Liability Company Interests of Issuer
Pledged Equity as of the date hereof: 100%

Notice Information pursuant to Section 16.1:

Address: 932 Southwood Boulevard
Incline Village, Nevada 89451

Attention: Chief Financial Officer

Telephone: 775-832-8500

Facsimile: 775-832-8501

Email: cris.larson@pdl.com

With a copy to:

Attention: General Counsel

Email: chris.stone@pdl.com

Jurisdiction of Organization as of the date hereof: Delaware

BILL OF SALE

This BILL OF SALE is dated as of November 2, 2009 (the "Closing Date") by PDL BIOPHARMA, INC., a Delaware corporation ("Seller"), in favor of QHP ROYALTY SUB LLC, a Delaware limited liability company ("Purchaser").

RECITALS

WHEREAS, Seller and Purchaser are parties to that certain Purchase and Sale Agreement, dated as of the Closing Date (the "Purchase and Sale Agreement"), pursuant to which, among other things, Seller agrees to sell, transfer, convey, assign, contribute and grant to Purchaser, and Purchaser agrees to purchase, acquire and accept from Seller, all of Seller's right, title and interest in, to and under the Purchased Assets, for the consideration described in the Purchase and Sale Agreement; and

WHEREAS, the parties hereto now desire to carry out the purposes of the Purchase and Sale Agreement by the execution and delivery of this instrument evidencing Purchaser's purchase, acquisition and acceptance of the Purchased Assets;

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth in the Purchase and Sale Agreement and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Seller, by this Bill of Sale, does hereby sell, transfer, convey, assign, contribute, grant, release, set over, confirm and deliver to Purchaser, and Purchaser does hereby purchase, acquire and accept, all of Seller's right, title and interest in, to and under the Purchased Assets.
2. The parties hereto acknowledge that Purchaser is not assuming any of the Excluded Liabilities and Obligations.
3. Seller hereby covenants that, at any time or from time to time after the Closing Date, at Purchaser's reasonable request and without further consideration, Seller shall execute and deliver to Purchaser such other instruments of sale, transfer, conveyance, assignment, contribution, granting and confirmation, provide such materials and information and take such other actions, each as Purchaser may reasonably deem necessary to sell, transfer, convey, assign, contribute, grant, release, set over, confirm and deliver to Purchaser, and to confirm Purchaser's title to, the Purchased Assets and to put Purchaser in actual possession of such Purchased Assets and assist Purchaser in exercising all rights with respect thereto.
4. This Bill of Sale shall be binding upon and inure to the benefit of Seller, Purchaser and their respective successors and assigns, for the uses and purposes set forth and referred to above, effective immediately upon its delivery to Purchaser.

5. THIS BILL OF SALE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.
6. This Bill of Sale may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all of such counterparts shall together constitute but one and the same instrument.
7. The following terms as used herein shall have the following respective meanings:
 - “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director, officer or manager of such Person. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative to the foregoing. For purposes hereof, the term “Affiliate” when used in respect of Seller shall be deemed to exclude Purchaser.
 - “Capital Securities” means, with respect to any Person, all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person’s capital, whether now outstanding or issued after the Closing Date, including common shares, ordinary shares, preferred shares, membership interests or share capital in a limited liability company or other Person, limited or general partnership interests in a partnership, beneficial interests in trusts or any other equivalent of such ownership interest or any options, warrants and other rights to acquire such shares or interests, including rights to allocations and distributions, dividends, redemption payments and liquidation payments.
 - “Counterparty” means Genentech, Inc., a Delaware corporation and a wholly-owned subsidiary of Roche Holding, Ltd.
 - “Counterparty Agreements” means, collectively, the Master Agreement, the License Agreements, the Settlement Agreement, the letter agreement entitled “Re: Amendments to Product Licenses and Settlement Agreement” dated July 27, 2009 from Counterparty to Seller executed by Seller and Counterparty, the letter agreement dated July 27, 2009 from Seller to Counterparty executed by Seller and Counterparty and the letter agreement dated September 22, 2009 from Seller to Counterparty executed by Seller and Counterparty.

“Excluded Liabilities and Obligations” has the meaning set forth in Section 2.4 of the Purchase and Sale Agreement.

“FDA” means the U.S. Food and Drug Administration and any successor agency thereto.

“Governmental Authority” means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority (including supranational authority), commission, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including each Patent Office, the FDA and any other government authority in any country.

“License Agreements” means, collectively, (a) the PDL License Agreement dated as of November 3, 1998 between Seller and Counterparty (re HER-2/neu protein), as amended, (b) the PDL License Agreement dated as of December 18, 2003 between Seller and Counterparty (re IgE), as amended, (c) the PDL License Agreement dated as of March 5, 2004 between Seller and Counterparty (re VEGF), as amended, and (d) any other existing or future license agreements entered into under the Master Agreement.

“Licensed Patents” means the PDL Licensed Patents as defined in Exhibit C of the Purchase and Sale Agreement.

“Licensed Products” means Avastin® (Bevacizumab), Herceptin® (Trastuzumab), Lucentis® (Ranibizumab), Xolair® (Omalizumab) and any other products subject to the Master Agreement.

“Master Agreement” means the Amended and Restated Patent Licensing Master Agreement (Queen Patents) dated as of July 27, 2009 between Seller and Counterparty, as amended.

“Patent Office” means the applicable patent office, including the United States Patent and Trademark Office and any comparable foreign patent office, for any Licensed Patents.

“Person” means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or any other legal entity, including public bodies, whether acting in an individual, fiduciary or other capacity.

“Purchased Assets” means, collectively, (a) Seller’s rights under (i) the Counterparty Agreements to (1) receive the Purchased Counterparty Agreements Royalties, (2) receive the reports produced by Counterparty pursuant to the Counterparty Agreements in respect of worldwide sales of the Licensed Products, (3) audit the records of Counterparty in respect of such sales pursuant to the Counterparty Agreements and receive an audit report summarizing the results of

any such audit and (4) make indemnification claims against Counterparty pursuant to the Counterparty Agreements and (ii) the Settlement Agreement to receive the Purchased Settlement Agreement Royalties, (b) to the extent permitted by the Counterparty Agreements, Seller's right to (i) pay directly to Counterparty any amounts due and payable under the Counterparty Agreements from Seller to Counterparty, (ii) provide any reports to Counterparty that may be due under the Counterparty Agreements from Seller and (iii) to the extent possible, cure any breach of or default under the Counterparty Agreements by Seller, (c) Seller's right to receive any Set-off pursuant to Section 2.2(c) of the Purchase and Sale Agreement, (d) Seller's right to disapprove of an assignment of the Counterparty Agreements by Counterparty and (e) Seller's right to transfer, assign or pledge the foregoing, in whole or in part, and the proceeds of and the rights to enforce each of the foregoing.

"Purchased Counterparty Agreements Royalties" means 60% of the Royalties under the Counterparty Agreements.

"Purchased Settlement Agreement Royalties" means 60% of the Royalties (except liquidated damages payments) under the Settlement Agreement if Counterparty breaches its obligations thereunder in respect of the Licensed Products.

"Royalties" means (a) all amounts or fees paid, owed, accrued or otherwise required to be paid to Seller or any of its Affiliates as a result of the sale by Counterparty or any Sublicensees of any of the Licensed Products (including not only from the sale of currently approved indications for each Licensed Product, but also from any additionally approved indications and from any off-label usage for such Licensed Product) and attributable to the period commencing on the Royalties Commencement Date, including all amounts due or to be paid to Seller or any of its Affiliates in lieu thereof (whether based upon sales of the Licensed Products or otherwise), (b) all indemnity payments, recoveries, damages or award or settlement amounts paid or payable to Seller or any of its Affiliates by any third party and arising out of or relating to the Licensed Products or as a result of a breach by Counterparty of any of the Counterparty Agreements with respect to any Licensed Product and attributable to the period commencing on the Royalties Commencement Date (except for liquidated damages payments under the Settlement Agreement), (c) all other amounts paid by Counterparty, any Sublicensee or any other Person arising out of, related to or resulting from the Licensed Products or the Counterparty Agreements and attributable to the period commencing on the Royalties Commencement Date (except for liquidated damages payments under the Settlement Agreement), (d) all accounts (as defined under the UCC) evidencing the rights to the payments and amounts described herein and (e) all proceeds (as defined under the UCC) of any of the foregoing.

"Royalties Commencement Date" means October 1, 2009.

"Set-off" means any set-off, off-set, rescission, counterclaim, reduction, deduction or defense.

“Settlement Agreement” means the Settlement Agreement dated December 18, 2003 between Seller and Counterparty, as amended.

“Sublicensee” means any sublicensee of Counterparty under the Counterparty Agreements.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of Delaware; provided, that, if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the back-up security interest granted pursuant to Section 2.1(d) of the Purchase and Sale Agreement is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than the State of Delaware, then “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of the Purchase and Sale Agreement and any financing statement relating to such perfection or effect of perfection or non-perfection.

“Voting Securities” means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale as of the day and year first written above.

PDL BIOPHARMA, INC.

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President and Chief Executive Officer

QHP ROYALTY SUB LLC

By: PDL BioPharma, Inc., its Member

By: /s/ John P. McLaughlin

Name: John P. McLaughlin

Title: President and Chief Executive Officer